

OTHER GROUNDS FOR REFUSAL OF REGISTRATION

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1 INTRODUCTION

This chapter is concerned with some other grounds for refusal of registration of a mark which are not covered in other chapters of this manual.

2 RELEVANT LEGISLATION

The Trade Marks Act (Cap. 332, 2005 Rev. Ed.)

Interpretation

2. — (1) In this Act, unless the context otherwise requires —

"Convention country" means —

- (a) in section 10 and paragraph 13 of the Third Schedule, a country or territory, other than Singapore, which is —
 - (i) a party to the Paris Convention; or
 - (ii) a member of the World Trade Organisation; and
- (b) in any other provision of this Act, a country or territory which is —
 - (i) a party to the Paris Convention; or
 - (ii) a member of the World Trade Organisation;

"Paris Convention" means the Convention for the Protection of Industrial Property signed at Paris on 20th March 1883, as revised or amended from time to time;

"trade mark" means any sign capable of being represented graphically and which is capable of distinguishing goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person;

"TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement, as revised or amended from time to time;

"WTO Agreement" means the World Trade Organisation Agreement signed in Marrakesh in 1994 as revised or amended from time to time.

Absolute grounds for refusal of registration

7. —(1) The following shall not be registered:

- (a) signs which do not satisfy the definition of a trade mark in Section 2(1)
- (b) trade marks which are devoid of any distinctive character;
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services; and
- (d) trade mark which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade.

(4) A trade mark shall not be registered if it is —

- (a) contrary to public policy or to morality; or
- (b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or services).

(5) A trade mark shall not be registered if or to the extent that its use is prohibited in Singapore by any written law or rule of law.

(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.

(11) A trade mark shall not be registered in the cases specified in sections 56 and 57.

(12) The Minister may make rules to provide that a sign specified in the rules shall not be registered as a trade mark, or shall not be registered unless such conditions as may be prescribed are met.

(13) A trade mark shall not be registered if or to the extent that the registration contravenes any rule made under subsection (12).

National emblems, etc., of Convention countries: Article 6ter of Paris Convention, etc.

56. —(1) A trade mark which consists of or contains the flag of a Convention country shall not be registered without the authorisation of the competent authorities of that country, unless it appears to the Registrar that use of the flag in the manner proposed is permitted without such authorisation.

(2) A trade mark which consists of or contains the armorial bearings or any other state emblem of a Convention country which is protected under the Paris convention or the TRIPS Agreement shall not be registered without the authorisation of the competent authorities of that country.

(3) A trade mark which consists of or contains an official sign or hallmark adopted by a Convention country and indicating control and warranty shall not, where the sign or hallmark is protected under the Paris Convention or the TRIPS Agreement, be registered in relation to goods or services of the same, or a similar kind, as those in relation to which it indicates control and warranty, without the authorisation of the competent authorities of the country concerned.

(4) The provisions of this section as to national flags and other state emblems, and official signs or hallmarks, apply equally to anything which from a heraldic point of view imitates any such flag or other emblem, or sign or hallmark.

(5) Nothing in this section prevents the registration of a trade mark on the application of a national of a country who is authorised to make use of a state emblem, or official sign or hallmark, of that country, notwithstanding that it is similar to that of another country.

(6) Where by virtue of this section the authorisation of the competent authorities of a Convention country is or would be required for the registration of a trade mark, those authorities are entitled to restrain by injunction any use in the course of trade of the trade mark in Singapore without their authorisation.

Emblems, etc., of certain international organisations: Article 6ter of Paris Convention, etc.

57. —(1) This section shall apply to —

- (a) the armorial bearings, flags or other emblems; and
- (b) the abbreviations and names,

of international intergovernmental organisations of which one or more Convention countries are members.

(2) A trade mark which consists of or contains any such emblem, abbreviation or name which is protected under the Paris Convention or the TRIPS Agreement shall not be registered without the authorisation of the international organisation concerned, unless it appears to the Registrar that the use of the emblem, abbreviation or name in the manner proposed —

- (a) is not such as to suggest to the public that a connection exists between the organisation and the trade mark; or
- (b) is not likely to mislead the public as to the existence of a connection between the user and the organisation.

(3) The provisions of this section as to emblems of an international organisation apply equally to anything which from a heraldic point of view imitates any such emblem.

(4) Where by virtue of this section the authorisation of an international organisation is or would be required for the registration of a trade mark, that organisation is entitled to restrain by injunction any use in the course of trade of the trade mark in Singapore without its authorisation.

