

No. R. 603

1 July 2005

COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE**AMENDMENT OF THE REGULATIONS ISSUED UNDER THE TRADE MARKS
ACT, 1993 (ACT 194 OF 1993)**

I, MANDISI MPAHLWA, the Minister of Trade and Industry have under section 69 of the Trade Marks Act, 1993 (Act 194 of 1993), read with section 28 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), amended the Trade Marks Regulations, 1995, in accordance with the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing regulations.

_____ Words underlined with a solid line indicate insertions in existing regulations.

Definitions

1. In these regulations "the Regulations" mean the Trade Marks Regulations, 1995, published under Government Notice No. R.578 of 21 April 1995, as amended by Government Notice No. R.51 of 19 January 1996, rectified by Government Notice No. R. 368 of 1 March 1996 and amended by Government Notice No. R.310 of 28 February 1997 and Government Notice No 211 of 15 February 2002.

Amendment of regulation ■ of the Regulations

2. Regulation 1 is hereby substituted by the following regulation:

“1. In these regulations, unless the context otherwise indicates, any expression to which a meaning has been assigned in the Trade Marks Act, 1993 (Act 194 of 1993), bears a meaning so assigned, and-

‘access code’ means the unique identification particulars, whether alphanumeric, biometric or otherwise, enabling the CIPRO system to identify a person;

‘the Act’ means the Trade Marks Act, 1993 (Act 194 of 1993);

‘CIPRO’ means the Companies and Intellectual Property Registration Office that constitutes a combined administrative office for the various registration offices established or deemed to be established under the Act, the Patents Act, 1978 (Act 194 of 1993), the Designs Act, 1993 (Act 195 of 1993), the Registration of Copyright in Cinematograph Films Act, 1977 (Act 62 of 1977), the Close Corporations Act, 1984 (Act 69 of 1984) and the Companies Act, 1973 (Act 61 of 1973);

‘CIPRO customer’ means any person using electronic services and includes any person who has been allowed by the Registrar to use electronic services, who is legally entitled to act on behalf of a natural or juristic person, and who has thus been allowed to use or provide electronic services or to act as an intermediary in respect of electronic services;

‘CIPRO Portal’ means the Internet website or other electronic Portal forming a part of the CIPRO system;

‘CIPRO record retention system’ means the system used by CIPRO to store records for subsequent access, whether in paper, microfilm, electronic or any other form;

‘CIPRO system’ means the computer system, including the CIPRO Portal, through which CIPRO provides electronic services, irrespective of the medium or form of technology underlying or forming a part of such services;

'electronic services' means the services provided or made available by CIPRO through the CIPRO system in terms of regulation 1A;

'inspect' includes obtaining access to a record via the CIPRO system;

'load' includes the creation of a record on the CIPRO system;

"Patent Journal" means the official journal of patents, designs, trade marks and copyright in cinematograph films of the Republic of South Africa;

"Office " means the Trade Marks Office referred to in section 5 of the Act;

'operational requirements' means the requirements provided for in regulation 1A(2);

'record' includes a document and vice versa.";

'send' includes give;

'specification' means the designation of goods or services in respect of which a trade mark is registered or proposed to be registered.".

Insertion of regulation 1 A in the Regulations

3. The following heading and regulation is hereby inserted after regulation 1 :

"ELECTRONIC SERVICES"

1A. (1) The Registrar may direct by notice in the Gazette that any requirement under the Act or these regulations, including requirements in respect of information, records and Document, may or must be satisfied in electronic form, subject to the Provisions of the operational requirements.

