

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

**TRADE MARKS (TRIBUNAL) RULES
ARRANGEMENT OF RULES**

PRELIMINARY

RULES

1. Citation
2. Interpretation

**PART I
APPEALS**

3. Entry of appeal
4. Application for an extension of time in which to appeal.
5. Notice of hearing
6. Evidence
7. Attendance of witnesses
8. Security on appeal
9. Abandonment or failure to prosecute appeal
10. Frivolous or vexatious appeals

**PART II
APPLICATIONS TO TRIBUNAL**

11. Application to Tribunal under section 31, 32, 37 or 38
12. Hearing of applications
13. Evidence by affidavit
14. Costs

**PART III
TAXATION OF COSTS**

15. Registrar of Tribunal to be Taxing Officer
16. Necessary and proper costs to be allowed
17. Scale of fees to be followed
18. Witnesses' charges and allowances
19. Taxation of costs
20. Review of decision of Taxing Officer
21. Reference to Chairman in chambers

**PART IV
GENERAL**

22. Adjournment of proceedings
23. Place of hearing
24. Forms
25. Fees
26. Endorsement of fee on document chargeable
27. Oath to be taken by assessors appointed under section 54
28. Remuneration of assessors

FIRST SCHEDULE

SECOND SCHEDULE

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

under s. 53

G.N.
261/1957(F)
5/1964(M)
166/1967

PRELIMINARY

Citation.

1. These rules may be cited as the Trade Marks (Tribunal) Rules.

Interpretation.

2. In these Rules, unless inconsistent with the context:

“Office” means the Trade Marks Office;

“Chairman” means the Chairman of the Tribunal;

Entry of appeal.

3. (1) Any person who desires to appeal to the Tribunal from a decision of the Registrar of Trade Marks in any matter in which a right of appeal is given under the Act shall, within three months after the date of the decision, file with the registrar of the Tribunal a notice in form TMT. No. 1.

(2.) A notice of appeal shall state the nature of the decision appealed against and whether the appeal is from the whole or part only and, if so, what part of the decision.

(3.) The notice in form TMT. No. 1 shall be accompanied:-

Above p. 49.

(a) in case the appeal concerns an application within regulations 31 to 35 inclusive of the Trade Marks Regulations by a copy of the form of application containing a representation of the mark applied for and a copy of the grounds of the decision of the Registrar of Trade Marks;

(b) in other cases by a copy of the decision of the Registrar of Trade Marks.

(4.) The notice shall also be accompanied by a statement in writing of the appellant’s grounds of appeal.

(5.) The appellant shall send a copy of the notice of appeal to the Registrar of Trade Marks and to any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(6.) The appellant shall be responsible for the preparation of the record which shall be certified by the Registrar of Trade Marks as correct in terms of sub-rule (9).

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

- (7.) The Registrar of Trade Marks as well as the parties or their legal practitioners shall endeavour to exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject matter of the appeal, and generally to reduce the bulk of the record as far as practicable, and to avoid the production of unnecessary exhibits, taking special care to avoid the duplication of documents and the unnecessary repetition of headings, and furnish merely the formal particulars of documents; but the documents omitted to be copied shall be enumerated in a list to be placed after the index or at the end of the record.
- (8.) The Registrar of Trade Marks, after consultation with the registrar of the Tribunal, shall direct the number of copies of the record to be prepared, having regard to whether or not one or more assessors are likely to sit upon the hearing of the appeal.
- (9.) After the completion of the preparation of the record the Registrar of Trade Marks shall certify the record to be correct and forward it to the registrar of the Tribunal together with such copies thereof as he has directed to be prepared in terms of sub-rule (8).

4. (1) Any application for an extension of time in which to appeal shall be in form TMT. No. 2 and shall state briefly the grounds upon which the application is based and where facts are alleged such facts shall be verified by affidavit.
(2) The application accompanied by supporting documents shall be delivered to the Registrar of the Tribunal and copies shall forthwith be served by the appellant on the Registrar of Trade Marks and on any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.
(3) The respondent shall be entitled to file an affidavit in reply within fourteen days from the date of service or within such longer period as may be ordered by the Tribunal, and the Tribunal may permit further affidavits to be filed. Copies of such affidavits shall be served on the Registrar of Trade Marks and on the appellant or the respondent, as the case may be, immediately after the affidavits are filed.

