

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1867. Fredericton, NB: G. E. Fenety, Printer to the Queen's Most Excellent Majesty, 1867.

30 Victoria – Chapter 31

An Act relating to Trade Marks. Passed 17th June 1867.

Section.

1. Trade Marks, by whom granted.
2. How applied for.
3. Petition and diagrams, where filed.
4. granting of Trade Marks published in Gazette.
5. What constitutes "Trade Marks."
6. Provincial Secretary to determine who has a right to a Trade Mark.

Section.

7. Penalty for using Trade Marks registered by another person.
8. Penalty for registering a Trade Mark already registered.
9. How penalties recovered.
10. What held to be use of Trade Mark.
11. Fee to be paid Provincial Secretary.
12. Suit may be maintained by proprietor.

Whereas it is expedient to make provision for the better ascertaining and determining the right of manufacturers or others, to enjoy the exclusive use within this Province of Trade Marks claimed by them;—

Be it therefore enacted by the Governor, Legislative Council, and Assembly, as follows:—

1. The Governor may from time to time grant, under the Great Seal of the Province, to any person or persons applying therefor, the exclusive right to appropriate and use any particular Trade Mark or Marks.
2. The applicants for such right shall in his or their petition set forth a description of the said Trade Mark, accompanied by a diagram or drawing of the same, and also by the declaration of the applicant that the said Trade Mark has not been previously appropriated by any person or persons, and is not in public or common use in the Province; the allegation in the said petition and declaration he shall verify on oath to the best of his belief.
3. The Petition with the accompanying diagram and affidavit shall be delivered into the Provincial Secretary's Office and there filed, and the grant thereof duly registered as in case of other grants issuing under the Great Seal.
4. The granting of such Trade Marks shall be duly published for three months in the Royal Gazette by the Provincial Secretary.
5. For the purposes of this Act, all marks, names, brands, labels, packages or other business devices which may be adopted for use by any person in his trade, business, occupation, or calling, for the purpose of distinguishing any manufacture, product or

article of any description by him manufactured, produced, compounded, packed, or offered for sale, no matter how applied, whether to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatever containing the same, shall be considered and known as "Trade Marks," and may be registered for the exclusive use of the party registering the same in the manner hereinbefore provided; and thereafter he shall have the exclusive right to use the same to designate articles manufactured or sold by him.

6. If any person shall make application to register as his own any Trade Mark which has been already registered, the Provincial Secretary shall notify all parties interested, with their witnesses, to appear before him for the purpose of establishing which is the rightful owner of such Trade Mark, and after having heard the parties and their witnesses, the said Provincial Secretary shall order such entry or cancellation, or both, to be made as he shall deem just; in the absence of the said Secretary the Assistant Secretary may hear and determine the case, and make such entry or cancellation, or both, as to right and justice may appertain.

7. If any person other than the party who has registered the same shall mark any goods or any article of any description whatever with any Trade Mark registered under the provisions of this Act, or with any part of such Trade Mark, whether by applying such Trade Mark, or any part thereof, to the article itself, or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such Trade Mark, or shall knowingly sell or offer for sale any article marked with such Trade Mark, or with any part thereof, with intent to deceive and to induce persons to believe that such article was manufactured, produced, compounded, packed or sold by the proprietor of such Trade Mark, he shall be guilty of a misdemeanor, and on conviction thereof shall forfeit for each offence a sum of not less than twenty dollars and not exceeding one hundred dollars, which amount shall be paid to the proprietor of such Trade Mark, together with the costs incurred in enforcing and recovering the same; provided always, that every complaint under this Section shall be made by the proprietor of such Trade Mark, or by some one acting on his behalf and duly authorized thereto.

8. If any person shall knowingly and wilfully register as his own, any Trade Mark the property of a person not resident in this Province, he shall be guilty of a misdemeanor, and shall be subject and liable to the penalty mentioned in the preceding Section; and the entry of every such Trade Mark in the Secretary's Office shall be cancelled by the said Provincial Secretary, on receipt of a certificate signed by the Clerk of the Court, or the Justices of the Peace before whom the conviction was had, of any such conviction, and one half of every such penalty shall be paid to the party prosecuting, and the other half to the use of the Province.

9. Complaints under either of the two next preceding Sections may be brought by any party or person whatever, and the penalties mentioned in the three next preceding

Sections shall be enforced and recovered in the same manner and subject to the same provisions as are provided in the Sections of this Act respecting the registration and protection of designs.

10. The use of any Trade Mark either identical with that of any manufacturer, producer, packer, or vender, or so closely resembling as to be calculated to be taken for it by ordinary purchasers, shall be held to be a use of such Trade Mark.

11. That on every application made under this Act, the applicant shall pay at the time of making the same, into the Provincial Secretary's Office, a sum not exceeding twenty dollars, to pay the expense of issuing such Grant and of publishing the same in the Royal Gazette.

12. Notwithstanding any thing in the preceding Sections contained, a suit may be maintained by any proprietor of a Trade Mark against any person using his registered Trade Mark, or any fraudulent imitation thereof, or selling articles bearing such Trade Mark, or any such imitation thereof, or contained in packages being or purporting to be his, contrary to the provisions of this Act.