

IN THE HIGH COURT OF SINDH AT KARACHI
(Original Civil Jurisdiction)

Suit No. 200 of 2020

M/s. Sadiq & Suharwardy

v.

Ismail Industries Ltd.

**and Eight Other Connected Suits and One J. Misc.
as per Annexure "B"**

Dates of Hearing: 05.09.2023, 22.09.2023, 06.10.2023,
12.10.2023 and 13.10.2023.

Date of Announcement: 10.01.2024

M/s. Muhammad Shaikh, Saifullah Sachwani, Amna Salman & Musharaf Asraf, Advocates for Plaintiff in Suit No.200/2020 and for Respondent in JM 34/2020

M/s. Hania Haroon, Alizeh Mehak & Hassan Zaman Khan, Advocate in Suit No.200/2020 for Defendant and in JM 34/2020 for Applicant.

Mr. Aitezaz Mansoor, Advocate for Plaintiff in Suit No.226/2004.

Mirza Mehmood Baig, Advocate for Plaintiff in Suit No.08/2005 and Defendant in J. Misc. No.34/2020.

Mr. Liaquat Hussain Khan, Advocate for Plaintiff in Suit No.2232/2016.

Mr. Saleem Khan holding brief for Mr. Nadeem Qureshi, Advocate in Suit No.584/2010

Mr. Salman Ahmed Shaikh holding brief for Mr. Sultan Ahmed Shaikh, Advocate in Suit No.226/2004 for Defendant and in Suit No.763/2010 for Plaintiff

Mr. Jehangir holding brie for Mr. Abid H. Puri, Advocate for Defendant in Suit No.2679/2016

Mr. Qamaruddin, Advocate for Plaintiff in Suit No.2679/2016

Ms. Saira Shaikh, Advocate.

ORDER

Jawad Akbar Sarwana, J.: The subject matter of these nine (9) suits and one (1) J. Misc. Application concern the judicial determination of future proceedings of trademark matters, which have been filed between the years 2005 and 2020, pending hearing at various stages before this bench and are currently retained in the High Court of Sindh at Karachi as per by his lordship, Mr Justice Munib Akhtar, who as a Judge of the High Court of Sindh at Karachi (currently a sitting Judge of the Supreme Court of Pakistan) authored a Note/Opinion regarding the transfer of cases from the High Court of Sindh at Karachi to the Intellectual Property Tribunal (“the IP Tribunal”) established under Section 16 of the Intellectual Property Organization of Pakistan (“IPOP”) Act, 2012. Following the Judgment of the Supreme Court of Pakistan in the case of Muhammad Multazam Raza v. Muhammad Ayub Khan, 2022 SCMR 979, and the enactment of the Trade Marks (Amendment) Act, 2023, on 11.08.2023, this bench put the parties and Counsels in the above-mentioned trademark matters on notice as to why these nine (9) suits and one (1) JM connected to one of the nine suits should not be transferred for hearing by the Tribunal established under Section 16 of the IPOP Act, 2012.

2. The learned Counsels for the Plaintiffs/Applicants in the ten (10) lis argued that after the Trade Marks (Amendment) Act, 2023, suits involving trademarks matters filed in the High Court which could have been transferred under the IPOP Act, 2012 from the High Court to the IP Tribunal need not be transferred, as most of the references made to “the District Court” in the Trade Marks Ordinance, 2001, resultantly stood substituted with reference to “the High Court”. Therefore, such trademark matters filed in the High Court should remain pending to be decided by the High Court. The Counsels also contended that the trademark suits had been filed in the High Court pursuant to the Note/Opinion written by Justice Munib Akhtar, and these matters could not be subsequently

transferred to the IP Tribunal until the Note/Opinion was varied or set aside. The litigating parties had relied on the said Note/Opinion of Mr Justice Munib Akhtar, which allowed/enabled the Plaintiffs to file and continue to prosecute their trademark claims in the High Court of Sindh at Karachi and as such vested rights have accrued to them in favor of proceeding in the High Court. The Counsels further contended that the continuation of the trademark matters in the High Court was contingent on the pecuniary value of the suit. Therefore, the pecuniary value of the trademark suits will determine the continuation of such suits in the High Court. Finally, the Counsels submitted that the High Court was comparatively more commercially sound than the IP Tribunal, hence, the parties were better placed to be heard by the High Court rather than by the IP Tribunal.

3. Ms. Saira Shaikh and Mr. Salman Ahmed Sheikh, learned Advocates, made slightly nuanced submissions. Counsel Saira Shaikh argued that after the establishment of the IP Tribunal, all suits are to be transferred from the High Court to the IP Tribunal. Thus, this bench cannot pass any further orders except to transfer all the cases. Mr Salman Ahmed Sheikh contended that there was a lack of consistency in handling the trademark matters by the High Court in that, the High Court had returned the Plaint in some cases, and in some cases the suit was transferred. He further contended that trademark matters, which involved rectification and cancellation, currently pending in the High Court of Sindh, could only be decided by the High Court of Sindh at Karachi.

4. I have heard the learned Counsels and perused the record.

5. Before proceeding further, it would be expedient to categorize the ten (10) trademark cases into three categories; namely Category "A", "B" and "C". Category "A" consists of cases filed on or before 28.12.2015, Category "B" consists of cases filed on or after 29.12.2015, and, Category "C" consists of cases involving "Rectification" and "Cancellation" provisions of the Trade Marks

Ordinance, 2001. The three categories may be expressed in tabular form as follows:

Category "A"	Category "B"	Category "C"
Suit No.1161 of 2004 Suit No. 226 of 2004 Suit No. 08 of 2005 Suit No.1058 of 2006 Suit No. 584 of 2010 Suit No. 763 of 2010	Suit No.2232 of 2016 Suit No.2679 of 2016	Suit No. 200 of 2020 a/w J.M 34 of 2020

5. By way of background, it may be noted that Parliament enacted the Intellectual Property Organization of Pakistan ("IPOP") Act, 2012 on 06.12.2012. Section 2(h) of the IPOP Act, 2012 defines "Intellectual Property Laws" as the laws specified in the Schedule to the Act which include the following:

- (1) The Trade Marks Ordinance, 2001 (XIX of 2001).
- (2) The Copyright Ordinance, 1962 (XXXIV of 1962)
- (3) The Patents Ordinance, 2000 (LXI of 2000).
- (4) The Registered Designs Ordinance, 2000 (XLV of 2000).
- (5) The Registered Layout-Designs of Integrated Circuits Ordinance, 2000 (XLIX of 2000).
- (6) Sections 478, 479, 480, 481, 482, 483, 485, 486, 487, 488 and 489 of Pakistan Penal Code (XLV of 1860).

6. Section 16 of the IPOP Act, 2012 provides for the creation of Intellectual Property Tribunals ("IP Tribunals"), and sections 17 and 18 of the Act determines the powers and jurisdiction of such Tribunals as follows:

"17. Powers of the Tribunals. (1) Subject to the provisions of the Act, the Tribunal shall,

- (a) in the exercise of its civil jurisdiction, have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908);
- (b) in the exercise of its criminal jurisdiction, try offences made punishable under this Act and shall, for this purpose have the same powers as are vested in a Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898);

(2) The Tribunal shall in all matters with respect to which the procedure has not been provided for in this Act, follow the procedure laid down in the Code.

