

- Trademark can be cancelled or rectified on application by an interested party (s24,26,27).
- Rectified on ground that its entry was wrongly made or wrongly made on the register.
- Rectified if the owner or licensee of the trademark fails to comply with the condition entered in the register of trade mark registration.
- Trademarks that are not used may be cancelled.

Trademark Infringement

Essential Elements that must be proved for an infringement claim: s34(1)

- Unauthorised use
- Use in the course of trade
- Of a trademark which is identical or confusingly similar
- To a registered mark
- In connection with the same goods or services
- Section 34(1)(b) the protection extends to similar goods

Section 34(1)(c): Dilution

Unauthorised use of a trade mark

- in the course of trade
- in relation to any goods/services
- of a mark which is identical or similar to a registered trade mark
- which is well known in the Republic
- in such a way that it is likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the registered trade mark

Section 35: 'Famous' marks – essential elements

- the offending mark is a reproduction, imitation or translation of a mark which is well-known in South Africa, and which belongs to a national of, or domiciled or established in, a convention country (not South African),
- and the offending mark is being used in relation to goods or services which are identical or similar to the goods or services of the well-known mark,