

PROCEDURE OF TRADEMARK REGISTRATION IN INDIA

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ABSTRACT

The present article only attempts to give an overview of the topic. There are so many times when trademark owner has to end up in protracted litigation, all because they don't utilize the right time to do trademark registration in India of their brand name. Due to that mistake, the time which is investing and the money which is putting up to build a particular brand is seen to be used by another person. It is not a difficult task to register the trademark of your brand name. A simple few steps are explained and Trademark registration is a much needed legal protection for any brand name. Robbing an owner brand name not only confuse peoples to choose wisely but also harm the owner's reputation which he/she has earned. It is not an agreeable state of affairs. Registration of trademark not only helps people to distinguish between the goods and services of product from other market products. Besides these, it also helps to deterrent to others.

INTRODUCTION

A Trademark is a symbol that is the form of a word and it is not only a device or a label but also applied to the articles of commerce with a view which can stipulate the customers that can particular article good manufactured or otherwise. It helps to identify the product by its origin also and also it helps to distinguish it from other products¹. It is not only a word but also it can be a phrase or design or symbol or any combination of words that are used in the course of trade, so it can help to distinguish or identify the source of goods and services of one enterprise from those to others. It is different from copyright or patent or geographical indication.

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It is a type of intellectual property which is consisting of a recognizable sign, expression and design which identifies the products and services which are usually called service marks².

¹ N Acharya, Textbook on Intellectual Property, 2nd Ed

² McCarthy on Trade Marks and Unfair Competitions 4th Ed, Volume 1

Trademark Registration is very important for a company or any new trade and business. It helps to protect the company's logo, name or signature from the rest and make it unique also. It helps to protect from the others. For trademark registration the legal process is provided under the Trademark act, 1999. It makes the mark legally valid and it is very important to make the trademark registered so it will secure it from the rest of the business competition. Due to a lot of misuse of company assets business should be registered by symbol, mark, signature etc. There are a lot of benefits for registration of a trademark, it not only safeguards one's brand but also having a strong brand will help to act as a direct link to the customers and the product by making it sure for more reliability³. Under sections 9 to 11 of the trademark act names should not be similar to earlier trademarks and according to section 10, the combination of colours or even a single colour combination of word and device should not be similar.

Section 18 of the Trademark act, 1999 deals with the application of registration. The duration of the trademark application process is 12 to 18 months but it is also depending upon the various factors. It can be longer if there is any objection arising from the registry or the third party. Trademark registration lasts for 10 years and can be further renewed for 10 years. If the owner will not pay the renewed fee by the next renewed date the mark will expire. However, it is allowed for extra 6 months which will renew the registration and owners have to pay the fee for late renewal⁴.

When the trademark is registered it not only gives guarantees to the good quality of goods and services but also gives credit to the good source of it. In the registration of a trademark, the cost depends on the nature of the trademark applied. Trademark registration is a long process that involves multiple steps.

The Trademark Registration process is as follows:

1. Trademark search
2. Trademark filling
3. Trademark application allotment
4. Vienna codification

³ Expressive Generosity, Trade Marks as Language in the Pepsi Generation, R. Dreyfuss (1990) 65 Notre Dame Law Review.

⁴ Any other established fact probative of the effect of use. application of the factors set out in In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

5. Trademark examination
6. Trademark journal publication
7. Trademark registration

1. **Trademark search:**

Trademark search refers to the check that whether your business name and logo is not similar to other businesses, already which are registered in trademark. There are mainly 2 kinds of search one is online and the other one is offline. People can do both the searches and once it is found unique then you can proceed to the next step of the procedure.

2. **Trademark filling:**

After the search part is completed, the registration of the application is filled in by the trademark registrar. There should be a prescribed manner while filling the application of trademark and it is filled along with the fee for the registration of a trademark. It should be filled one of the 5 trademark registrar offices which is having come over the jurisdiction over the state or online⁵. For online application filling, it is through IndiaFiling.com or the agent and lawyer.

3. **Trademark application allotment:**

After the based on the search is conducted the attorney of the trademark will conduct a draft for the trademark application and provide the logo/ name found to be unique and which was not similar to any other trademark and once the registration of application is filled in trademark registrar the application number is allotted within one or two working days.

4. **Vienna codification:**

It is established by the Vienna agreement 1973 and once the registration of application is filled then the registrar will apply for the Vienna classification and while the work is in progress the application status reflects as “Sent for Vienna codification”.

5. **Trademark examination:**

When the above procedures were done and completed, then in the trademark registrar office trademark registration application is allotted to a trademark officer. And after it would be

⁵ European Intellectual Property Review, 2008, “Remedies and sanctions for the infringement of intellectual, property rights under EC law”.

reviewed by the officer about the application correctness and issue a trademark application report. Then the officer can accept and allow for trademark journal publication or it will object to the trademark registration application. If it is objected then the applicant has the right to appear before the officer of the trademark or address the objections relating to it or if the officer is satisfied with the justifications then it is allowed for journal publication.

6. **Trademark journal publication:**

Once the application is accepted by the registrar then the trademark which is proposed is ready to publish in the trademark journal. And it is published weekly and contains all the things which are accepted by the registrar. Once it is published then the public have the opportunity to object to the registration of a trademark, if the public believes that the registration is damaging then they can raise objections filed within 90 days of the publication and the mark will typically get registered within 12 weeks to months in time.

7. **Trademark registration:**

After there is no objections are arising and no one is opposing the registration application then the manuscript and certificate of registration will be prepared and sent to the trademark application and once it gets issued then it is considered as the trademark of the owner. And it gives the owner the granting power to use that mark. After seeing the above process of registration, India does not require much effort and one of the best things is that while registration process people do not have to worry about the deadline and responses and when you get the power of your brand name then it will help to run your business smoothly due to protection of trademark.

CONCLUSION

In the world of intellectual property, India is a very active member, so it is necessary to protect the trademark of our business. There is a growing part for the need of registration of trademarks in India and day by day there is indicating for awareness of developing among people safeguard to their products. Nowadays, trademark infringement is commonly sighting and violation of any kind of trademark leads not only negative impact on the individual but also to leads reducing of the value of that brand. Along with the direct infringement of trademark, these are indirect infringement is as well arising. Therefore, what is required is a little bit of awareness to avoid facing any kind of infringement on their product.