(3) All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning or sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).

(4) Subject to subsection (5), no court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of the Tribunal extends under this Act.

(5) Nothing in sub-section (4) shall be deemed to affect any proceedings pending before such court immediately before the coming into force of this Act.

(6) All suits and proceedings pending in any court instituted under intellectual property laws shall stand transferred to, and be heard and disposed of by, the Tribunal having jurisdiction under this Act. On transfer of proceedings under this subsection, the parties shall appear before the Tribunal concerned on the date previously fixed.

(7) In respect of proceedings transferred to the Tribunal under subsection (6), the Court shall proceed from the stage which the proceedings had reached immediately prior to the transfer and shall not be bound to recall and re-hear any witness and may act on the evidence already recorded or produced before a court from which the proceedings were transferred (underling added).”

“18. Jurisdiction of the Tribunals. (1) All suits and other civil proceedings regarding infringement of intellectual property laws shall be instituted and tried in the Tribunal.

(2) Notwithstanding anything contained in any other law for the time being in force, the Tribunal shall have exclusive jurisdiction to try any offence under intellectual property laws.”

(underlining added)

7. According to Section 17(1) of IPOP Act, 2012, matters pertaining to Intellectual Property Laws pending in any Court shall stand transferred to the Intellectual Property Tribunal under Section 16 of the IPOP Act, 2012. However, the IP Tribunal in Sindh was not established until the Government of Pakistan, Law Justice and Human Rights Division published Notification No.P.15(1)/2013-A-IV dated 02.12.2014. Thereafter vide the Government of Pakistan, Law Justice and Human Rights Division published Notification No.S.R.O 1330(I)/2015 dated 29.12.2015 that the Federal Government was pleased to direct that section 15 as well as sub-sections (2), (3), (8), (9), (10), (11) and (12) of section 16 and sections 17, 18 and 19 of the said Act shall come into force with immediate effect.

8. Following the above developments, pursuant to an Order dated 14.12.2017 in Suit No.2578/2014 (Muhammad Ali Barry v. Kaybee Snacks & Others), Mr. Justice Munib Akhtar, rendered an opinion/note pursuant to the directions of the Chief Justice of the High Court of Sindh relating to the transfer of cases to the IP Tribunal Karachi. The said Note/Opinion became a part of the Office Report put up by the Asst. Registrar (D-II)(O.S.) on 28.12.2017 to regulate IP matters filed in the High Court. A selection of relevant paragraphs is reproduced from Justice Munib Akhtar’s Note/Opinion as follows:

“2. One point appears clear. Since the Tribunal is intended to be a first instance (i.e. trial) forum, the appellate jurisdiction of the High Court is not involved. Thus (obviously) HCAs and Mas (Misc. Appeals) under or in respect of or arising out of the IP Laws are not affected and were not be transferred.

3. The first jurisdiction, generally speaking, under the IP Laws is conferred on the “court” which is usually defined as being the District Court or Judge. The Sindh High Court, being or having the jurisdiction of the principal Court of Civil Jurisdiction in Karachi Division by virtue of the (Provincial) Act of 1926 exercises this jurisdiction accordingly, essentially in forms of suits filed on the Original Side. Some of the provisions of the IP Laws, however, directly confer first instance jurisdiction on the High Court. These include Petitions regarding revocation of Patents and cancellation of designs and/or the Patents Ordinance, 2000 and Registered Design Ordinance, 2000, respectively.

4. As noted above, in my view the crucial provision is Section 18(1) and what is required in particular is the proper interpretation of the word “infringement” of intellectual property laws appearing therein. The reason is that it is only suit and civil proceedings “regarding” such “infringement” that fall within the (exclusive) jurisdiction of the Tribunal and need therefore be transferred. Quite obviously, suits for infringement of intellectual property rights such as registered trademarks, patents, designs, etc. would fall within the scope of the foregoing words. The fact that such suits above have been instituted in the High Court would not be relevant since as noted the High Court is exercising jurisdiction in such matters because it is the principle court of civil jurisdiction for Karachi Division. The statute confer jurisdiction in relation to such infringement not on the High Court but rather on the District Court or Judge or Court in relation to infringement of the right concerned. Thus Section 117 of the Trademark Ordinance, 2001 (“TM Ordinance”). . . speak of the District Court/Judge. . . Now, by far, the majority of the suits pending on the original side would appear to be those involving infringement in terms of the foregoing provisions. Thus, subject to what is stated below, the general rule would appear to be that suits pending on the Original Side arising out of the IP Laws would have to be transferred to the Tribunal.

5. It is to be noted that the IP Laws provide. for remedies against groundless threats of infringement

proceedings: see s. 52 of the TM Ordinance, s. 66 of the Patents Ordinance and s. 22 of the Designs Ordinance. In these proceedings, essentially, the plaintiff is threatened by the defendant. the holder of the IP right on the basis of an alleged infringement of the latter's right(s), which the plaintiff denies. The remedies include suitable declarations, injunctions and even damages. In each case, the action is by way of a suit, which would, as explained above, ordinarily mean the District Court/Judge or court in general. It could be argued that the nature of such threats should not be considered to be "infringement of intellectual. property laws", the crucial words of section 18(1) of the Act. Indeed, it could be argued that such situations are quite the opposite: here the plaintiff is averring that he has not infringed the relevant IP Law but has nonetheless been issued a (groundless) threat in this regard. However, on the whole the better view would seem to be that such suits would also be covered by section 18(1) as being "regarding infringement" and, hence, the suit would lie within the jurisdiction of the Tribunal. This is all the more so given that it is quite probable that the IP right holder would countersue, for infringement of his right, which would certainly lie within the jurisdiction of the Tribunal. There would then be a danger of multiple proceedings before different forums.

6. Section 46(3) of the TM Ordinance provides as follows: "Nothing in his Ordinance shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or services as services provided by another person, or the remedies in' respect thereof". Thus, the action of passing off lies, as before, in the realm of torts and is not an infringement of the IM Ordinance. A suit for passing off pending on the Original Side ought not therefore to be transferred to the Tribunal, since its jurisdiction in terms of Section 18(1) is specifically limited to "infringement of intellectual property laws". The difficulty however is that invariably the action for passing off is not a "standalone" suit, in which the relief (for injunction, etc.) is sought only on this basis. It is invariably "combined" with an action for trademark infringement. Thus, it could be that relief is sought on the basis of trademark infringement with an additional or alternative basis on the ground of, passing off. In my view such a "combined" suit would not lie within the competence of the Tribunal and ought not therefore to be transferred.

7. The TM Ordinance also poses certain other difficulties in the present context. They are rather intricate in nature and may well not arise in any of the pending proceedings. I have not therefore discussed these difficulties in any detail. I merely mention this in case there is such a situation, which would have to be dealt with on a case to case basis. . . .”

9. Mr. Justice Munib Akhtar summarized his opinion in paragraph 9 of the said Note/Opinion as follows, which is reproduced to the extent of trademark matters only:

- “a) Pending appeals need not be transferred.
- b) Pending petitions (J.Ms). . . (a patent). . .(a design). . .
- c) Pending suits for infringements. . . (a patent). . . (a design). . .
- d) Suits being an action of passing off or in which relief sought on this basis along with an action for infringement of a registered trademark (whether in addition or in alternative) also ought not to be transferred.
- e) Subject to the above, suit pending on the Original Side regarding the IP Laws ought to be transferred.
- f) In case in any suit being transferred any party claims it ought not to be transferred (or even vice versa), the party should be asked to file appropriate application in the suit or seek other appropriate judicial remedy, in the High Court. The matter should then be dealt with on the basis of the judicial determination.