(5) Nothing in this section shall affect the rights of a person whose bona fide use of the trade mark in question began before 23rd February 1995 (where the relevant provisions of the Paris Convention entered into force in relation to Singapore).

Notification under Article 6ter of Paris Convention, etc.

58. —(1) For the purposes of Section 56, state emblems of a Convention country (other than the national flag), and official signs or hallmarks, shall be regarded as protected under the Paris Convention or the TRIPS Agreement only if, or to the extent that —

- (a) the country in question has notified Singapore in accordance with Article 6ter (3) of the Paris Convention, or under that Article as applied by the TRIPS Agreement, that it desires to protect that emblem, sign or hallmark;
- (b) the notification remains in force; and
- (c) Singapore has not objected to it in accordance with Article 6ter (4) of the Paris Convention, or under that Article as applied by the TRIPS Agreement, or any such objection has been withdrawn.

(2) For the purposes of Section 57, the emblems, abbreviations and names of an international organisation shall be regarded as protected under the Paris Convention or the TRIPS Agreement only if, or to the extent that —

Other grounds for refusal of registration

- (a) the organisation in question has notified Singapore in accordance with Article 6ter (3) of the Paris Convention, or under that Article as applied by the TRIPS Agreement, that it desires to protect that emblem, abbreviation or name;
- (b) the notification remains in force; and
- (c) Singapore has not objected to it in accordance with Article 6ter (4) of the Paris Convention, or under that Article as applied by the TRIPS Agreement, or any such objection has been withdrawn.

(3) Notification under Article 6ter (3) of the Paris Convention, or under that Article as applied by the TRIPS Agreement, shall have effect only in relation to applications for registration made more than 2 months after the receipt of the notification.

(4) The Registrar shall keep and make available for public inspection by any person, at all reasonable hours and free of charge, a list of —

- (a) the state emblems and official signs or hallmarks; and
- (b) the emblems, abbreviations and names of international organisations, which are for the time being protected under Paris Convention or the TRIPS Agreement by virtue of a notification under Article 6ter (3) of that Convention or under that Article as applied by the TRIPS Agreement.

Acts of agent or representative: Article 6septies of Paris Convention, etc.

59. —(1) Subsections (2) to (6) shall apply where an application for registration of a trade mark is made by a person who is an agent or representative of a person who is the proprietor of the trade mark in a Convention country.

(2) If the proprietor opposes the application, registration shall be refused.

(3) If the application (not being so opposed) is granted, the proprietor may —

- (a) apply for a declaration of the invalidity of the registration; or
- (b) apply for the rectification of the register so as to substitute his name as the proprietor of the registered trade mark.

(4) The proprietor may (notwithstanding the rights conferred by this Act in relation to a registered trade mark) by injunction restrain any use in the course of trade of the trade mark in Singapore which is not authorised by him.

(5) Subsections (2), (3) and (4) shall not apply if, or to the extent that, the agent or representative justifies his action.

(6) An application under subsection (3)(a) or (b) must be made within 3 years of the proprietor becoming aware of the registration.

(7) No injunction shall be granted under subsection (4) in respect of a use in which the proprietor has acquiesced for a continuous period of 3 years or more.

The Trade Marks Rules

Representation of President

11. The Registrar shall refuse to register a trade mark which consists of or contains any representation of the President or any colourable imitation thereof.

Singapore Crest, Presidential Coat of Arms, Royal Arms, etc.

- 12.** The Registrar shall refuse to register a trade mark which consists of or contains –
- (a) any representation of the Crest of the Republic of Singapore, the Presidential Coat of Arms, the Royal or Imperial Arms, or of any crest, armorial bearing, insignia, or device so nearly resembling any of the foregoing as to be likely to be mistaken for them;
 - (b) any representation of the Royal or Imperial crown, or of the Singapore flag, or of the Royal or Imperial flag;
 - (c) the word “Royal”, “Imperial”, “Presidential”, or “Singapore Government”, or any word, letter or device if used in such a manner as to be likely to lead persons to think that the applicant either has or recently has had Royal, Imperial, Presidential or the Singapore Government’s patronage or authorisation, whether or not such be the case;
 - (d) the words “Red Cross” or “Geneva Cross”, any representation of the Geneva Cross or the Red Cross, any representation of the Swiss Federal cross in white on a red background or silver on a red background, or any representation similar to any of the foregoing; or
 - (e) the word “ANZAC”,

unless it appears to the Registrar that consent to its registration and use of the person or authority entitled to give consent has been obtained.

