

— FAQ'S

Doing Business in India

IPR (Trademarks)

1. Can a registered trademark be removed from the register?(Under the Trade Marks Act 1999)

Yes, it can be removed on application to the Registrar on prescribed form on the ground that the mark is wrongly remaining on the register. The registrar also can suo moto notice for removal of a registered trademark. For further details please access following link.

2. Does the Trade Marks Registry help to select a trademark agent to prepare and prosecute trademarks application?(Under the Trade Marks Act 1999)

Yes, Trade Marks Registry is publishing the list of facilitators who are willing to play a role in filing trademark applications for start-ups and act as a trademark agent on their behalf. Their fees for this purpose have also been notified. The list of facilitators is available in IPO website link and has also been uploaded in the Start-up Hub in DPIIT website.

3. Can any correction be made in the application or register?(Under the Trade Marks Act 1999)

Yes. But the basic principle is that the trademark applied for should not be substantially altered affecting its identity. Subject to this changes are permissible according to rules detailed in the subordinate legislation. For further details please access following link.

4. What does the Register of trademark contain?(Under the Trade Marks Act 1999)

The register of trademark currently maintained in electronic form contains inter alia the trademark the class and goods/services in respect of which it is registered including particulars affecting the scope of registration of rights conferred, the address of the proprietors; particulars of trade or other description of the proprietor; the convention date (if applicable); where a trademark has been registered with the consent of the proprietor of an earlier mark or earlier rights, that fact. For further details please access

following link.

5. What are the sources of trademark laws?(Under the Trade Marks Act 1999)

The national statutes i.e., The Trade Marks Act, 1999 and rules made there under: 1) International multilateral convention. 2) National bilateral treaty. 3) Regional treaty. 4) Decision of the courts. 5) Office practice reduced in Manuals and guidelines and rulings of the Courts. 6) Decision of Intellectual Appellate Board. 7) Text books written by academicians and professional experts. For further details please access following link.

6. What are the benefits of registering a trademark?

The registration of a trademark confers upon the owner the exclusive right to the use of the trademark in relation to the goods or services in respect of which the mark is registered and to indicate so by using the symbol (R) and seek the relief of infringement in appropriate courts in the country. The exclusive right is however subject to any conditions entered on the register such as limitation of area of use etc. Also, where two or more persons have registered identical or nearly similar marks due to special circumstances, such exclusive right does not operate against each other. For more information, click here.

7. What are the formalities and the government fees for major trademark transactions?(Under the Trade Marks Act 1999)

1) For filling new applications there are prescribed forms depending on the nature of application such as Form TM-1, TM-2, TM-3, TM-8, TM-51 etc. Fees: US\$ 62 2) To file a Notice of Opposition to oppose an application published in the Trade Marks Journal (Form TM-5). Fees: US\$ 38 for each class covered. 3) For renewal of a Regd. Trademark (Form TM-12). Fees: US\$ 78 Surcharge for belated renewal (Form TM-10). Fees: US\$ 46 4) Restoration of removed mark (Form TM-13). Fees: US\$ 78 5) Application for rectification of a registered trademark (Form TM-26). Fees: US\$ 46 6) Legal certificate (Form TM-46) (Providing details of entries in the Register). Fees: US\$ 8 7) Preliminary advice of the Registrar as to the registrability of a mark (Form TM-55). Fees: US\$ 8 8) Copyright search request and issuance of the certificate (Form TM-60). Fees: US\$ 78 For further details please access following link.

8. What are different types of trademark that may be registered in India?(Under the Trade Marks Act 1999)

Any name (including personal or surname of the applicant or predecessor in business or the signature of the person), which is not unusual for trade to adopt as a mark: 1) An invented word or any arbitrary dictionary word or words, not being directly descriptive of the character or quality of the goods/services. 2) Letters or numerals or any combination thereof. 3) The right to proprietorship to trademark may be acquired by either registration under the Act or by use in relation to particular goods or services. 4) Devices, including fancy devices or symbols. 5) Monograms. 6) Combination of colors or even a single color in combination with a word or devise. 7) Shape of goods or their packaging. 8) Marks constituting a 3-dimensional sign. 9) Sound marks when represented in conventional notation or described in words by being graphically represented. For further details please access following link.

9. What is the function of a trademark? (Under the Trade Marks Act 1999)

Under modern business condition a trademark performs four functions: 1) It identifies a good/service and its origin. 2) It guarantees its unchanged quality. 3) It advertises the goods/services. 4) It creates an image for good/services. For further details please access following link.

10. Who benefits from a trademark?(Under the Trade Marks Act 1999)

The registered proprietor of a trademark can create, establish and protect the goodwill of his products or services, he can stop traders from unlawfully using his trademark, sue for damages and secure destruction of infringing goods or labels. The government earns revenue as a fee for registration and protection of registration of trademark. The legal professionals render services to the entrepreneurs regarding selection, registration and protection of trademarks and get remuneration for the same. The purchaser and ultimately consumers of goods and services get options to choose the best. For further details please access following link.

11. What is a trademark?(Under the Trade Marks Act 1999)

A trademark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking. The legal requirements to register a trademark under the Act are: 1) The selected mark should be capable of being represented graphically (that is in the paper form). 2) It should be capable of distinguishing the good or services of one undertaking from those of

others. 3) It should be used or proposed to be used mark in relation to goods or services for the purpose of indicating services or so as to indicate a connection in the course of trade between the goods or services and the same person have the right to use the mark with or without identity of that person. For further details please access following link.

12. How do I file a trademark application for my brand?

The Controller General of Patents, Designs and Trademarks has information regarding trademark form and fees and can be accessed from this link.

