

The Protection of Names, Uniforms And Badges Act

*Date of commencement: 16th May, 1969.*

*Date of Assent: 7th May, 1969.*

*An Act to make provision for the protection of the names, uniforms and badges of certain associations and institutions and for their registration and to prevent their use by unauthorised persons.*

*Short Title.*

1. This Act may be cited as the Protection of Names, Uniforms and Badges Act, 1969.

*Interpretation.*

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

“association” means an association, group or body formed for the promotion of sport or scouting, or such other purpose as, in the opinion of the Minister, is in the public interest;

“badge” means any object or figure or design used by an association or institution as a mark of recognition as a member of such association or institution;

“distinctive” means adopted to distinguish or differentiate members of one association or institution from those of another association or institution;

“institution” means any institution, including any university, university college, teachers’ college, training college, normal college, technical college, school or research institute, in Swaziland or a foreign country, for the promotion of education, arts, science or any other lawful human activity;

“magistrate’s court” means a court of the First Class established under the Subordinate Courts Proclamation (*Cap. 20*);

“Minister” means the Minister for Justice and Constitutional Development;

“parent national body” includes any association, board, union, council or other body created, constituted or formed for the control, supervision, management or administration of an association or institution or a branch thereof, to which subsidiary associations, boards, unions, councils or other bodies are, or may be affiliated;

“register” means the register referred to in section 3;

“registrar” means the registrar of companies appointed under the Companies Act No. 7 of 1912;

“uniform” means any article or articles of wearing apparel, being distinctive in design and colour, intended to be used by members of an association or institution;

“use” includes the use, wearing, sale, trading, bartering, or otherwise dealing in or with any name, uniform or badge.

*Keeping of Register.*

3. (1) The Minister shall for the purposes of this Act cause a register to be kept wherein shall be entered the particulars referred to in section 5(3) as well as the particulars of any amendment or deletion of any entry made under this Act.

(2) The register or any document lodged in terms of this Act shall be kept by the registrar and shall be open for inspection by the public during normal office hours on payment of the prescribed fee and subject to any prescribed conditions.

*Application for The Registration of Name, etc..*

4. (1) An association or institution may make application to the Minister for registration of —

- (a) the name of such association or institution;
- (b) any special name or designation used by such association or institution for the members thereof or for the members of any organization constituted by such association or institution in pursuance of its rules and regulations;
- (c) any uniform, with or without a badge as an integral portion thereof, used by such association or institution;
- (d) any badge, with or without a uniform, used by such association or institution.

(2) An application under subsection (1) shall be made in such manner, and contain such information as the Minister may prescribe, and shall *inter alia*, contain an exact and precise description and a pictorial representation or design of the name, uniform or badge sought to be registered and be accompanied by such fee as the Minister may prescribe.

*Publication of Notice of Application And Lodging Of Objections.*

5. (1) Upon receipt of an application under section 4 the Minister shall, by notice in the Gazette, publish the particulars thereof, and shall invite all persons affected or likely to be affected by the grant of such application, to lodge in a prescribed form particulars of any objection thereto within one month of the date of publication at a place specified therein:

Provided that —

- (a) in the case of an application by an association the Minister may further refer such application to the parent national body, if any, to which such applicant association may directly or indirectly be affiliated or connected, in order that such parent national body may make such recommendation to the Minister as it may deem fit;
- (b) in the case of an application by a school, the Minister shall refer such application to the Minister for Education in order that the Minister for Education may make such recommendation to the Minister as he may deem fit.

(2) Before granting the application the Minister shall consider any objection which may have been lodged against it in terms of subsection (1).

(3) If no objection has been lodged within the time stated in subsection (1) or if an objection has been lodged and duly considered by the Minister he may, if he deems fit, cause the name and address of the applicant association or institution and the name, uniform or badge, the registration of which was applied for, and an exact and precise description and a

drawing or pictorial representation of such name, uniform or badge to be entered in the register.

(4) The decision of the Minister upon any application shall be final and binding.