Registration of mark consisting of arms, etc.

13. —(1) Where a representation of the name, initials, armorial bearings, insignia, orders of chivalry, decorations, flags or devices of any state, settlement, city, borough, town, place, society, body corporate, government body, statutory board, institution or person appear on a trade mark which is the subject of an application for registration, the Registrar, before proceeding to register the mark, may require the applicant to furnish the Registrar with the consent to the registration and use of the matter in question of such official or other person as appears to the Registrar to be entitled to give consent.

(2) The Registrar shall refuse to register the mark if no such consent is furnished within the time specified by the Registrar.

Persons living or recently dead

14. —(1) Where the name or representation of any person appears on a trade mark which is the subject of an application for registration, the Registrar may, before proceeding to register the mark, require the applicant to furnish the Registrar with the consent of the person or, in the case of a person recently dead, of his legal representatives.

Other grounds for refusal of registration

(2) Where the consent referred to in paragraph (1) is not furnished within the time specified by the Registrar and the applicant fails to satisfy the Registrar that it is impossible or impracticable in the circumstances of the case to obtain the consent, the Registrar shall refuse to register the mark.

3 SECTION 7(11) – MARKS PROTECTED UNDER ARTICLE 6^{TER} OF THE PARIS CONVENTION

Section 7(11) of the Trade Marks Act prohibits the registration of a trade mark which falls within the cases specified in sections 56 and 57. Sections 56 and 57 give effect to the obligation under Article 6^{ter} of the Paris Convention, which is concerned with protection for emblems of Convention countries and emblems of certain international organisations. “Convention country” is defined in section 2(1) as “a country or territory, other than Singapore, which is a party to the Paris Convention or a member of the World Trade Organisation”.

Flags of Convention countries receive automatic protection. All other emblems only receive protection if they have been notified in accordance with the procedure set out in section 58. Briefly, the country concerned notifies Singapore that it desires to protect the emblem in question. In the absence of an objection from Singapore, the notification affects applications for registration made more than 2 months after the receipt of the notification. A list of the protected emblems may be viewed at www.ipos.gov.sg -> eSearch -> IP²SG (Trade Marks) Search -> Public Search & Enquiry -> Article 6^{ter}.

(a) Section 56 – Emblems of Convention Countries

Section 56 of the Trade Marks Act provides that a trade mark which consists of or contains:

- (i) the flag of a Convention country;
- (ii) the armorial bearings or any other state emblem of a Convention country
- (iii) an official sign or hallmark adopted by a Convention country; or
- (iv) anything which from a heraldic point of view imitates any such flag, emblem, sign or hallmark,

shall not be registered without the authorisation of the competent authorities.

The items in (i), (ii) and (iv) above are protected irrespective of the goods or services sought to be registered. As for item (iii), the objection may be waived if the applicant shows that the goods or services for which the official sign or hallmark is used as an indication of control and warranty are dissimilar to those for which trade mark protection is sought.

(b) Section 57 – Emblems of International Organisations

Section 57 of the Trade Marks Act provides that a trade mark which consists of or contains:

- (i) armorial bearings, flags or other emblems;
 - (ii) abbreviations and names; or
 - (iii) anything which from a heraldic point of view imitates any such emblem;
- of international organisations of which one or more Convention countries are members, shall not be registered without the authorisation of the international organisation concerned, unless the Registrar is satisfied that the use of the emblem in question does

not indicate a connection with the organisation and is not likely to mislead the public as to the existence of a connection.

(c) Registrar’s Practice

When Singapore is notified of the emblems, they are indexed and put onto the Trade Marks database so that an appropriate search during the normal examination process will reveal these emblems. These emblems are allocated with an “A” prefix in the Trade Marks database.

Although many national flags are notified, Article 6ter of the Paris Convention indicates that formal notification is not necessary for protection to be accorded to the flags of countries of the Union. Therefore the identity of any flag which is included within a trade mark should be researched even if it does not appear on the Trade Marks database.

If a notified emblem is found which closely resembles the trade mark being searched, further research should be carried out to determine if the sign has only been notified for specific goods and/or services or whether the notification of that sign is a general prohibition on the use of the mark. Flags, coats of arms and country emblems, for example, apply to all goods and services in all classes. However, intergovernmental and warranty signs have limited goods and/or services. For example, a hallmark which is limited to metal goods is unlikely to cause confusion if applied to textile goods. Basic information on the emblem such as the date of the notification and a description of the emblem is available on the trade marks database. More information in determining the extent of the prohibition may be obtained from World Intellectual Property Organization’s (WIPO) 6ter database search interface at <http://www.wipo.int/reference/en/>. The onus is on the applicant to show that the goods or services for which the official sign or hallmark is used as an indication of control and warranty are dissimilar to those for which trade mark protection is sought.

(d) Wording of Registrar’s Objection

The Registrar will raise the following objection:

“The mark is objectionable under section 7(11) of the Trade Marks Act as the mark consists of/contains:

- a flag of a Convention country (see attached printout)
 - the state emblem of a Convention country (see attached printout)
 - an official sign or hallmark adopted by a Convention country (see attached printout)
 - the armorial bearing/flag/emblem of an international intergovernmental organisation (see attached printout)
 - the abbreviation/the name of an international intergovernmental organisation (see attached printout)
- (choose only one of the above)*

Other grounds for refusal of registration

The objection may be overcome by obtaining the written consent of the competent authority of the country/countries/organisation concerned, to the proposed registration of the trade mark.”

4 SECTION 7(5) – SIGNS PROTECTED UNDER OTHER NATIONAL LEGISLATION

Under section 7(5), a trade mark shall not be registered if or to the extent that its use is prohibited in Singapore by any written law or rule of law. In other words, if the trade mark applied for contains or consists of a sign the use of which is precluded under some other piece of national legislation, an objection under this subsection will apply.

Examples of legislation which prohibits the use of words and signs as trade marks are the Singapore Arms and Flag and National Anthem Rules, Singapore Tourism Board Act and the Geneva Conventions Act.

(a) Singapore Arms and Flags and National Anthem Rules

The Singapore Arms and Flags and National Anthem Rules restrict the use of Singapore's national symbols in trade marks.

Singapore's Crest/Coat of Arms

An application to register a trade mark which consists of or contains a representation of the Coat of Arms of the Republic of Singapore or anything so nearly resembling the Arms as to be likely to be mistaken for them breaches rule 3, which provides as follows:

Singapore Arms and Flags and National Anthem Rules

3. —(1) Subject to paragraph (3), no person shall, without the prior written permission of the Minister or any authorised officer —

- (a) print, publish, manufacture, sell, offer for sale or exhibit for sale;
- (b) cause to be printed, published, manufactured, sold, offered for sale or exhibited for sale;
- (c) send, distribute or deliver to, or serve on, any other person; or
- (d) cause to be sent, distributed or delivered to, or served on, any other person,

any writing, material or object in or on which appears the Arms or any token, insignia, emblem or other thing that so nearly resembles the Arms as to be capable of being mistaken for the Arms.

(3) This rule shall not prohibit —

- (a) the display of the Arms by any Government department on or within the premises of any building owned by the Government or occupied by one or more Government departments; or
- (b) the use or application of the Arms on any writing, material or object produced or commissioned by any Government department, or any public officer, for the purposes of the Government.

Consent to use the Coat of Arms of Singapore may be obtained from the Ministry of Information, Communications and the Arts.

Flag of Singapore

Under rule 9, the flag of Singapore shall not be used in any trademark, nor for any commercial or advertising purposes.

Singapore Arms and Flags and National Anthem Rules

- 9.** —(1) No person shall use or apply the Flag or any image thereof —
- (a) for any commercial purpose;
 - (b) as a means, or for the purposes, of any advertisement;
 - (c) as or as part of any furnishing, decoration, covering or receptacle,
- except in such circumstances as may approved by the Minister, being circumstances wherein there is no disrespect for the Flag.
- (2) No person shall use or apply the Flag or any image thereof as or as part of any trademark.

(b) Singapore Tourism Board Act

Sections 24 and 25 of The Singapore Tourism Board Act restrict the use of the Merlion symbol and the Singapore Tourism Board's symbol.