10. Following Justice Munib Akhtar’s Note/Opinion, the High Court accepted all kinds of suits in respect of IP Laws filed in the High Court. None were rejected. However, when a judicial challenge was raised by way of an application filed by one of the parties regarding the transfer of the trademark suit from the High Court to the IP Tribunal, a learned Single Judge of the High Court returned the Plaint filed in a suit filed in the year 2014¹ while another

¹ Order dated 14.12.2021 in Suit No.2578/2014

learned Single Judge did the same in respect of a suit filed in the year 2019.² In another suit filed in 2000, this bench, on its own motion, transferred a trademark suit from the High Court to the IP Tribunal.³

11. As a starting point and as discussed herein, it is evident that Section 17(6) of IPOP, 2012, which pertains to the transfer of proceedings from the High Court to the IP Tribunal, came into force on 29.12.2015. Therefore, with respect to the ten (10) suits and proceedings filed in the High Court before 29.12.2015, all such matters appear liable to be transferred from the High Court to the IP Tribunal. Further, from 29.12.2015, once Section 17(6) came into force, the High Court continued to entertain and hear trademark matters, whereas such actions ought not to have been filed in the High Court. In such cases, the plaint filed in the trademark suit ought to have been returned by the High Court for filing in IP Tribunal as the High Court did not have jurisdiction.

12. Apart from the above-mentioned criterion regarding the date of filing of the trademark suit, there is yet another aspect which should be kept in mind at the time when the High Court is considering either returning the plaint or transferring the suit in a pending trademark matter, and, i.e. the subject matter of the trademarks suit.

13. As Justice Munib Akhtar's Note/Opinion (reproduced above) mentioned, IPOP, 2012, covered "IP Laws" only, therefore, any matter which would fall outside the scope of "IP Laws" was deemed not to be covered by IPOP, 2012. Thus, suits that referred to "Passing Off" in the prayer clause and other multiple reliefs, such as the declaration, permanent injunction, rectification, rendition of accounts, damages, etc., were not to be transferred as per Justice Munib Akhtar's Note/Opinion. It may not be out of place to mention that Justice Munib Akhtar's Note/Opinion is neither a judicial order nor a judgment and has no binding force as it is a simplicitor office

² Order dated 14.11.2022 in Suit No. 2639/2019 and Order dated 01.11.2021 in Suit No.2058/2019.

³ Order dated 29.08.2023 in Suit No.1276/2001.

note/opinion. There was no judicial determination on whether the subject of “Passing Off” was beyond the ambit of IPOP, 2012 until the Judgement of the Supreme Court of Pakistan in the case of Muhammad Multazam Raza v. Muhammad Ayub Khan, 2022 SCMR 979 in paragraph 12 of the judgment, the apex Court observed:

“It may also be relevant to note that what is described as a passing off action may either be a passing off action simplicitor or an action of infringement of trade mark coupled with passing off. Where the case of passing off action is based on infringement of trade mark, such suit shall necessarily require determination of the question whether there had been any infringement of the trade mark and where infringement of trade mark is alleged the suit must, in view of sections 17, 18 and 39 of the IPO Act, 2012, be instituted before the tribunal notwithstanding that the allegations in the suit were coupled with the allegation of passing off.”

14. The Supreme Court clarified that IPOP, 2012 includes a “Passing Off” action.

15. Yet another development took place in August 2023, with the enactment of the Trade Marks (Amendment) Act, 2023 that has further diluted the Note/Opinion of Justice Munib Akhtar. The new law replaced references to “the District Court” with “the High Court” in the Trademarks Ordinance, 2001. Appendix “A” of this Judgment gives a tabular comparative analysis of these amendments. It may be noted that the new Section 117 of the Trademarks Ordinance, 2001 which deals with suits for infringement to be instituted before an IP Tribunal, mandates that no suit for infringement of a trademark or otherwise relating to any right in a trademark shall be instituted in any Court except an IP Tribunal having jurisdiction to try the suit. The old Section 117 stands duly amended by the Trademarks (Amendment), Act 2023, and appears to close the door to any future filing of suits for infringement before the High Court. It is also pertinent to mention here that the word “infringement” under the

trademarks law has a definite meaning. In contrast, reference to “otherwise relating to any right in a trademark”, may relate to such rights as those specified under sections 67(3) [unfair competition], 68 [misleading and comparative advertising],⁴ 90 [acts of agent or representatives], etc. of the Trademarks Ordinance, 2001. Thus, a suit for infringement and enforcement of all such rights will be made before the IP Tribunal. Therefore, on this account of the Trademarks (Amendment), Act 2023, Justice Munib Akhtar’s Note/Opinion and the current practice of the High Court require updating.

16. Notwithstanding paragraph 15 above, it is also apparent that the Legislature, enacting the Trademarks (Amendment), Act 2023, has not entirely removed references to the High Court from the Trademarks Ordinance, 2001. To this end, the amended Section 116 of the Trademarks Ordinance, 2001, provides an option in some instances to apply to the High Court where any suit or proceeding concerning the trademark is pending. Such action may be invoked under Section 73(4) [an application for revocation], Section 80(4) [an application for declaration of invalidity], Section 96(2) [an application for rectification], etc. In all such instances, an action in the High Court will be maintainable.

17. In view of the above, the contentions of the learned Counsels for the Plaintiffs/Applicants that following the Trade Marks (Amendment) Act, 2023, the trademarks suits should be retained and continue to proceed in the High Court is not entirely accurate. As discussed above, there are several moving parts, and each particular case must be examined in light of the law and on its own facts. Suffice to say that suits for infringement currently pending in the High Court and filed prior to 29.12.2015 may be transferred to the IP Tribunal forthwith (Category “A”), whereas trademarks suits filed after 29.12.2015, currently pending in the High Court, the Plaint in such suits must be returned

⁴ References to “Tribunal” under Section 2(li) means the Registrar, as the case may be, the High Court or IP Tribunal before which the proceedings concerned are pending.

(Category “B”). Finally, in cases involving a Suit connected with a J. Misc. Application, the High Court may retain jurisdiction and proceed with the matter.

18. The learned Plaintiffs Counsel's contention that if the trademark suit is valued such that the High Court has pecuniary jurisdiction, has no legs to stand. First, IPOP, 2012, is silent on pecuniary jurisdiction. There is no express reference to “pecuniary jurisdiction” in respect of a civil suit. For example, the Financial Institutions (Recovery of Finance) Ordinance of 2001 prescribed a pecuniary jurisdiction of the Banking Court. There is no such pecuniary threshold for either the High Court or the IP Tribunal mentioned in IPOP, 2012 and the Trademarks Ordinance, 2001. The only reference to the IP Tribunal under IPOP, 2012, is territorial, as in Sections 16(4) and 17(4), but not pecuniary.

19. Section 6 of the Trademarks Ordinance 2001 states that the provisions of this Ordinance shall be in addition to and not in derogation of any other law for the time being in force. Further, section 39 of IPOP, 2012 states that the provisions of IPOP, 2012 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus the provisions of IPOP, 2012 will trump the provisions of TM Ordinance, 2001.

20. In view of the above reasons, the six (6) Category “A” suits, namely, **(i) Suit No.1161 of 2004, (ii) Suit No.226 of 2004, (iii) Suit No. 08/2005, (iv) Suit No.1058 of 2006, (v) Suit No.584 of 2010 and (vi) Suit No.763 of 2010 filed by the Plaintiffs are hereby transferred to and will be heard and disposed of by the Tribunal established under Section 16 of the IPOP Act, 2012.** The parties will appear before the learned Tribunal on 14.02.2024, which will then proceed with the matter in accordance with law.

21. With regard to Category "B" Suits, the Plaints filed in the two suits, **(i) Suit No.2232/2016 and (ii) Suit No.2679/2016** are returned to the Plaintiffs to enable them to avail the jurisdiction of the IP Tribunal.

22. As regards Category "C", **it is ordered that Suit No.200 of 2020, along with J.M 34 of 2020 will proceed in the High Court of Sindh at Karachi** in its normal course as these matters relate to Revocation/Removal/Cancellation of trademarks.

23. The Office is directed to transmit a copy of this Order to the concerned officer of the Intellectual Property Tribunal of Sindh at Karachi and retain a copy of the pleadings at the time of returning the Plaint to the Plaintiffs.

J U D G E

Announced by me.

J U D G E

Annexure “A”

Trademark Ordinance, 2001	After Trademark (Amendment) Act, 2023, the actual Text
<p>(li) “tribunal” means the Registrar or, as the case may be, the High Court or a District Court before which the proceedings concerned are pending;</p>	<p>Section 2 (i) “Act” means the intellectual Property Organization Act, 2012 (Act No.XXII of 2012)”</p> <p>(xxa) "IP Tribunal" means the Tribunal established under section 16 of the Act;</p> <p>(xxb) "International application” means;</p> <p>"(xxiia) "Madrid Protocol" means ;</p> <p>(li) "Tribunal" means the Registrar, as the case may be, the High Court or IP Tribunal before which the proceedings concerned are pending;"</p>
<p>Sec 10 (2). Subject to the superintendence and direction of the Federal Government the Register shall be kept under the control and management of the Registrar.</p>	<p>Sec 10 (2). Subject to the superintendence and direction of the {Organization} the Register shall be kept under the control and management of the Registrar.</p>
<p>Sec 11. Evidence of entries in Register and things done by Registrar.</p> <p>(1) A printed, written or computer generated copy of any entry in the Register, purporting to be certified by the Registrar and sealed with the seal of the Trade Marks Registry, shall be admitted in evidence in all High Courts or District Courts in Pakistan and in all proceedings is without further proof or production of the original.</p>	<p>Sec 11. Evidence of entries in Register and things done by Registrar.</p> <p>(1) A printed, written or computer generated copy of any entry in the Register, purporting to be certified by the Registrar and sealed with the seal of the Trade Marks Registry, shall be admitted in evidence {the High Court or IP Tribunal} and in all proceedings is without further proof or production of the original.</p>
<p>Sec 14 (3) (a). by reasons of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in High Courts or District Courts.</p>	<p>Sec 14 (3) (a). by reasons of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in {the High Court}.</p>
<p>Sec 24 (6). Infringement proceedings may be brought by any co-proprietor but he may not, without the leave of the High Court or District Court, proceed with the action unless the other, or each one of the others, is either joined as a plaintiff or added as a defendant.</p>	<p>Sec 24 (6). Infringement proceedings may be brought by any co-proprietor but he may not, without the leave of the High Court or {IP Tribunal}, proceed with the action unless the other, or each one of the others, is either joined as a plaintiff or added as a defendant.</p>

<p>Sec 47. Order for erasure of offending mark.</p> <p>(1) Where a person is found to have infringed a registered trade mark, the High Court or a District Court may make an order requiring him</p> <p>(a) to cause the offending trade mark to be erased, removed or obliterated from any infringing goods, material or articles in his possession, custody or control:or</p> <p>(b) to secure the destruction of the infringing goods, material or articles, if is not reasonably practicable for the offending trade mark to be erased, removal or obliterated.</p> <p>(2) If an order under sub-section (1) is not complied with, or it appears to the High Court or District Court likely that such an order would not be complied with, the High Court or a District Court may order that infringing goods, material or articles be delivered to such person as the High. Court or a District Court may direct for erasure, removal or obliteration of the make, or for destruction, as the case may be.</p>	<p>Sec 47. Order for erasure of offending mark.</p> <p>(1) Where a person is found to have infringed a registered trade mark, the High Court or {an IP Tribunal} may make an order requiring him</p> <p>(a) to cause the offending trade mark to be erased, removed or obliterated from any infringing goods, material or articles in his possession, custody or control:or</p> <p>(b) to secure the destruction of the infringing goods, material or articles, if is not reasonably practicable for the offending trade mark to be erased, removal or obliterated.</p> <p>(2) If an order under sub-section (1) is not complied with, or it appears to the High Court or {IP Tribunal} likely that such an order would not be complied with, the High Court or {an IP Tribunal} may order that infringing goods, material or articles be delivered to such person as the High. Court or {an IP Tribunal} may direct for erasure, removal or obliteration of the make, or for destruction, as the case may be.</p>
<p>Sec 48. Order for delivery up of infringing goods, material or articles.</p> <p>(1) The proprietor of a registered trade mark may apply to the High Court or a District Court for an order for the delivery up to him, or such other person as the High Court or a District Court may direct, of any infringing goods, material or articles which a person has in his possession, custody or control in the course of a business.</p> <p>(2) An application shall not be made after the expiry of the period specified</p>	<p>Sec 48. Order for delivery up of infringing goods, material or articles</p> <p>(1) The proprietor of a registered trade mark may apply to the High Court or {an IP Tribunal} for an order for the delivery up to him, or such other person as the High Court or {an IP Tribunal} may direct, of any infringing goods, material or articles which a person has in his possession, custody or control in the course of a business.</p> <p>(2) An application shall not be made after the expiry of the period</p>

