

# Protection of Names, Uniforms and Badges Act (Cap 314)

## CHAPTER 314 THE PROTECTION OF NAMES, UNIFORMS AND BADGES ACT

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## CHAPTER 314

### PROTECTION OF NAMES, UNIFORMS AND BADGES

An Act to provide for the registration of names, designations, uniforms and badges; and to provide for matters connected therewith.

[1st January, 1958] 38 of 1957

19 of 1959

Government Notice

497 of 1964

Act No.

13 of 1994

Short title

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

Interpretation

2. In this Act, unless the context otherwise requires

"association" means any association, club, board, group or body formed within Zambia for the promotion of sport or for any other purpose, not of a political or religious character;

"badge" means any token, design, crest, armorial bearings, insignia or emblem produced by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining or any other means whatsoever, whether manual, mechanical or chemical, separate or combined, which can be applied to any article for the pattern, shape, configuration or ornamentation thereof or for any two or more such purposes; but does not include a design for sculpture;

"the Board" means the Colours Control Board appointed by the Minister for the purpose of authorising the use of any uniform or badge on behalf of any association or institution;

"institution" means an institution formed or created within Zambia for the promotion of education, and includes any university, college, training college, normal college, technical college, school or any union or society of the present or past students or scholars of any such institution;

"licensed trader" means a person licensed to trade in accordance with the provisions of the Trades Licensing Act; Cap. 402

"register" means the register referred to in section four;

"registered" means registered in accordance with the provisions of section eight:

"uniform" means any article or articles of wearing apparel, including a tie other than a tie of which the design consists solely of an arrangement of stripes, being distinctive in design and colour, intended to be used by members of an association or institution or to be used by such persons as may be authorised by an association, institution or colours control board;

"use", in relation to a uniform or badge, includes "wear". (As amended by No. 19 of 1959)

#### Colours Control Board

3. The Minister may, by Gazette notice, appoint such persons as he may deem fit to be the Colours Control Board for the purposes of this Act.

#### Keeping of register

4. The Board shall, for the purposes of this Act, cause a register to be kept wherein shall be entered the particulars referred to in subsection (4) of section eight as well as particulars of any amendment or deletion of any entry made under this Act.

#### Application for registration of names, etc.

5. Any association or institution may make application to the Board for the registration of-

- (a) the name of the association or institution;

- (b) any special name or designation used by the association or institution for the members thereof or for the members of any organisation constituted by the association or institution in pursuance of its rules and regulations;

- (c) any uniform, with or without a badge, used by such association or institution or authorised by such association or institution to be used by any person; or

- (d) any badge, with or without a uniform, used by such association or institution or authorised by such association or institution to be used by any person.

#### Form and particulars of application

6. An application made in terms of section five shall be made in such manner and contain such information as the Board, subject to the special or general directions of the Minister, may by rule prescribe and more particularly shall contain an exact and precise description of the name, special name, designation, uniform or badge sought to be registered, together with an exact and detailed pictorial representation of the uniform or badge both in respect to form and colour so as clearly to indicate the precise extent and limits of the protection applied for.

#### Publication of notice of application and lodging of objections

7. (1) Before an association or institution makes application in terms of section five, it shall at its own expense cause notice of the application to be published in the Gazette and in two newspapers circulating in Zambia.

(2) Such notice shall-

- (a) describe in sufficient detail the particulars to be contained in the application; and
- (b) call upon any person affected or likely to be affected by the grant of the application to lodge in writing with the Board any objection thereto within three months of the date of the publication of such notice in the Gazette.

#### Grant or refusal of application

8. (1) After considering any objections lodged in terms of section seven, and subject to the provisions of subsection (2), the Board shall grant or refuse any application.

(2) The Board may refuse an application-

- (a) if the name, uniform or badge so closely resembles a name, uniform or badge registered in terms of this Act as might lead to the belief that the name, uniform or badge which is the subject of the application is the name, uniform or badge so registered;
- (b) if the uniform is not distinctive in design and colour;
- (c) if the uniform or badge incorporates in whole or in part any design which has been and remains registered under the provisions of any written law relating to the registration of trade marks unless the owner of such registered design has consented in writing to the registration thereof; or
- (d) if for any other good and sufficient reason it considers the application should be refused.

