

A STUDY OF TRADEMARK REGISTRATION PROCESS

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Abstract:

The present article covers the study of registration process of Trademark. A trademark is a visual symbol which may be a word, name, device, label or numeral used by a business to distinguish its goods or services from other similar products or services in the market owned by other businesses. A trademark is an asset that can be protected under the Indian law. To protect a trademark from being copied by others, the inventor of the word or symbol must apply for trademark registration. The process for trademark registration has various steps, and it is essential to hire an expert for trademark filing to ensure a seamless process.

Significance of the Study:

The essential function of a trademark is to exclusively identify the source or origin of products or services, so a trademark, properly called, indicates source or serves as a badge of origin. In other words, trademarks serve to identify a particular entity as the source of goods or services. The use of a trademark in this way is known as trademark use. Certain exclusive rights attach to a registered mark. Trademarks are used not only by businesses but also by noncommercial organizations and religions to protect their identity and goodwill associated with their name. Trademark rights generally arise out of the use of, or to maintain exclusive rights over, that sign in relation to certain products or services, assuming there are no other trademark objections. Different goods and services have been classified by the International [Nice] Classification of Goods and Services into 45 Trademark Classes [1 to 34 cover goods, and 35 to 45 cover services]. The idea behind this system is to specify and limit the extension of the intellectual property right by determining which goods or services are covered by the mark, and to unify classification systems around the world.

Objective of the Study:

The present study covers following objectives

- O1- To understand the concept of trademark.
- O2- To study details of registration process of trademark.

Data Collection: Present research article is based on secondary data which is collected from various reference books, websites.

Trademark Concept:

A trademark is a type of intellectual property consisting of a recognizable sign, design, or expression which identifies products or services of a particular source from those of others, although trademarks used to identify services are usually called service marks. The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher, or on the product itself. For the sake of corporate identity, trademarks are often displayed on company buildings. It is legally recognized as a type of intellectual property. Different goods and services have been classified by the International [Nice] Classification of Goods and Services into 45 Trademark Classes [1 to 34 cover goods and 35 to 45 cover services]. The first legislative act concerning trademarks was passed in 1266 under the reign of Henry III requiring all bakers to use a distinctive mark for the bread they sold. The first modern trademark laws emerged in the late 19th century. The symbols TM

(the trademark symbol) and ® (the registered trademark symbol) can be used to indicate trademarks; the latter is only for use by the owner of a trademark that has been registered.

Trademark Registration:

A trademark application can be filed by any person or legal entity in India. The mark does not necessarily have to be used before applying for registration although a prior used mark improves the chances of registration. Foreign nationals and foreign entities can also file trademark applications in India and secure registration without additional requirements. Before filing a trademark application, it is necessary to identify the classes in which you wish to seek protection for your trademark. An application should be made in the relevant classes of current goods/services as well as in classes where there is intent to use. All goods and services are divided into 45 classes.

The 9th edition of the NICE international classification system is followed in India.

Requirements for filing a trademark application:

1. The name, address and nationality of the applicant. If the applicant is a partnership firm, the names of all the partners. Also mention whether any minor is a partner.
2. If the applicant is a company, the country or state of incorporation.
3. A list of goods and/or services for which registration is required.
4. Soft copy of the trademark to be registered.
5. If the mark contains or consists of non-English words, a translation of those words into English is required.
6. If the application is to claim priority from an earlier filed convention application, details of that application is also required (application number, filing date, country and goods/services). A certified priority document or its duly notarized copy is to be submitted. If the certificate is not in English, a certified/notarized English translation is also required. If it is not readily available, the application can be filed based on the basic application number, date of the application and country of the application. A copy of the priority document can be submitted within 1 month from the filing date of the application.
7. Date of first use of the trademark in India, if at all used
8. Power of attorney simply signed by the applicant (no legalization or notarization is required). For Indian clients, power of attorney to be executed in 100 Rs. stamp paper and signed by the applicant. The power of attorney is not required at the time of lodging the application and can be submitted later with no additional cost.