<p>in section 50, and no order shall be made unless the High Court or a District Court also makes, or it appears to the High Court or a District Court that there are grounds for making, an order under section 51.</p> <p>(3) A person to whom any infringing goods, material or articles are delivered in pursuance of an order under this section shall, if an order under section 51, has not been made, retain them pending the making of an order, or the decision not to make an order, under that section.</p> <p>(4) Nothing in this section shall affect any other power of the High Court or a District.</p>	<p>specified in section 50, and no order shall be made unless the High Court or {an IP Tribunal} also makes, or it appears to the High Court or {an IP Tribunal} that there are grounds for making, an order under section 51.</p> <p>(3) A person to whom any infringing goods, material or articles are delivered in pursuance of an order under this section shall, if an order under section 51, has not been made, retain them pending the making of an order, or the decision not to make an order, under that section.</p> <p>(4) Nothing in this section shall affect any other power of the High Court or {an IP Tribunal}.</p>
<p>Sec 51 (1). Where infringing goods material or mucks have been delivered up in pursuance of an order under section 48, an application may be made to the High Court or a District Court</p> <p>(a) for an order that they be destroyed or forfeited to such person as the High Court or a District Court may think fit; or</p> <p>(b) for a decision that no such order should be made.</p> <p>(2) In considering what order, if any should be made, the High Court or a District Court shall consider whether other remedies available in an action for infringement of the registered trade mark would be adequate to compensate the proprietor and any licensee and, protect their interests.</p> <p>(3) Where there are more persons than one interested in the goods, materials or articles, the High Court or a District Court shall make such order as it thinks just.</p> <p>(4) if the High Court or a District Court decides that no order should be made under this section; then the person, in whose possession, custody or control the goods,</p>	<p>Section 51 (1). Where infringing goods material or mucks have been delivered up in pursuance of an order under section 48, an application may be made to the High Court or {an IP Tribunal}</p> <p>(a) for an order that they be destroyed or forfeited to such person as the High Court or {an IP Tribunal} may think fit; or</p> <p>(b) for a decision that no such order should be made.</p> <p>(2) In considering what order, if any should be made, the High Court or {an IP Tribunal} shall consider whether other remedies available in an action for infringement of the registered trade mark would be adequate to compensate the proprietor and any licensee and, protect their interests.</p> <p>(3) Where there are more persons than one interested in the goods, materials or articles, the High Court or {an IP Tribunal} shall make such order as it thinks just.</p> <p>(4) if the High Court or {an IP Tribunal} decides that no order should be made under this section; then the person, in whose possession, custody or control the goods, material or articles were</p>

<p>material or articles were before being delivered shall be entitled to their return.</p>	<p>before being delivered shall be entitled to their return.</p>
<p>Sec 58. Forfeiture of goods. If the importer, consignee or owner of any seized goods, at any time before for infringement of the trade mark in respect of goods, by notice in writing to the Collector of Customs, gives consent to the goods being forfeited by the Collector of Customs, the goods shall be so forfeited by the Collector of Customs.</p>	<p>Sec 58. Forfeiture of goods. If the importer, consignee or owner of any seized goods, at any time before for infringement of the trade mark in respect of goods, by notice in writing to the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"}, gives consent to the goods being forfeited by the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"}, the goods shall be so forfeited by the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"}</p>
<p>Sec 59. Release of goods.- (1) The Collector of Customs shall release the seized goods to their designated importer consignee or owner if, within the specified period, the applicant has not:--</p> <ul style="list-style-type: none"> (a) brought an action for infringement of the registered trade mark in respect of the goods; and (b) given to the Collector of Customs notice in writing of the action. <p>(2) The Collector of Customs shall also release the seized goods to their designated importer consignee or owner if</p> <p>(a) before the end of the prescribed period, the applicant, by notice in writing to the Collector of Customs, consented to the release of the goods:</p>	<p>Sec 59. Release of goods.- (1) The {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)" shall release the seized goods to their designated importer consignee or owner if, within the specified period, the applicant has not</p> <ul style="list-style-type: none"> (a) brought an action for infringement of the registered trade mark in respect of the goods; and (b) given to the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)" notice in writing of the action. <p>(2) The {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)" shall also release the seized goods to their designated importer consignee or owner if:</p> <ul style="list-style-type: none"> (a) before the end of the

<p>and</p> <p>(b) at that time.</p> <p>(i) the applicant has not brought an action for infringement of the registered trade mark in respect of the goods; or</p> <p>(ii) the action brought by the applicant has been withdrawn.</p> <p>(3) The Collector of Customs may release the seized goods to their designated importer, consignee or owner before the end of the specified period if</p> <p>(a) having regard to information that has come to his knowledge after the goods were seized, he is satisfied that there are no reasonable grounds of believing (hat the registered trade mark has been infringed by the importation of the goods: and</p> <p>(b) the applicant has not so far brought an action for infringement of the registered trade mark in respect of the goods, or has not informed him of such an action.</p>	<p>prescribed period, the applicant, by notice in writing to the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"}, consented to the release of the goods: and</p> <p>(b) at that time.</p> <p>(i) the applicant has not brought an action for infringement of theregistered trade mark in respect of the goods; or</p> <p>(ii) the action brought by the applicant has been withdrawn.</p> <p>(3) The {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"} may release the seized goods to their designated importer, consignee or owner before the end of the specified period if:</p> <p>(a) having regard to information that has come to his knowledge after the goods were seized, he is satisfied that there are no reasonable grounds of believing (hat the registered trade mark has been infringed by the importation of the goods: and</p> <p>(b) the applicant</p>
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	<p>has not so far brought an action for infringement of the registered trade mark in respect of the goods, or has not informed him of such an action.</p>
<p>Sec 60. Action for infringement against importation of infringing goods.</p> <p>(1) The applicant may bring an action for infringement of a registered trade mark in respect of the seized goods and give a notice to the Collector of Customs, subject to the provisions of clause (b), within ten working days specified in the notice given to the applicant in respect of the goods, under section 57 “or” if</p> <p>(i) the applicant has, before the expiry of the specified period, applied in writing to the Collector of Customs for a. extension of the specified period; and</p> <p>(ii) the Collector of Customs, being satisfied that in the circumstances of the case it is fair and reasonable to do so, has extended the specified period for a number of working days not exceeding ten days, within that period so extended by the Collector of Customs.</p>	<p>Sec 60. Action for infringement against importation of infringing goods.</p> <p>(4) (1) The applicant may bring an action for infringement of a registered trade mark in respect of the seized goods and give a notice to the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"}, subject to the provisions of clause (b), within ten working days specified in the notice given to the applicant in respect of the goods, under section 57 “or” if</p> <p>i. the applicant has, before the expiry of the specified period, applied in writing to the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"}</p> <p>for a. extension of the specified period; and</p> <p>ii. {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"}, being satisfied that in the circumstances of the case it is fair and reasonable to do so, has extended the specified period for a number of working days not exceeding ten days, within that period so extended by the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs</p>

