



STATUTORY INSTRUMENTS.

S.I. No. 47 of 2016



EUROPEAN COMMUNITIES (TRADE MARK AGENTS)
REGULATIONS 2016

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I, RICHARD BRUTON, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive No. 2006/123/EC of the European Parliament and of the Council of 12 December 2006¹ on services in the internal market, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Trade Mark Agents) Regulations 2016.

2. In these Regulations—

“Act of 1996” means the Trade Marks Act 1996 (No. 6 of 1996);

“Regulations of 2007” means the European Communities (Provision of Services Concerning Trade Marks and Industrial Designs) Regulations 2007 (S.I. No. 622 of 2007).

3. Section 2 of the Act of 1996 is amended in subsection (1), by the insertion of the following definitions:

“ ‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

‘EEA state’ means—

(a) a Member State (other than the State), or

(b) a state (other than a Member State) that is a contracting party to the EEA agreement;”.

4. Section 85 (amended by Regulation 4 of the Regulations of 2007) of the Act of 1996 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) Subject to the provisions of this section—

¹OJ No. L376, 27.12.2006, p.36.

(a) a person established in the State shall not carry on the business of acting as a trade mark agent in the State unless that person is for the time being registered in the Register;

(b) a person acting for gain shall not practise, describe himself or hold himself out as a registered trade mark agent or trade mark agent, or permit himself to be so described or held out, unless that person is for the time being registered in the Register.”, and

(b) by the deletion of subsections (2) and (3),

(c) by the substitution of the following subsection for subsection (4A):

“(4A) Notwithstanding subsection (1) but subject to subsections (4B) to (4E), a person established in another EEA state and qualified under the law of that state to act as a trade mark agent in that state may carry on the business of acting as a trade mark agent for others in connection with the registration of a trade mark or any procedure relating to a registered trade mark.”,

(d) in subsection (4B), in paragraph (a), by the substitution of “EEA state” for “Member State of the European Community”,

(e) in subsection (4C), in paragraph (a), by the substitution of “EEA state” for “Member State”,

(f) in subsection (4D), by the substitution of “EEA state” for “Member State”,

(g) in subsection (4E), by the substitution of “EEA state” for “Member State”, and

(h) in subsection (4F)—

(i) in the definition of “applicable professional title”, by the substitution of “EEA state” for “Member State”,

(ii) in the definition of “applicable qualifications”, by the substitution of “EEA state” for “Member State”, and

(iii) in the definition of “person”—

(I) in paragraph (a), by the substitution of “an EEA state” for “a Member State of the European Community”, and

(II) in paragraph (b), by the substitution of “an EEA state and having its registered office, central administration or principal place of business within an EEA state” for “a Member State of the European Community and having its registered office, central administration or principal place of business within the European Community”.

5. Section 86 of the Act of 1996 is amended by the substitution of the following subsection for subsection (1) (amended by Regulation 5 of the Regulations of 2007):

“(1) Any person who—

- (a) resides in the State or in an EEA state,
- (b) has a place of business in the State or in an EEA state,
- (c) possesses the prescribed educational and professional qualifications, and
- (d) complies with the prescribed conditions,

shall be eligible to be a registered trade mark agent and a person so eligible shall, on application in the prescribed form and manner and on payment of the prescribed fee, be so registered.”.

6. A person or partnership whose name was entered in the Register of Trade Mark Agents immediately before the commencement of these Regulations shall continue to be registered in the Register of Trade Mark Agents.

7. Section 90 of the Act of 1996 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) The Minister may make rules for the management of the Register and may by such rules prescribe any matter or thing referred to in this section, section 86 or section 88, and in particular may so prescribe—

- (a) the educational and professional qualifications and the conditions (including conditions relating to nationality or citizenship), which must be satisfied for eligibility for registration in the Register;
- (b) the conditions which must be satisfied by a partnership, body corporate or unincorporated body of persons for eligibility for registration in the Register, including conditions relating to the following:
 - (i) evidence of establishment as a partnership, body corporate or unincorporated body;
 - (ii) evidence that a trade mark agent established in an EEA state (other than the State) is acting as a trade mark agent in accordance with the law of that state;
 - (iii) evidence that the partnership, body corporate or unincorporated body is performing the services of a trade mark agent in the State;

(c) the maximum fees which may be charged by any person registered in the Register for such services in connection with the obtaining of trade marks as may be specified in such rules.”, and

(b) by the deletion of subsection (3).



GIVEN under my Official Seal,
2 February 2016.

RICHARD BRUTON,
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations, made pursuant to the European Communities Act 1972, amend certain provisions of the Trade Marks Act 1996, relating to the criteria for entry into the register of trade mark agents.

The European Communities (Trade Mark Agents) Regulations 2016 amends sections 85, 86 and 90 of the Trade Marks Act 1996 thereby removing legal form and shareholding restrictions on EEA trade mark agents. These Regulations facilitate the registration of EEA trade mark agent partnerships and companies who wish to set up a secondary establishment in Ireland.

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