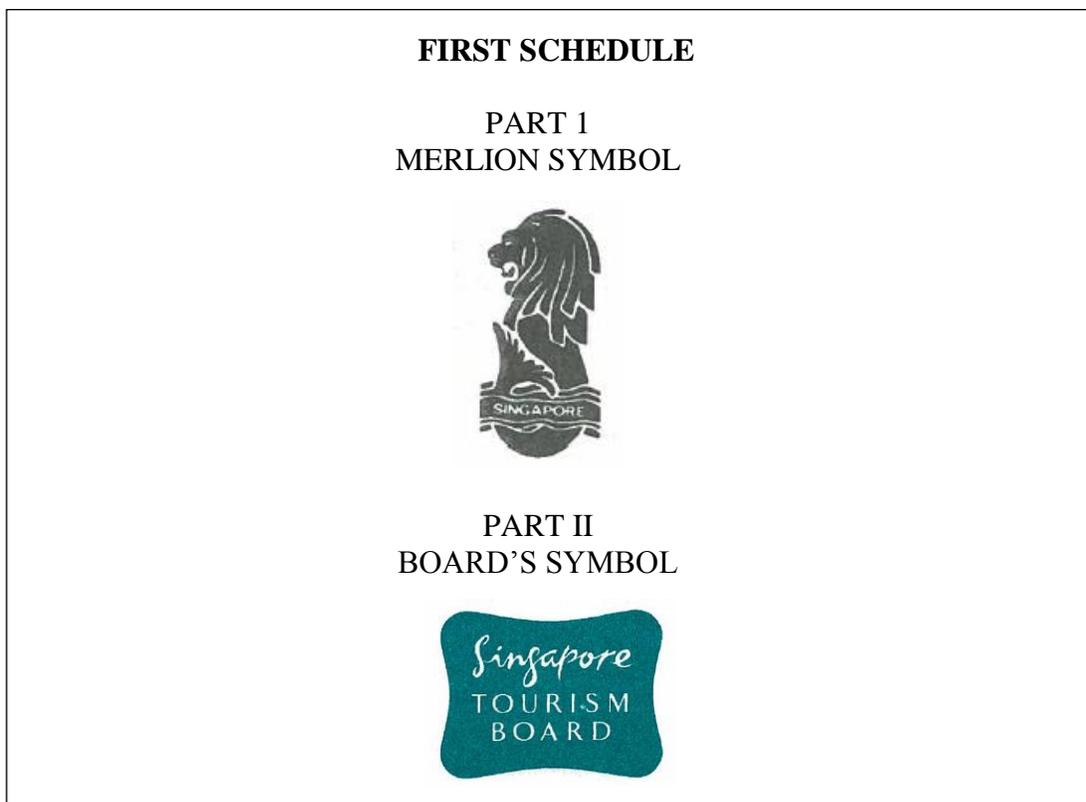
Use of Merlion symbol

24. Any person who, without the permission of the Board, uses the Merlion symbol, a representation of which is set out in Part I of the First Schedule, or a symbol or representation so nearly resembling the Merlion symbol as to cause confusion in relation to it, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.

Board's symbol

25. —(1) The Board shall have the exclusive right to the use of the Board's symbol a representation of which is set out in Part II of the First Schedule.

(2) Any person who, without the permission of the Board, uses the Board's symbol, or a symbol or representation so nearly resembling the Board's symbol as to cause confusion in relation to it, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.



Consent to use the symbols above in a trade mark may be obtained from the Singapore Tourism Board.

(c) **Geneva Conventions Act – Red Cross and Other Emblems**



**Red Cross
emblem**



**Red Crescent
emblem**



**Red Lion and Sun
emblem**



**Red Crystal
emblem**

Sections 8 and 9 of the Geneva Conventions Act provide as follows:

Prohibition of use of emblem without authority

8. No person shall, without the authority of the Minister, use for any purpose in Singapore —

- (a) the red crescent emblem;
- (b) the red cross emblem;
- (c) the red crystal emblem;
- (d) the red lion and sun emblem; or
- (e) the words “Red Cross” or “Geneva Cross”.

Prohibition of use of certain words and designs

9. No person shall without the authority of the Minister use for any purpose whatsoever —

- (a) any design consisting of a white or silver cross on a red ground, none of the limbs of which extends to the margin of the ground, being the cross comprised in the Arms of the Swiss Confederation;
- (b) any design being a colourable imitation of the design mentioned in paragraph (a);
- (c) any design being a colourable imitation of the red crescent emblem, the red cross emblem, the red crystal emblem or the red lion and sun emblem; or
- (d) any words so nearly resembling the words “Red Cross” or “Geneva Cross” as to be capable of being understood as referring to the red cross emblem.

Applications with trade marks containing or consisting of the following are objectionable under section 7(5):

- (i) a red cross on a white ground (where the cross is made up of 5 red squares)
- (ii) a white or silver cross on a red ground;
- (iii) a cross which is in black and white and the application does not contain a voluntary limitation that the cross will be used in colours other than red on a white background or vice versa (where the cross is made up of 5 red squares);
- (iv) the words “Red Cross” or “Geneva Cross”;
- (v) phonetic equivalents of the words “Red Cross” or “Geneva Cross”;
- (vi) any design so nearly resembling the above emblems as to be capable of being understood as referring to them.