<p>(2) A District Court hearing the action</p> <p>(a) may, on the application of any person, allow that person to be joined as a defendant in the case: and</p> <p>(b) shall allow the Collector of Customs, or his duly authorised officer, to appear and be heard.</p> <p>(3) Subject to sub-section (4), in addition to any relief that a District Court may grant apart from the provisions of this section, the Court may—:</p> <p>(a) at any time, if it thinks it just order that the seized goods be released to their designated owner subject to such conditions that the Court considers fit to impose; or</p> <p>(b) order that the seized goods be forfeited.</p> <p>(4) A District Court shall not make any order which may facilitate</p> <p>(a) re-exporting of the counterfeit trade mark goods;</p> <p>(b) removing of the trade marks which have been affixed to the counterfeit trademark goods without authorization;</p>	<p>Act, 1969-(IV of 1969)".</p> <p>(2) An {IP Tribunal} hearing the action</p> <p>(a) may, on the application of any person, allow that person to be joined as a defendant in the case: and</p> <p>(b) shall allow the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"}, or his duly authorised officer, to appear and be heard.</p> <p>(6)</p> <p>(7) (3) Subject to sub-section (4), in addition to any relief that {IP Tribunal} may grant apart from the provisions of this section, the Court may</p> <p>(a) at any time, if it thinks it just order that the seized goods be released to their designated owner subject to such conditions that the Court considers fit to impose; or</p> <p>(b) order that the seized goods be forfeited.</p> <p>{4} {An IP Tribunal} shall not make any order which may facilitate</p> <p>(a) re-exporting of the counterfeit trade mark goods;</p> <p>(b) removing of the trade marks which have been affixed to the counterfeit trade mark goods without authorization; and</p> <p>(c) local sale of such goods.</p>
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<p style="text-align: center;">and</p> <p style="text-align: center;">(c) local sale of such goods.</p> <p>(5) if a District Court decides that the registered trade mark was not infringed by the importation of the goods and the designated importer, consignee or owner of the goods, satisfies the Court that he has suffered losses or damage because the goods were seized, the Court may order the applicant to pay the defendant compensation in the amount determined by the Court, for any part of the loss or damage that is attributable to any period beginning on or after the day on which the action was brought.</p> <p>(6) If, after three weeks from the day on which the action was brought there is not in force at any time an order of a District Court preventing the goods from being released. the Collector of Customs shall release the goods to their designated importer, consignee or owner.</p> <p>(7) If a District Court orders that the goods be released, the Collector of Customs shall, subject to section 63, comply with the order.</p>	<p>(5) if {An IP Tribunal} decides that the registered trade mark was not infringed by the importation of the goods and the designated importer, consignee or owner of the goods, satisfies the Court that he has suffered losses or damage because the goods were seized, the Court may order the applicant to pay the defendant compensation in the amount determined by the Court, for any part of the loss or damage that is attributable to any period beginning on or after the day on which the action was brought.</p> <p>(6) If, after three weeks from the day on which the action was brought there is not in force at any time an order of {An IP Tribunal} preventing the goods from being released. the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"} shall release the goods to their designated importer, consignee or owner.</p> <p>(7) If {An IP Tribunal} orders that the goods be released, the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"} shall, subject to section 63, comply with the order.</p>
<p>Sec 64. Insufficient security. if security give under section 55 by the applicant who gave notice in respect of a registered trade mark under section 53 or section 61 is not sufficient to meet— the expenses incurred by the Federal Government as a result of the action taken by the Collector of Customs under this Chapter, because of the notice; the amount of the difference in the expenses and the amount of security</p> <p>(a) shall be a debt due by the applicant to the Federal Government; and</p> <p>(b) shall be recovered by the Federal Government under section 202 of the</p>	<p>Sec 64. Insufficient security. if security give under section 55 by the applicant who gave notice in respect of a registered trade mark under section 53 or section 61 is not sufficient to meet— the expenses incurred by the Federal Government as a result of the action taken by the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"} under this Chapter, because of the notice; the amount of the difference in the expenses and the amount of security</p> <p>(a) shall be a debt due by the applicant to the Federal Government; and</p> <p>(b) shall be recovered</p>

<p>Customs Act, 1969 (IV of 1969).</p>	<p>by the Federal Government under section 202 of the Customs Act, 1969 (IV of 1969).</p>
<p>Sec 67 (3). An action against unfair competition may be brought before a District Court of competent jurisdiction.</p>	<p>Sec 67 (3). An action against unfair competition may be brought before {an IP Tribunal} of competent jurisdiction.</p>
<p>Sec 70 (2) (e). an order of the High Court, District Court or other competent authority transferring a registered trade mark or any right in or under it.</p>	<p>Sec 70 (2) (e). an order of the High Court, IP Tribunal or other competent authority transferring a registered trade mark or any right in or under it.</p>
<p>Sec 73 (4). An application for revocation may be made by an interested party to the Registrar except that</p> <ul style="list-style-type: none"> (a) if proceedings concerning the trade mark in question are pending in the High Court or a District Court, the application shall be made to this High Court or, as the case may be, the District Court; and (b) in case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the High Court or a District Court. 	<p>Sec 73 (4). An application for revocation may be made by an interested party to the Registrar except that</p> <ul style="list-style-type: none"> (a) if proceedings concerning the trade mark in question are pending in the High Court [OMITTED], the application shall be made to this High Court [OMITTED]; and (b) in case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the High Court [OMITTED].
<p>Sec 73 (6). Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from</p> <ul style="list-style-type: none"> (a) the date of the application for revocation; or (b) if the Registrar, the High Court or a District Court is satisfied that the grounds for revocation existed at an earlier date, that date. 	<p>Sec 73 (6). Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from</p> <ul style="list-style-type: none"> (a) the date of the application for revocation; or (b) if the Registrar {or the High Court} is satisfied that the grounds for revocation existed at an earlier date, that date.
<p>Sec 77 (2). Where infringement proceedings are, brought by a licensee under this section, the licensee may not, without the leave of the High Court or a District Court, proceed with the action unless the proprietor is either joined as a plaintiff or added as a defendant; Sec 77 (4). In infringement proceedings brought by the proprietor of a registered trade mark any loss suffered or likely to be suffered by licensees shall be taken into account and the High Court or a</p>	<p>Sec 77 (2). Where infringement proceedings are, brought by a licensee under this section, the licensee may not, without the leave of the High Court or {an IP Tribunal}, proceed with the action unless the proprietor is either joined as a plaintiff or added as a defendant; Sec 77 (4). In infringement proceedings brought by the proprietor of a registered trade mark any loss suffered or likely to be suffered by licensees shall be taken</p>

<p>District Court may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of licensees.</p>	<p>into account and the High Court or {an IP Tribunal} may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of licensees.</p>
<p>Sec 78 (4). Where proceedings for infringement of a registered trade mark brought by the proprietor or an exclusive licensee relate wholly or partly to an infringement in respect of which they have concurrent rights of action, the proprietor or, as the case may be, exclusive licensee may not, without the leave of the High Court or a District Court, proceed with the action unless the other is either joined as plaintiff or added as a defendant:</p> <p>Sec 78 (6). Where an action for infringement of a registered trade mark is brought which relates wholly or partly to an infringement in respect of which the proprietor and an exclusive licensee have or had concurrent rights of action—</p> <p>(a) the High Court or a District Court shall in assessing damages take into account</p> <p>(i) the terms of the lie; and</p> <p>(ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement ;</p> <p>(b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and</p> <p>(c) the High Court or a District Court shall if an</p>	<p>Sec 78 (4). Where proceedings for infringement of a registered trade mark brought by the proprietor or an exclusive licensee relate wholly or partly to an infringement in respect of which they have concurrent rights of action, the proprietor or, as the case may be, exclusive licensee may not, without the leave of the High Court or {an IP Tribunal}, proceed with the action unless the other is either joined as plaintiff or added as a defendant:</p> <p>Sec 78 (6). Where an action for infringement of a registered trade mark is brought which relates wholly or partly to an infringement in respect of which the proprietor and an exclusive licensee have or had concurrent rights of action—</p> <p>(a) the High Court or {an IP Tribunal} shall in assessing damages take into account</p> <p>(i) the terms of the lie; and</p> <p>(ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement ;</p> <p>(b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and</p> <p>(c) the High Court or {an IP Tribunal} shall if an</p>