(3) Any person who is aggrieved by a decision of the Board to grant or refuse any application may, within thirty days of such decision, appeal against that decision to the Minister. On such appeal the Minister shall confirm the decision of the Board or shall give such decision as in his opinion the Board ought to have given, and the decision of the Minister shall for the purposes of this Act be deemed to be the decision of the Board.

(4) If the application is granted the Board shall, upon payment of the prescribed fees, cause to be entered in the register-

- (a) the name and address of the applicant association or institution;
- (b) any special name or designation referred to in paragraph (b) of section five;
- (c) an exact and precise description of the uniform or badge and a pictorial representation thereof.

#### Publication of registration

9. The Board shall cause a notice to be published in the Gazette of every registration made under subsection (4) of section eight and of every amendment or cancellation of any such registration.

#### Issue of certificates of registration

10. The Board shall issue to the association or institution whose application has been granted by it a certificate of registration in such form as it thinks fit.

#### Use of registered name, etc.

11. Subject to the provisions of section seventeen, an association or institution which possesses a valid certificate of registration under this Act shall be entitled to the sole and exclusive right to use or authorise the use of the name, special name, designation, uniform or badge in respect of which such certificate was issued.

#### Amendment and cancellation of certificate of registration

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

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

(3) Upon receiving any order made under subsection (2), such association or institution shall deliver to the Board its certificate of registration for amendment or cancellation, as the case may be, and upon receiving such certificate the Board may amend or cancel it, as the case may be.

(4) Any association or institution which is aggrieved by a decision of the Board to amend or cancel a certificate of registration issued to it under this Act may, within thirty days of such decision, appeal against that decision to the Minister. On such appeal the Minister shall confirm the decision of the Board or shall give such decision as in his opinion the Board ought to have given.

#### Authority to sell or buy registered uniform and badges

13. (1) No person shall sell or give to any person any registered uniform or badge unless he holds written authorisation so to do signed by or on behalf of the association or institution in whose name the said uniform or badge is registered.

(2) No person authorised in terms of subsection (1) shall sell any registered uniform or badge to any person unless such person has produced to him before or at the time of such sale a certificate signed by or on behalf of the association or institution in whose name such uniform or badge is registered, stating that he is a person authorised to buy or use such uniform or badge.

(3) Any person failing to comply with the provisions of this section shall be guilty of an offence.

## Offences and penalties

14. Any person who is convicted of an offence under this Act shall be liable to a fine not exceeding one hundred and fifty penalty units. (As amended by Act No. 13 of 1994)

## Evidence

15. In any proceedings under this Act-

(a) a certificate issued in terms of section ten shall on its mere production be admissible as prima facie evidence of the facts stated therein;

(b) an affidavit purporting to be made by the chairman, secretary, headmaster or other person duly authorised by an association or institution in which it is stated that any specified person is not authorised to use, buy, sell or otherwise acquire or dispose of any name, special name, designation, uniform or badge registered by such association or institution shall on its mere production be admissible as prima facie evidence of the facts stated therein.

## Prescribed fees

16. For the purpose of defraying the administrative expenses of the Board, there shall be paid to the Board by an association or institution in respect of an application to the Board such fees as may, by statutory notice, be prescribed by the Minister from time to time.

## Savings

17. Nothing in this Act contained shall prohibit-

(a) any person from using any name, special name, designation, uniform or badge in the course or for the purpose of a stage play or representation, or a music hall or circus performance, pageant, or production of a cinematograph film, if the name, special name, designation, uniform or badge is not used in such a manner or under such circumstances as to bring it into ridicule or contempt; or

(b) the continued use of any mark or device, whether or not protected under the provisions of any written law relating to the registration of trade marks or any amendment thereof, which has been bona fide used as a trade mark before the commencement of this Act; or

(c) the right of any person to use any name, special name, designation, uniform or badge which at the commencement of this Act was in regular use by such person; or

(d) the right of any person to use any uniform or badge to the use of which such person has bona fide become entitled by reason of his present or past membership of any association or institution outside Zambia.