Application for an extension of time in which to appeal.

5. (1) The Registrar of the Tribunal shall, after obtaining directions from the Chairman, give to the Registrar of Trade Marks, to the appellant and to any opposing party not less than fourteen days' notice of the time and place appointed for the hearing of the appeal, unless the Chairman directs that shorter notice shall be given.

Notice of hearing.

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

- (2) In any case where the setting down of the hearing of an appeal has been delayed any party may apply to the registrar of the Tribunal to fix a date for the hearing, and thereupon the registrar of the Tribunal, after consulting any other party and the Chairman, shall set down the appeal for hearing after having given to the Registrar of Trade Marks and to any other party appointed less than fourteen days' notice of the time and place appointed for the hearing of the appeal unless the Chairman directs that shorter notice shall be given.
- (3) If in the opinion of the registrar of the Tribunal an appeal is not being prosecuted timeously he may lay the matter before the Chairman for directions and, if the Chairman is satisfied that the parties do not intend or are unable to proceed with the appeal, he may direct that the parties attend before him to show cause why the appeal should not be dismissed.

Evidence.

6. Subject to section 51(7) of the Act, the evidence used on appeal to the Tribunal shall be the same as that used before the Registrar of Trade Marks, and no further evidence shall be given except with the leave of the Tribunal.

7. The Tribunal may, at the request of any party, order the attendance at the hearing for the purpose of cross-examination of any person who has given evidence in the matter to which the appeal relates.

Attendance of witnesses.

8. (1) Subject to section 65 of the Act any party may, at any time before the hearing of an appeal, apply to the Tribunal for an order that any opposing party shall, within such time, in such amount and in such manner as the Tribunal directs, give security for the payment of any costs which such opposing party may be ordered to pay.

Security on appeal.

- (2) The party applying for an order for security for costs shall serve upon the opposing party a copy of the notice of the application for security at least seven days before the date of the hearing thereof.
- (3) Any party ordered to give security for costs in terms of this rule may apply to the Tribunal for an order extending the time within which any security is to be given, and shall give not less than four days' notice of such application to the other party.
- (4) In the event of the of the security not being given or being only partly given within the time directed by the Tribunal or any extension thereof, all proceedings in the appeal shall be deemed to be stayed, unless the Tribunal otherwise orders, and the appeal shall be set down for such order, whether of dismissal or otherwise, as the Tribunal may think fit.

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

- 9.** (1) An appellant may at any time abandon his appeal by giving notice of abandonment in form TMT. No. 3 to the register of the Tribunal, and upon such notice being given the appeal shall be deemed to have been dismissed by the Tribunal.
- (2) The appellant shall serve a copy of the notice of abandonment on the respondent and on the Registrar of Trade Marks.
- (3) The respondent may, upon receipt of such notice, apply to the Tribunal for an order in respect of any costs incurred by him.
- 10.** (If it appears to the Tribunal that any notice of appeal against a decision of the Registrar of Trade Marks discloses grounds of appeal which are frivolous or vexatious and that the appeal of appeal can be determined without a hearing, the Tribunal may dismiss the appeal summarily without calling on any person to attend the hearing of such appeal.

Abandonment or failure to prosecute appeal.

Frivolous or vexatious appeals.

PART II APPLICATIONS TO TRIBUNAL

- 11.** (1) An application to the Tribunal under section 31, 32, 37 or 38 of the Act shall be made in form TMT. No. 4 and shall be filed with the Registrar of Trade Marks.
- (2) The application shall set out fully the nature of the application's interest, the facts, upon which he bases his case and the relief he seeks, and shall be accompanied by an affidavit verifying the facts set out therein..
- (3) The application shall serve copies of the application and of the relevant affidavit upon the registered proprietor or registered user of the trade mark concerning which the application is made and upon any other person appearing from the register to be interested in the trade mark, and he shall advertise the application in one issue of the *Gazette*, in such form as may be approved by the Registrar of Trade Marks.
- (4) At any time within two months from the date of the advertisement the registered proprietor or registered user of the trade mark or any other person who wishes to oppose the application shall deliver to the Registrar of Trade Marks a counter-statement, verified by affidavit is opposed, and shall at the same time serve upon the applicant a copy of the counter-statement and of such affidavit. Proof of service shall be furnished to the satisfaction of the said Registrar.
- (5) When this rule has been complied with to the extent herein required the Registrar of Trade Marks shall hand all relevant papers to the registrar of the Tribunal.