The above practice applies regardless whether the objectionable emblem or words are not prominent in the mark, and regardless of the goods or services claimed.

Applications containing or consisting of a red cross on a white ground (where the cross does not have the proportion of 5 red squares) will still be objected to under section 7(5) if the cross closely resembles the red cross emblem and the goods or services are medical related (for example, Class 3, 5, 10, or 44). It is irrelevant whether the cross is a significant or prominent part of the mark.

Depending on the scenario, the applicant may overcome the objection by inserting a colour limitation to the application or obtaining consent to use the above prohibited emblems or words from the relevant authorities.

5 SECTIONS 7(1)(b), (c) AND (d) - INTERNATIONAL NON-PROPRIETARY NAMES

An International Non-proprietary Name (INN) identifies a pharmaceutical substance or active pharmaceutical ingredient by a unique name that is globally recognised and is public property. World Health Organization (WHO) advises member states of names which are proposed as and later, of names recommended as, INN. Notification to member states is accompanied by a request that the name should be recognised as the non-proprietary name for the particular substance and that member states should take all steps necessary to prevent acquisition of proprietary rights in the name, including prohibiting registration of the name as a trade mark.

The on-line database of INNs is available at <http://mednet.who.int/>.

(a) Registrar's Practice

All applications in class 5 are searched against the INN list. The Registrar would raise an objection under sections 7(1)(b), (c) and (d) in the event that:

- (i) the trade mark contains or consists of the INN without being accompanied by any other distinctive matter; and
- (ii) the specification contains “pharmaceutical substances”, “veterinary substances”, “pesticides” or analogous descriptions.

(b) Wording of Registrar's Objection

The Registrar will raise the following objection:

“The mark is objectionable under sections 7(1)(b), (c) and (d) of the Trade Marks Act as the mark consists exclusively of the word [state the INN] which is a generic term for [state the product].”

6 SECTION 7(13) – SIGNS PROTECTED UNDER TRADE MARKS RULES

Under section 7(13), a trade mark shall not be registered if or to the extent that the registration contravenes any rule made under subsection 12. Subsection 12 states that the Minister may make rules to provide that a sign specified in the rules shall not be registered as a trade mark, or shall not be registered unless such conditions as may prescribed are met. The following rules have been made under subsection 12.

(a) Rule 11 – Representation of President

Under rule 11, a mark which consists of or contains any representation of the President or any colourable imitation thereof shall not be registered as a trade mark.

(b) Rule 12 – Singapore Crest, Presidential Coat of Arms, Royal Arms, etc.

Under rule 12, a mark which consists of or contains any representation of the Crest of the Republic of Singapore, the Presidential Coat of Arms, the Royal or Imperial Arms, crown or flag or any word, letter or device that is likely to lead persons to think that the applicant has Royal, Imperial, Presidential or the Singapore Government’s patronage or authorisation shall not be registered as a trade mark. Words such as “Red Cross”, “Geneva Cross” or “ANZAC” as well as any representation of the Red Cross, the Geneva Cross or the Swiss Federal cross in white on a red background or silver on a red background shall not be registered as a trade mark.

A mark may proceed to registration if the Registrar is satisfied that consent to its registration and use has been obtained from the authorised person or organisation.

(c) Rule 13 – Registration of mark consisting of arms, etc.

Under rule 13, a mark which consists of or contains name, initials or devices of any government body, statutory board, institution or person shall not be registered as a trade mark, unless consent is furnished within the time specified by the Registrar. The signs restricted from registration under rule 13 can be found at ip2.sg -> Search & Enquiry (Trade Marks) -> Logogram.

(d) Wording of Registrar’s Objection

Where a trade mark applied for contains or consists of any of the above prohibited symbols or any symbol so nearly resembling the above prohibited symbols as to cause confusion, the Registrar will raise the following objection(s):

Other grounds for refusal of registration

The mark is objectionable under section 7(5) of the Trade Marks Act and/or rule 11/12/13 of the Trade Marks Rules as the mark consists of or contains:

- the word _____
- a representation of the _____ of Singapore
- a design of _____
- the _____ symbol
- a [word/symbol/design] so nearly resembling the [word_____/representation of _____ design of _____/ the _____ symbol] as to be capable of being understood as referring to it
(choose only one of the above)

which is a sign whose use is prohibited under the [state the name of the Act and the relevant provision].

The objection may be overcome by obtaining the written consent of the competent authority concerned, to the proposed registration of the trade mark.