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- (2) The Registrar must publish operational requirements on the CIPRO portal setting out the requirements, processes and procedures in respect of all or certain electronic services, including -
- (a) registration procedures;
 - (b) identification, authentication and verification;
 - (c) form and format of records;
 - (d) manner and form of payment;
 - (e) information security requirements; and
 - (f) record retention requirements.
- (3) The operational requirements may be published in different forms over different Darts of the CIPRO Portal.
- (4) Unless another form of electronic signature is specified in the operating requirements, any signature requirement under the Act or these regulations in respect of a record to be accessed from or lodged with CIPRO is satisfied by the CIPRO customer entering his access code on the CIPRO system and any record loaded after the CIPRO customer has entered the access code shall be deemed to have been duly signed by the person whose signature is required under the Act or these regulations for purposes of such record.
- (5) Where any form under the Act or regulations makes provision for a signature and such form is deemed to be signed as provided for in sub-regulation (4), it shall not be necessary to have recorded on such form that it had been signed.
- (6) Unless CIPRO receives prior written notification from the holder of an access code to disable such access code, CIPRO shall be entitled to accept that the person using electronic services is the person to whom the access code was issued or such person's duly

authorized representative acting within the scope of such person's authority.

~~(7) CIPRO may suspend or terminate electronic services at any time without incurrina any liability for doina so: Provided that proper notice of such suspension or termination shall be aiven and that such suspension or termination will not effect existina riahts of any person who has been usina such electronic services."~~

Amendment of regulation 2 of the Regulations

4. Regulation 2 is hereby amended –

(a) by the substitution for sub-regulation (2) of the following sub-regulation:

"(2) All such fees shall, subject to such conditions as the Registrar may impose, be payable [**by means of revenue stamps or**] in such a manner as the Registrar may direct."; and

(b) by the detetion of sub-regulation (3).

Amendment of regulation 3 of the Regulations

5. Regulation 3 is hereby amended by the substitution for sub-regulation ~~(1)~~ the following sub-regulation:

"(1) The forms referred to in these regulations are the forms contained in Schedule 2, and such forms, whether in paper form or in any electronic form authorized by the Reaistrar for electronic services, shall be used in all cases to which they are applicable, but may be modified ~~or~~ amended to the extent necessary in the circumstances of a particular case."

Amendment of regulation 5 of the Regulations

6. Regulation 5 is hereby amended by the insertion of the following proviso at the end thereof:

"Provided that the requirements of this regulation are met if documents have been lodged in accordance with the operational requirements and proof of payment of the prescribed fee (if any), has been provided."

Amendment of regulation 6 of the Regulations

7. Regulation 6 is hereby amended –

(a) by the substitution for sub-regulation (1) of the following sub-regulation:

"(1) Any document to be filed with the Registrar may be sent through the post or in such electronic form and by such electronic means as authorized by the Registrar for electronic services. Any such document so sent shall not be deemed to have been duly sent until it is received by the Registrar.";

(b) by the substitution for sub-regulation (3) of the following sub-regulation:

"(3) Any affidavit to be filed with the Registrar or served on any other person in terms of regulations 19 and 52 (2) may be sent by facsimile transmission or in such electronic form and by such electronic means as authorized by the Registrar for electronic services. Such transmitted copy or original electronic document, as the case may be, shall be received and accepted by the Registrar and any such other person and shall be deemed to be in compliance with these regulations: Provided that the original version of such affidavit is filed with the Registrar before noon on the court day but one day preceding the day upon which the matter is to be heard, or within 15 court days of the date of signature of the document, whichever ~~is~~ earlier.";

(c) by the substitution for sub-regulation (4) of the following sub-regulation:

"(4) Any other document or copy to be filed with the Registrar or served on any other person in terms of the Act may be filed or served by facsimile transmission or by means of electronic transfer: Provided that the original document or copy, as the case may be, is filed or

served within 15 court days of the date of the signature thereof, unless the document or COPY so transmitted complies with the requirements of regulation 1A(4) and is, therefore, deemed to be original.".

Amendment of regulation 7 of the Regulations

8. Regulation 7 is hereby amended by the substitution for sub-regulation (3) of the following sub-regulation:

"(3) An address for service may, in addition, contain a post office box number **[and]** a facsimile transmission number and an e-mail address.".

Amendment of forms in Schedule 2 of the Regulations

9. The forms contained in Schedule 2 are hereby amended by the deletion of the expression "Revenue stamp or revenue franking machine impression" where it appears therein.