

Trademarks Act, 2009 (Section 42)

42. Removal from Register and imposition of limitations on ground of non-use.—(1) A registered trademark may be taken off the Register in respect of any of the goods or services, in respect of which it is registered on application made in the prescribed manner by any person aggrieved to the High Court Division or the Registrar, on the ground either—

- (a) that the trademark was registered without any bona-fide intention on the part of the applicant for registration that it should be used in relation to those goods or services, as the case may be, by him or, in a case to which the provisions of section 41 apply, by the company concerned, and that there has in fact, been no bona-fide use of the trademark, in relation to those goods or services by any proprietor thereof for the time being up to a date one month before the date of the application; or
- (b) that up to a date one month before the date of the application, a continuous period of 5 (five) years or longer elapsed during which the trademark was registered and during which there was no bona-fide use thereof in relation to those goods or services by any proprietor thereof for the time being

(2) The Tribunal shall not refuse an application submitted under sub-section (1) except where—

- (a) the applicant has been permitted under section 10 to register an identical or nearly resembling trademark in respect of the goods or services; or
- (b) where the Tribunal is of opinion that there has been, before the relevant date or during the relevant period, bona-fide use of the trademark by any proprietor thereof for the time being in relation to goods or services.

(3) On an application by an aggrieved person in the prescribed manner to the High Court Division or the Registrar, the Tribunal may impose on the registration such limitations as it thinks proper for securing that registration shall cease to extend to such use in cases where—

- (a) circumstances exist in relation to goods or services, as the case may be, to be sold, or otherwise traded in, in a particular place in Bangladesh, or in relation to goods or services, as the case may be, to be exported to a particular market outside Bangladesh, that there has been no bona fide use of the trademark for 5 (five) years or more after registration by any proprietor thereof; or

- (b) more than one person have been permitted under section 10 to register an identical or nearly resembling trademark in respect of identical goods or services, as the case may be, to be sold, or otherwise traded in, or to be exported.

(4) For the purpose of clause (b) of sub-section (1) or sub-section (2), an applicant shall not be entitled to rely on any non-use of a trademark, which—

- (a) is shown to have been due to special circumstances; and
- (b) is not to any intention to abandon the business or not to use the trademarks.