Application to Tribunal under section 31, 32, 37 or 38.

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

- 12.** (1) When the registrar of the Tribunal has received from the Registrar of Trade Marks the papers or written proceedings in relation to any application or other matter made to the Tribunal under the Act he shall, after taking directions from the Chairman, appoint a time and place for the hearing if the case, and shall give the parties at least fourteen days' notice of the appointment.
- (2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Tribunal shall decide the case and notify its decision to the parties.
- 13.** (1) All evidence shall be by affidavit unless otherwise directed by the Tribunal.
- (2) Whenever a time is specified in this Part within any act or thing is to be done the Registrar of Trade Marks may, on application made to him in writing, extend the time either before or after its expiration or within any extended period.
- 14.** If the applicant notifies the Tribunal that he does not desire to proceed with an application, the Tribunal in deciding whether costs should be awarded to the other party shall consider whether proceedings might have been avoided if such other party had given reasonable notice to the applicant before the application to the Tribunal was filed.
- PART III**
TAXATION OF COSTS
- 15.** The registrar of the Tribunal shall be the Taxing Officer for the purpose of taxing a bill of costs of a legal practitioner and in the taxation of costs shall comply with such instructions as may from time to time be given to him by the Tribunal for that purpose.
- 16.** (1) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his application or opposition, and to ensure that all such costs shall be borne by the party against such order has been awarded by the party against whom such order has been awarded by the Tribunal, the Taxing Officer shall on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to counsel, unless the Tribunal otherwise orders, or special charges and expenses to witness or other persons or by other unusual expenses.

(1) Hearing of applications.

Evidence by affidavit.

Costs.

Registrar of Tribunal to Taxing Officer.

Necessary and proper costs to be allowed.

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

- (2) Upon the taxation of costs the Taxing Officer may, in determining the remuneration to be allowed, have regard to the skill, labour and responsibility involved. If, on having regard to the said matters, the Taxing Officer considers that there are special reasons why costs in excess of those prescribed in the Second Schedule should be allowed, he may, in respect of any particular application made or business done, allow such costs as seem to him reasonable and shall certify his decision in writing.
- (3) Any persons aggrieved by the charges made by any legal practitioner in respect of work performed by him under the Act may refer such charges to the Taxing Officer for taxation.

17. In the taxation of costs the Taxing Officer shall be guided, as far as the circumstances of each particular case will permit, by the scale of fees prescribed in Part IV of the Second Schedule. In addition to these charges all disbursements shall be separately charged and shall be allowed by the Taxing Officer when reasonable.

Scale of fees to be allowed.

18. (1) Witnesses requiring payment shall be paid for their attendance and traveling in accordance with the tariff prescribed in Part II of the Second Schedule.

Witnesses' charges and allowances.

- (2) The charges for witnesses as fixed by tariff are to be considered as payable to the witness by the party who summoned or produced him, and in the event of any such party being awarded his costs against any other party the said charges shall be allowed against such other party in the taxation of costs.
- (3) Any person applying to the registrar of the Tribunal for the issue of a subpoena to compel the attendance of any witness shall by endorsement of such subpoena give an undertaking that all expenses due to the witness shall be tendered to such witness upon service of the subpoena, failing which no subpoena shall issue. If upon service of the subpoena all expenses due to such witness have not been paid the subpoena shall have no force and effect.
- (4) In the taxation of costs between party and party no amount shall be allowed for any witness whether for attendance or traveling expenses unless there is produced to the Taxing Officer proof that such amount has already been paid or tendered to or claimed by such witness.
- (5) In the taxation of costs between party and party nothing shall be allowed for any witness not examined unless upon proof that his evidence might reasonably have been believed to be material and necessary.

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

- (6) If the number of witnesses summons, or if the number of affidavits filed, is manifestly greater than is reasonably necessary, there shall only be allowed against the other party the charges for such witnesses or affidavits as were reasonably necessary.
- (7) In the taxation of costs between party and party no amount shall be allowed for any witness in respect of personal attendance or traveling expenses if the fact or facts which such witness is subpoena to prove have, before the issue of such subpoena, been admitted to the party taking out the subpoena by the opposite party:
- Provided that such admission shall be in writing, signed by the party making it or his legal practitioner acting on his behalf.
- (8) When the same person is a witness in more cases than one heard on the same day, he shall be entitled to no more than one expenses, which shall be equally divided between such cases.

- 19.** (1) In all cases where a notice of taxation is necessary seven days' notice together with a copy of the bill of costs shall be given by the legal practitioner on behalf of the party whose costs are to be taxed to the other party or to the legal practitioner of such other party.
- (2) When the dwelling house or place of business of the party against whom costs are to be taxed more than 36 miles from the seat of the Tribunal, the time for the service of such notice shall be extended to fourteen days.
- (3) In the taxation of costs, the notice of taxation with a copy of the bill of costs may be transmitted by registered post to the party appearing in person.

Taxation of costs

- 20.** Any party aggrieved by the decision of the Taxation Officer may apply to the Tribunal within four weeks after the taxation to review such taxation. Copies of the application shall be served on the Taxing Officer and on the opposite party. The application shall specify the items forming the subject of the grievance but the grounds upon which such items are sought to be reviewed shall not require to be verified by affidavit.

**Review of decision
of Taxing Officer.**

- 21.** The Taxing Officer may, without filing any formal documents, submit any point arising at a taxation for decision by the Chairman in chambers, and it shall be competent for the Taxing Officer and for the legal practitioners who appeared at the taxation to appear before the Chairman respecting such point..

**Reference
Chairman
chambers. to
in**

LAWS OF MALAWI

Trade marks
Trade Marks (Tribunal) Rules

Cap. 49:01
(Subsidiary)

PART IV
GENERAL

- 22.** The hearing of any application or other matter before the Tribunal may from time to time be adjourned upon such terms as the Tribunal thinks fit.
- 23.** (1) Except as provided in sub-rule (2) every hearing before the Tribunal shall be in Blantyre.
- (2) One or more of the parties may, not later than fourteen days before the date approved for the hearing, apply to the Tribunal to conduct the hearing at some other place in Malawi. The Tribunal may, in its discretion and subject to such conditions as to notice and costs as it thinks fit, conduct the hearing at the place named in the application.
- (3) Where an application under sub-rule (2) is not made by all the parties to the proceedings, the Tribunal shall not decide the application without giving the parties an opportunity to be heard.
- 24.** The forms referred to in these Rules are those set out in the First Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Chairman.
- 25.** The Tribunal fees prescribed in Part I of the Second Schedule shall be paid to the Registrar of Trade Marks at the Office.
- 26.** (1) Upon receipt of any document chargeable with any fee payable in terms of these rules the Registrar of Trade Marks shall endorse upon the original of such document the amount of the fee paid and the date of payment.
- (2) The Registrar of Trade Marks shall refuse to accept any document in respect of which a fee is payable under these rules, unless the appropriate fee accompanies such document.
- 27.** The form of oath to be taken by assessors shall be as follows:-
- I, hereby declare that I will to the best of my ability faithfully and diligently discharge any duties as assessors without favour, fear or prejudice.
- 28.** The remuneration of any assessor appointed under section 54 of the Act shall be as prescribed in Part III of the Second Schedule.

Adjournment of proceedings.

Place of hearing.

Forms.

Fees.

Endorsement of fee on document chargeable.

Oath to be taken by assessors appointed under section 54.

Remuneration of assessors.

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

r. 24

FIRST SCHEDULE

FORMS

<u>Form</u>	<u>Matter</u>	<u>Rule</u>
1.	Notice of appeal to Tribunal	3(1)
2.	Application for an extension of time in which to appeal	4(1)
3.	Notice of abandonment of appeal	9(1)
4.	General form of application made to the Tribunal under section 31, 32, 37 or 38 of the Act.	11(1)
3.	Notice of abandonment of appeal	9(1)

LAWS OF MALAWI

Trade marks
Trade Marks (Tribunal) Rules

Cap. 49:01
(Subsidiary)

MALAWI

Form TMT. No. 1

Sections 51 and 53.
Rule 3(1).