<p>account of profits is directed apportion the profits between them as it, subject to any agreement between them, considers just.</p> <p>(7).The provisions of sub-section (6) shall apply whether or not the proprietor and the exclusive licensee are both parties to the action the High Court or a District Court may give such directions as it thinks fit as to the extent to which the party to the proceedings shall hold the proceeds of any pecuniary remedy on behalf of the other.</p> <p>(8). The proprietor of a registered trade mark shall inform any exclusive licensee who has a concurrent right of action before applying for an order under section 48, and the High Court or District Court may, on the application of the licensee, make such order under that section as it thinks fit having regard to the license.</p>	<p>account of profits is directed apportion the profits between them as it, subject to any agreement between them, considers just.</p> <p>(7).The provisions of sub-section (6) shall apply whether or not the proprietor and the exclusive licensee are both parties to the action the High Court or {an IP Tribunal} may give such directions as it thinks fit as to the extent to which the party to the proceedings shall hold the proceeds of any pecuniary remedy on behalf of the other.</p> <p>(8). The proprietor of a registered trade mark shall inform any exclusive licensee who has a concurrent right of action before applying for an order under section 48, and the High Court or {an IP Tribunal} may, on the application of the licensee, make such order under that section as it thinks fit having regard to the license.</p>
<p>Sec 80 (4). An application for declaration of invalidity may be made by an interested party either to the Registrar or to the High Court or a District Court, except that</p> <p>(a) if proceedings concerning the trade mark in question are pending in the High Court or a District Court, the application shall be made to the High Court or a District Court; and</p> <p>(b) in any other case, if the application has been made to the Registrar, he may at any stage of tire proceedings refer the application to the High Court or a District Court.</p>	<p>Sec 80 (4). An application for declaration of invalidity may be made by an interested party either to the Registrar or to the High Court {OMITTED}, except that</p> <p>(a) if proceedings concerning the trade mark in question are pending in the High Court {OMITTED}, the application shall be made to the High Court or a District Court; and</p> <p>(b) in any other case, if the application has been made to the Registrar, he may at any stage of tire proceedings refer the application to the High Court {OMITTED}.</p> <p>(5) {OMITTED}.</p>

<p>(5) In the case of bad faith in the registration of a trade mark, the Registrar may apply to the High (court or a District Court for a declaration of the invalidity of the registration.</p>	
	<p>A New Chapter XA with heading of “INTERNATIONAL REGISTRATION OF TRADEMARKS” is added comprising sections from 92A to 92-I.</p>
<p>Sec 93. Textile goods. The Federal Government shall prescribe classes of goods, in this Chapter referred to as textile goods, to the trade marks used in relation to which the provisions of this Chapter shall apply, and subject to the said provisions, the other provisions of this Ordinance shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.</p>	<p>Sec 93. Textile goods. The {administrative division} shall prescribe classes of goods, in this Chapter referred to as textile goods, to the trade marks used in relation to which the provisions of this Chapter shall apply, and subject to the said provisions, the other provisions of this Ordinance shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.</p>
<p>Sec 96 (2). An application for rectification may be made to the registrar, except that</p> <p>(a) if proceedings concerning the trade mark in question are pending in the High Court or a District Court, the application shall be made to the High Court or a District Court; and</p> <p>(b) in case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the High Court or a District Court.</p>	<p>Sec 96 (2). An application for rectification may be made to the registrar, except that</p> <p>(a) if proceedings concerning the trade mark in question are pending in the High Court or {an IP Tribunal}, the application shall be made to the High Court or {an IP Tribunal}; and</p> <p>(b) in case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the High Court or {an IP Tribunal}.</p>
<p>Sec 105. Powers to award compensation for offences. (1) In any prosecution under this Ordinance, the High Court or; a District Court may when passing a sentence of fine, direct that an amount not exceeding fifty percent of the fine imposed by it but commensurate with the loss suffered by</p>	<p>Sec 105. Powers to award compensation for offences. (1) In any prosecution under this Ordinance, the High Court or; {an IP Tribunal} may when passing a sentence of fine, direct that an amount not exceeding fifty percent of the fine imposed by it but commensurate with the</p>

<p>the party shall be paid as compensation to the person whose right has been infringed or to the heirs or legal representatives of such person.</p> <p>(2) The payment of any compensation to any person under sub-section (1), shall be without prejudice to his right to any claim in a suit or other proceedings which may be instituted, or may be pending in the High Court or a District Court, in relation to the same matter:</p>	<p>loss suffered by the party shall be paid as compensation to the person whose right has been infringed or to the heirs or legal representatives of such person.</p> <p>(2) The payment of any compensation to any person under sub-section (1), shall be without prejudice to his right to any claim in a suit or other proceedings which may be instituted, or may be pending in the High Court or {an IP Tribunal}, in relation to the same matter:</p>
<p>Sec 111. Procedure before the Registrar. In all proceedings under this Ordinance before the Registrar</p> <p>(a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents, issuing commissions for the examination of witnesses and granting a certificate of contested validity;</p> <p>(b) evidence, shall be given by affidavit, provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.</p>	<p>Sec 111. Procedure before the Registrar. In all proceedings under this Ordinance before the Registrar</p> <p>(a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents, issuing commissions for the examination of witnesses and granting a certificate of contested validity;</p> <p>(b) {evidence shall be given by affidavit.}</p>
<p>Sec 114. Appeal against the decision of the Registrar. (1) Save as otherwise expressly provided in this Ordinance, an appeal shall lie, within the prescribed period, against any decision of the Registrar under this Ordinance or rules made thereunder to the High Court having jurisdiction:</p> <p>Provided that if any suit or other proceedings concerning the trade make</p>	<p>Sec 114. Appeal against the decision of the Registrar.(1) Save as otherwise expressly provided in this Ordinance, an appeal shall lie, within the prescribed period, against any decision of the Registrar under this Ordinance or rules made thereunder to the High Court having jurisdiction:</p> <p>Provided that if any suit or other proceedings concerning the trade make</p>

<p>in question is pending before the High Court or a District Court, the appeal shall lie to that High Court, as the case may be, to the High Court within whose jurisdiction that District Court is situated.</p> <p>(2) In an appeal by an applicant for registration against a decision of the Registrar under section 21, 22 or 28, it shall not be open, save with the express permission of the High Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party, in the proceedings before the Registrar, as the case may be, and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs to the Registrar or the parties opposing his application.</p> <p>(3) Subject to the provisions of this Ordinance and of rules made thereunder, the provisions of the Code of Civil Procedure, 1908 (Act V of.1908), shall apply to appeal before the High Court or a District Court under this Ordinance.</p>	<p>in question is pending before the High Court or {an IP Tribunal}, the appeal shall lie to that High Court, as the case may be, to the High Court within whose jurisdiction that {IP Tribunal} is situated.</p> <p>(2) In an appeal by an applicant for registration against a decision of the Registrar under section 21, 22 or 28, it shall not be open, save with the express permission of the High Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party, in the proceedings before the Registrar, as the case may be, and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs to the Registrar or the parties opposing his application.</p> <p>(3) Subject to the provisions of this Ordinance and of rules made thereunder, the provisions of the Code of Civil Procedure, 1908 (Act V of.1908), shall apply to appeal before the High Court or {an IP Tribunal} under this Ordinance.</p>
<p>Sec 116. Procedure in certain cases of option to apply to the High Court, a District Court or the Registrar. Where under this Ordinance, an applicant, has the option of making an application either to the High Court or a District Court or to the Registrar</p> <p>(a) if any suit or proceedings concerning the trade mark in question are pending before the High Court or a District Court, the application shall be made to the High Court or, as the case may be, the District Court: and</p> <p>(b) in any other case, if the application is made to the registrar, he may at any stage of the proceedings refer the application to the High Court or a District Court.</p>	<p>Sec 116. Procedure in certain cases of option to apply to the High Court, {an IP Tribunal} or the Registrar. Where under this Ordinance, an applicant, has the option of making an application either to the High Court or {an IP Tribunal} or to the Registrar</p> <p>(a) if any suit or proceedings concerning the trade mark in question are pending before the High Court or {an IP Tribunal}, the application shall be made to the High Court or, as the case may be, the {IP Tribunal}Court: and</p> <p>(b) in any other case, if the application is made to the registrar, he may at any stage of the proceedings refer the application to the High Court or {an IP Tribunal}.</p>
<p>Sec 117. Suits for infringement to be instituted before District Court. No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.</p>	<p>Sec 117. Suits for infringement to be instituted before {IP Tribunal}. No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court {except an IP Tribunal} having jurisdiction to try the suit.</p>