*Publication of Registration and Certificate.*

6. (1) The Minister shall cause a notice to be published in the Gazette of every registration made under section 5(3) and of every amendment or revocation of any such registration.

(2) The Minister shall cause a certificate of registration in such form and containing such particulars as may be prescribed to be issued to an association or institution, whose application has been granted by him.

*Amendment and Cancellation of Certificate Of Registration.*

7. (1) The Minister may at any time cause a notice to be served on any association or institution calling upon it to show cause in a prescribed manner and on or before a date specified in such notice, why a certificate of registration issued to it under this Act should not be amended or cancelled.

(2) The Minister may after the said date and after considering any representation made to him by such association or institution order it to deliver to him its certificate of registration for amendment or cancellation, as the case may be, and shall cause any entry in the register to be altered or cancelled accordingly.

(3) Upon receiving any order made under subsection (2), the chairman or secretary of such association or institution shall forthwith deliver to the Minister its certificate of registration for amendment or cancellation, and the Minister shall thereupon cause it to be amended or cancelled, as the case may be.

*Use of Registered Names, etc..*

8. (1) Every association or institution to whom a certificate or registration has been issued in terms of section 6(2) shall be entitled to the sole and exclusive right to use the name, uniform or badge in respect of which the certificate was issued.

(2) No person shall use such name, uniform or badge or any part thereof, or any other name, uniform or badge so closely resembling it as might lead to the reasonable belief that it is such name, uniform or badge, unless he has the written authority of such association or institution or is a member thereof.

*Damages for Misuse of Name, Uniform Or Badge.*

9. Any person who uses the name, uniform or badge of an association or institution in contravention of section 8(2) may be sued by such association or institution in any magistrate's court for —

(a) an amount not exceeding fifty emalangeni, and such court may without proof of any damages, in addition to the costs of the action, award such association or institution an amount not exceeding fifty emalangeni as it may deem reasonable in the circumstances; or

- (b) damages or an interdict or for both, and such court may in addition to the costs of the action award such damages as have been proved to its satisfaction to have been suffered by the association or institution in consequence of the wrongful use by such person of its name, uniform or badge, or grant an interdict, or award damages and grant an interdict.

*Savings.*

10. (1) Nothing in this Act shall be deemed to prevent any person from using any name, uniform or badge in the course of or for the purpose of a stage play or representation, or a music hall or theatre or circus or like performance or pageant, or the production of a cinematograph film:

Provided that the name, uniform or badge is not used in such manner or under such circumstances as to bring it into ridicule or contempt.

(2) No entry relating to any name, uniform or badge shall be made in the register in respect of which, or any part of which any design is registered under any law dealing with the registration of patents, designs, trade marks, or copyright, unless the owner of such registered design permits the use thereof.

(3) Nothing in this Act shall prevent the continued use of any mark or device not protected under any law dealing with the protection of patents, designs, trade marks or copyright which has been used as a *bona fide* trade mark before the commencement of this Act:

Provided that the onus of proving such *bona fide* use shall be on the person claiming it.

(4) Nothing in this Act or in any notice under this Act shall deprive any person of the right to use any name, uniform or badge which, at the commencement of this Act, was in regular use by such person:

Provided that the onus of proving such regular use shall be upon such person.

*Annual Payments.*

11. (1) An association or institution whose name is registered under the provisions of section 5(3) shall pay annually to the Minister such fees, if any, as may be prescribed.

(2) If any such association or institution fails to pay such fee on or before the prescribed date in any year the Minister may cause all entries in the register in respect of such association or institution to be deleted and thereupon any certificate which has been issued to such association or institution under this Act shall be deemed to be cancelled.

*Regulations.*

12. The Minister may make regulations not inconsistent with this Act, for all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient for giving effect to this Act, or for the conduct of any business relating to any office established by this act.

*Offences and Penalties.*

13. Any person who fails to comply with section 7(3) or who contravenes section 8(2) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangen.