

英美商標法介紹

英國

商標觀念在英國起源的相當早，中世紀時，英國商人已普遍使用商賈標誌，除經濟上之原因外，當有事實需要及法律意義。當時教育並未普及，人民多屬文盲，於是商人將其使用之商賈標誌黏貼於貨物或包裝上，以便運送人員辨認。再者，當時國際貿易之進行，除陸運外唯靠海上運送，當時海盜猖獗，運送之船舶時有被海盜洗劫之危險。

在西元1353年，英國國會通過一項重要法案〔即27 Edward III (353)〕，至十八世紀仍舊為法庭所採用。

其相關法律包括：

Trade Marks Act 1938

Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939

Trade Marks (Amendment) Act 1984

Patents, Designs and Marks Act 1986

1938年商標法

Trade Marks Act

1 Register of trade marks etc

Effect of registration and the action for infringement

- 2 No action for infringement of unregistered trade mark.
- 3 Registration to be in respect of particular goods
- 4 Right given by registration in Part A, and infringement thereof
- 5 Right given by registration in Part B, and infringement thereof
- 6 Infringement by breach of certain restrictions
- 7 Saving for vested rights
- 8 Saving for use of name, address, or description of goods

Registrability and validity of registration

- 9 Distinctiveness requisite for registration in Part A
- 10 Capability of distinguishing requisite for registration in Part B
- 11 Prohibition of registration of deceptive, etc, matter
- 12 Prohibition of registration of identical and resembling trade marks

- 13 Registration in Part A to be conclusive as to validity after seven years
- 14 Registration subject to disclaimer
- 15 Words used as name or description of an article or substance
- 16 Effect of limitation as to colour, and of absence thereof

Procedure for, and duration of, registration

- 17 Application for registration
- 18 Opposition to registration
- 19 Registration
- 20 Duration and renewal of registration
- 21 Registration of parts of trade marks and of trade marks as a series

Assignment and transmission

- 22 Powers of, and restrictions on, assignment and transmission
- 23 Certain trade marks to be associated so as to be assignable and transmissible as a whole only
- 24 Power of registered proprietor to assign and give receipts
- 25 Registration of assignments and transmissions

Use and non-use

- 26 Removal from register and imposition of limitations on ground of non-use
- 27 Defensive registration of well known trade marks
- 28 Registered users
- 29 Proposed use of trade mark by corporation to be constituted, etc
- 30 Use of one of associated or substantially identical trade marks equivalent to use of another
- 31 Use of trade mark for export trade

Rectification and correction of the register

- 32 General power to rectify entries in register
- 33 Power to expunge or vary registration for breach of condition
- 34 Correction of register
- 35 Alteration of registered trade mark
- 36 Adaptation of entries in register to amended or substituted classification of goods

Manchester Branch

39 Trade marks for textile goods

39A Registration of trade mark following overseas application

GENERAL AND MISCELLANEOUS

Rules and fees

40 Power of Board of Trade to make rules

40A Hours of business and excluded days

41 Fees

Powers and duties of Registrar

42 Preliminary advice by Registrar as to distinctiveness

43 Hearing before exercise of Registrar's discretion

44 Power of Registrar to award costs

45 Annual reports of Registrar

Legal proceedings and appeals

46 Registration to be prima facie evidence of validity

47 Certificate of validity

48 Costs of Registrar in proceedings before Court, and payment of costs by Registrar

49 Trade usage, etc to be considered

50 Registrar's appearance in proceedings involving rectification

51 Court's power to review Registrar's decision

52 Discretion of Court in appeals

53 Procedure on appeal to Board of Trade

54 Procedure in cases of option to apply to Court or Registrar

Evidence

55 Mode of giving evidence

56 Evidence of orders, etc of Board of Trade

Offences and restraint of use of Royal Arms

59 Falsification of entries in register a misdemeanour

- 60 Fine for falsely representing a trade mark as registered
- 61 Restraint of use of Royal Arms, etc

Miscellaneous

- 62 Change of form of trade connection not to be deemed to cause deception
- 63 Jointly owned trade marks
- 64 Trusts and equities
- 64A Restriction on importation of goods bearing infringing trade marks
- 65 Recognition of agents
- 66 Saving for jurisdiction of courts in Scotland, Northern Ireland and Isle of Man

Supplemental

- 68 Interpretation
 - 69 Transitional provisions
 - 70 Repeal and savings
 - 71 Short title, commencement and extent
- 1984年商標法

Trade Marks Amendment Act 1984

該法乃修正1938年Trade Marks Act

- 1. Application of Trade Marks Act 1938 to service marks
- 2. Short title, commencement and extent

美國

美國最早之商標保護，係由法院根據普通法給予未辦理註冊商標之保護判決。1837年，麻州法院開始受理有關商標之訟案，聯邦法院亦於1844年受理英國製造商控告一美國公民侵害其商標之訴訟案件。至1870年，美國法院所判決之商標案件，計有六十二宗。美國商標權基礎係採雙管齊下，適用於聯邦秩序者為1946年頒佈的Lanham Act，至於州階層則適用各州制訂之法律Statutory law以及不當競爭之普通法Common Law of Unfair competition，其法律沿革如下：

Lanham Trademark Act of 1946

Trademark Clarification Act of 1984

Trademark Counterfeiting Act of 1984

Trademark Law Revision Act of 1988

1988年商標法修正案（修文要旨）

Trademark Law Revision Act of 1988

101 Short title.
102 Reference to the trademark act of 1946.
103 Application to register trademarks.
104 Trademarks registrable on principal register.
105 Service marks registrable.
106 Collective and certification marks registrable.
107 Use by related companies.
108 Disclaimer of unregistrable matter.
109 Certificate of registration on the principal register.
110 Duration of registration.
111 Renewal of registration.
112 Assignment.
113 Examination of application.
114 Opposition to marks.
115 Cancellation of registrations.
116 Incontestability of right to use mark.
117 Interference.
118 Action of commissioner in proceedings.
119 Application of equitable principles.
120 Appeals.
121 Supplemental register.
122 Cancellation on supplemental register.
123 Provisions of act applicable to supplemental register.
124 Registration on principal register not precluded.
125 Notice of registration.
126 Classification of goods and services.
127 Innocent infringement and violations of section 43 (a).
128 Remedies.
129 Recovery for violation of rights.
130 Destruction of infringing articles.
131 Jurisdiction.
132 Unregistered marks, descriptions, and representations.
133 International matters.
134 Construction and definitions.
135 Pending applications.
136 Effective date.

參考書目

1. Litigating copyright, trademark, and unfair competition cases 1989
346.048/S947
2. Passing off law and practice 346.0482/D811
3. Merchandising intellectual property 346.048/A214
4. 專利商標法選論 440.61/8763
5. 中美防止仿冒商標談判及其影響 588.34/3113
6. 商標事後審查之研究 008.83/1156