<p>Sec 118. Costs of Registrar in proceedings before the High Court or a District Court. In all proceedings under this Ordinance before the High Court or a District Court, the costs of the Registrar shall be in the discretion of the High Court or, as the case may be, the District Court, but the Registrar shall not be ordered to pay the costs of any of the parties.</p>	<p>Sec 118. Costs of Registrar in proceedings before the High Court or {an IP Tribunal}. In all proceedings under this Ordinance before the High Court or {an IP Tribunal}, the costs of the Registrar shall be in the discretion of the High Court or, as the case may be, the {IP Tribunal}, but the Registrar shall not be ordered to pay the costs of any of the parties.</p>
<p>Sec 122. Death of a party to any proceedings under this Ordinance. If a person who is a party to any proceedings under this Ordinance, not being any proceedings before the High Court or a District Court, dies pending the proceedings, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceedings his successor-in-interest in his place, or if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceedings to continue without the substitution of his successor-in-interest.</p>	<p>Sec 122. Death of a party to any proceedings under this Ordinance. If a person who is a party to any proceedings under this Ordinance, not being any proceedings before the High Court or {an IP Tribunal}, dies pending the proceedings, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceedings his successor-in-interest in his place, or if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceedings to continue without the substitution of his successor-in-interest.</p>
<p>Sec 124. Registrar and other officers not compellable to produce Register, etc. The Registrar or any officer of the Trade Marks Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the Register or any other document in his custody the contents of which can be proved by the production of a certified copy issued under this Ordinance or to appear as a witness to prove the matters therein recorded unless by order of the High Court or a District Court made for special case.</p>	<p>Sec 124. Registrar and other officers not compellable to produce Register, etc. The Registrar or any officer of the Trade Marks Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the Register or any other document in his custody the contents of which can be proved by the production of a certified copy issued under this Ordinance or to appear as a witness to prove the matters therein recorded unless by order of the High Court or {an IP Tribunal} made for special case.</p>
<p>Sec 129. The Federal Government and a Provincial Government to be bound. The provisions of this Ordinance shall be binding on the Federal Government and a Provincial Government.</p>	<p>Sec 129. The Federal Government and a Provincial Government to be bound. The provisions of this Ordinance shall be binding on the Federal Government and {Provincial Governments}.</p>
<p>Sec 132 (2) (xxvi). the time period within which the applicant, by notice in writing to the Collector of Customs, consents to the release of the goods under clause (a) of sub-section (2) of section 59;</p> <p>(xlii). the period within which an appeal from any decision of the Registrar under this Ordinance or rules made thereunder may lie to the High Court or a District Court having jurisdiction under sub-section (1) of section 114;</p>	<p>Sec 132 (2) (xxvi). the time period within which the applicant, by notice in writing to the {"Director General, IPR (Enforcement). Director. IPR (Enforcement) or Collector of Customs or any competent authority under the Customs Act, 1969 (IV of 1969)"}, consents to the release of the goods under clause (a) of sub-section (2) of section 59;</p> <p>(xlii). the period within which an appeal from any decision of the Registrar under</p>

<p>(lix). the manner in which, in proceedings under this Ordinance before the Registrar or the Federal Government, application shall be made, notices given and matters advertised;</p> <p>(lxi). and matters generally,, related to business of the Trade Marks Registry or its branches and for regulating all things by this Ordinance placed under the discretion of the Registrar or the Federal Government; and</p>	<p>this Ordinance or rules made thereunder tray lie to the High Court {OMITTED} having jurisdiction under sub-section (1) of section 114;</p> <p>(lix). the manner in which, in proceedings under this Ordinance before the Registrar or the {Organization}, application shall be made, notices given and matters advertised;</p> <p>(lxi). and matters generally,, related to business of the Trade Marks Registry or its branches and for regulating all things by this Ordinance placed under the discretion of the Registrar or the {organization}; and</p>
<p>First Schedule Paragraph 12, subparagraph (7). In infringement proceedings brought by the proprietor of a registered collective mark, any loss suffered or likely to be suffered by authorised user shall be taken into account, and the High Court or a District Court may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of such users.</p>	<p>First Schedule Paragraph 12, subparagraph (7). In infringement proceedings brought by the proprietor of a registered collective mark, any loss suffered or likely to be suffered by authorised user shall be taken into account, and the High Court {an IP Tribunal} may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of such users.</p>
<p>Second Schedule Paragraph 14. The High Court or {an IP Tribunal} to take into account loss suffered by authorised users. — In infringement proceedings brought by the proprietor of the registered certification mark any loss suffered or likely to e suffered by authorised user shall be taken into account and the High Court or a District Court may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of such users.</p>	<p>Second Schedule Paragraph 14. The High Court or {an IP Tribunal} to take into account loss suffered by authorised users. — In infringement proceedings brought by the proprietor of the registered certification mark any loss suffered or likely to e suffered by authorised user shall be taken into account and the High Court or {an IP Tribunal} may give such directions as it thinks fit as to the extent to which the plaintiff shall hold the proceeds of any pecuniary remedy on behalf of such users.</p>

Annexure “B”

S. No	Case No	Case Title
1.	Suit No.200 of 2020	M/s Sadiq & Suharwardy v. Ismail Industries Limited
2.	J .Misc. No.34 of 2020	Ismail Industries Limited v. M/S Sadiq & Suharwardy & another
3.	Suit No.1161 of 2004	Master Textile Mills Ltd v. Master Fabric & Another
4.	Suit No.226 of 2004	Harrods Ltd. v. Harrods School of Applied & Applied Sciences
5.	Suit No.1058 of 2006	Pharmaton S.A v. Rite Aid Drugs Pvt. Ltd.
6.	Suit No.584 of 2010	Gujranwala Food Industries v. Mughal Enterprises & another
7.	Suit No.763 of 2010	Arfeen International Pvt Ltd v. Caracrete Pvt. Ltd.
8.	Suit No.2232 of 2016	Ontex Pakistan (Pvt) Limited v. Mr. Abdul Sattar
9.	Suit No.2679 of 2016	Paramount International Export Ltd. v. Muhammad Saleem & others
10.	Suit No.08 of 2005	M/S. Souvenir Tobacco Company v. M/S. Sadiq Cigarette