Trademark Registration Process:

Upon filing of the application, the registry will issue us with an official receipt with the filing date and number allotted to the application. The application is then formally examined by the Indian Trade Marks Office, as to its inherent registrability and/or any similarity with existing marks. If an objection to registration is raised, an official examination report will issue. To overcome the objection, it is necessary to file a written response or presenting evidence of acquired distinctiveness and in most cases, an interview/hearing with the examiner is posted. The Registrar may require the applicant to file an affidavit testifying to such user with exhibits showing the mark as used. If, following examination, the trade mark application is considered allowable, a Letter of Acceptance will issue, after which the trademark will be published in the Trade Marks Journal. If there are no oppositions within 4 months from the date of advertisement in the Trade Marks Journal, then the trademark registration certificate will issue. Trademark Registration is a tedious process and it takes around 7-18 months to obtain

registration in a straight-forward case, without any objections or oppositions. However, once the trademark application is filed, an application number is allotted immediately and the priority starts from the date of application. Once the trademark is registered, it is valid for a period of 10 years from the date of application. The registration can then be renewed indefinitely as long as the renewal fees are paid every 10 years.

Stages of Trademark Registration process:

Trademark Search before Registration Process

The process of trademark begins with a trademark search. The government trademark search tool can also be used to find identical or similar trademarks under the same class. Once the search is complete, can proceed with the trademark application based on the details of identical or similar trademark applications already filed with the government.

1 Trademark application allotment

Once the trademark registration application is filed with the trademark registrar, a trademark application allotment number is provided within one or two working days. The application can then be tracked online through the online trademark search facility. On obtaining the allotment number, the owner of the trademark can affix the TM symbol next to the logo.

2 Vienna codification

The Vienna codification established by the Vienna agreement (1973) is an international classification of the figurative elements of marks. Once the application is filed, the trademark registrar will apply the Vienna classification to the trademark based on the figurative elements of marks. While this work is in progress, the trademark application status usually reflects as "sent for Vienna codification".

3 Trademark Examination

Once the Vienna codification is complete, the trademark registration application will be allotted to an officer in the trademark registrar office. The trademark officer would then review the trademark application for correctness and issue a trademark examination report. The officer will either accept the application and allow for journal publication or object the same.

4a Objection

If the trademark registration application is objected by the Trademark Officer, the trademark applicant has the right to appear before the officer and address the objections. If the officer is satisfied with the justifications of the trademark applicant, the trademark would be allowed for trademark journal publication. In case the officer is not satisfied with the justifications, the trademark applicant has the right to appeal the decision of the Trademark officer before the Intellectual Property Appellate Board.

4b Journal Publication

Once the trademark registration application is accepted by the registrar, the proposed mark is published in the trademark journal. The trademark journal is published weekly and contains all the trademarks that have been accepted by the registrar. Once it is published, the public have an opportunity to object to a particular registration, if they believe their business will be damaged by that registration. If there are no objections filed within 90 days of that publication, the mark will typically be registered within 12 weeks' time.

If the trademark registration application is opposed by a third-party, a hearing will be called for by the trademark hearing officer. Both the applicant and the opposing party have the chance to

appear at the hearing and provide justifications for registration or rejection of the trademark application. Based on the hearings and the evidence presented, the hearing officer will determine if the application should be accepted or rejected. The decision of the hearing officer can also be challenged by escalating it to the Intellectual Property Appellate Board.

5 Trademark Registration

If there are no objections or oppositions to the application, the trademark manuscript and trademark registration certificate will be prepared. Once the trademark registration certificate is issued, the mark is considered to be a registered trademark of the owner, granting the owner exclusive use of the mark. The symbol can now be placed next to the logo.

Conclusion

Registering a trademark provides legal protection against misuse of any kind including infringement or copy of a company's name or logo, which is often a company's most valuable asset. It grants the trademark owner exclusive nationwide ownership of the mark which can be legally upheld in the courts of law in any part of the country. Products/ services are identified by their logo which helps create brand value over time. A strong brand is a huge pull for new customers and an anchor for existing customers. Registering a trademark early and using it will create goodwill and generate more business for the brand owner. Registering a trademark grants the trademark owner the right to make the mark exclusive and incontestable and use it in a variety of mediums. This will be immensely useful to prove the validity of the mark and the registrant's ownership in case of any infringement by a third party.

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