TRADE MARKS ACT
(CAP. 49:01)

Fee:£2.10s.

Notice of Appeal to the Tribunal

IN THE MATTER OF an application (1)

(1) State nature of the application or proceedings, the name or the applicant and the number of the application for registration of a trade mark.

and

IN THE MATTER OF an opposition by (2)

(2) State the name of the opponents(s) if the application is opposed.

I/We (3)
hereby give notice of appeal to the Tribunal from (4)

(3) State full name and address of appellant(s).

of the Registrar of Trade Marks, dated the day of
200....., relating to (5)

(4) Here insert "the decision" or "that part of the decision" as the case may be.

whereby he (6)

(5) Here insert brief particulars identifying the proceedings in which the decision was given.

Dated this day of 200.....

(7)

(6) Here insert statement of the nature of the decision in question.

My/Our address of service in Malawi:-

.....
.....
.....

(7) To be signed by the appellant(s) or his/their legal practitioner.

The Registrar
The Trade Marks Office,
P.O. Box 100
BLANTYRE

LAWS OF MALAWI

Trade marks
Trade Marks (Tribunal) Rules

Cap. 49:01
(Subsidiary)

MALAWI

Form TMT. No. 2

Sections 55.
Rule 4(1).

TRADE MARKS ACT
(CAP. 49:01)

Fee: Nil.

Application for an Extension of Time in which to Appeal

IN THE MATTER OF an application (1)
.....
.....

and

IN THE MATTER OF an opposition by (2)
.....
.....

I/We (3)
.....
hereby make application for an order of the Tribunal extending the time in which to
appeal from (4)

of the Registrar of Trade Marks on the following grounds (5)
.....
.....

Dated this day of 200.....

(6)
.....

The Registrar
The Trade Marks Office,
P.O. Box 100
BLANTYRE

(1) Stat nature of the application or proceedings, the name of the applicant and the number of the application for registration of a mark.

(2) State the name of the opponent(s) if the application is opposed.

(3) State full name and address of appellant(s).

(4) Here insert "the decision" or "that part of the decision" as the case may be.

(5) Here state briefly the grounds upon which the application is based, and where facts are alleged such facts shall be verified by affidavit.

(6) To be signed by the appellant(s) or his/their legal practitioner.

LAWS OF MALAWI

Trade marks
Trade Marks (Tribunal) Rules

Cap. 49:01
(Subsidiary)

MALAWI

Form TMT. No. 3

Rule 9(1).

TRADE MARKS ACT
(CAP. 49:01)

Fee: Nil.

Notice of Abandonment of Appeal

IN THE MATTER OF an application (1)
.....
.....

and

IN THE MATTER OF an opposition by (2)
.....
.....

You are hereby notified that the above-named appellant(s) hereby abandon(s) all further proceedings in the above matter.
.....

Dated this day of 200.....

(3)
.....

(1) State nature of the application or proceedings, the name of the applicant(s) and the number of the application for registration of a trade mark.

(2) State the name of the opponent(s) if the application is opposed.

(3) To be signed by the appellant(s) or his/their legal practitioner.

The Registrar
The Trade Marks Office,
P.O. Box 100
BLANTYRE

LAWS OF MALAWI

Trade marks

Cap. 49:01

Trade Marks (Tribunal) Rules

(Subsidiary)

MALAWI

Form TMT. No. 4

Sections 31, 32, 37 or 38.
Rule 11(1).

TRADE MARKS ACT
(CAP. 49:01)

Fee: £2.10s.

General Form of Application made to the Tribunal under section 31, 32, 37 or 38 of the Act

IN THE MATTER OF Trade mark(s) No.(s)
.....registered in class in the name of

(1) State full name and address of applicant(s).

I/We (1)

(2) Here insert nature of the relief sought.

.....
hereby make application to the Tribunal for an order (2)

(3) State fully the grounds.

The grounds on which I/We base this application are as follows:-

(3).....
.....
.....

(4) To be signed by the applicant(s) or his/their legal practitioner.

Dated this day of 200.....

(4)

My/Our address of service in Malawi:-

.....
.....
.....

NOTE: The application must be accompanied by an affidavit verifying the facts upon which the case is based.

The Registrar
The Trade Marks Office,
P.O. Box 100
BLANTYRE