
TRADEMARK REGISTRATION AND PROTECTION FOR MICRO, SMALL AND MEDIUM ENTERPRISES: DELAY IN REGISTRATION OF TRADEMARKS AND COMPARATIVE ANALYSIS OF LAW RELATING TO INDIAN AND UNITED KINGDOM TRADEMARKS

Devan A S, Faculty of Law, University of Delhi.

ABSTRACT

Micro, Small, and Medium Enterprises (MSMEs) play a vital role in the country's economic development by contributing to employment, innovation, and industrial growth. Many MSMEs lack awareness of and access to legal mechanisms that protect their intellectual property, particularly trademarks. This research paper delves into the delay in trademark registration, how the process delay can be reduced, what changes should be adopted, and a comparative analysis of laws relating to trademarks in India and the United Kingdom.

Keywords: Trademarks, MSMEs, Registration, Protection & development.

Introduction:

A trademark provides legal protection for marks of trade, such as brand names, signs, and symbols. It identifies that certain products or services come from a specific entity. Trademark registration lasts for 10 years and is indefinite if renewed on time.

Micro, Small, and Medium Enterprises are the backbone of the Indian economy and Social transformation. The classification is based on investment and turnover. They contribute significantly to employment generation, innovation, entrepreneurship, and regional development.

An enterprise is classified¹ as micro if the investment in plant and machinery or equipment does not exceed one crore rupees and the turnover does not exceed five crore rupees. A small

¹ Ministry Of Micro, Small And Medium Enterprises New Delhi, The 26th June, 2020, available at: https://dcmsme.gov.in/State-Gov/Notification_%20S%20O%202119.pdf. (Last visited on March 05, 2026)

enterprise has an investment not exceeding ten crore rupees and a turnover not exceeding fifty crore rupees. A medium enterprise has an investment not exceeding fifty crore rupees and a turnover not exceeding two hundred and fifty crore rupees.

This research paper delves into the delay in the registration procedure of a trademark and the process involved in it, discusses each step by step in detail from the application to the certificate of registration, and suggests the changes required to overcome the issue.

What is Trademark?

As per Section 2(m) “*mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof*”² “The first statutory law related to Trademarks (TM) in India was the Trade Marks Act, 1940, which was carved out from the Trade Marks Act, 1938 of the UK”³

Trademarks are central to the identity, survival, and growth of any business operating in a competitive commercial environment. They enable enterprises to establish consumer trust and preserve the goodwill built over time through substantial investments in quality, service, and brand visibility. For consumers, trademarks serve as indicators of the source and consistent quality of goods or services across different providers, thereby enabling them to make informed choices, which may, at a minimum, affect taste and preference and, at a maximum, impact their health and well-being. It is, therefore, imperative that intellectual property rights are robustly protected against infringing entities that seek to unfairly capitalize on another’s goodwill, to the detriment of both the rightful owner and the end consumer⁴

A trademark is a visual representation of a name, word, label, device, or numeric characters utilized by a business to differentiate its goods and/or services from other similar goods and/or services deriving from a different business. A trademark works as an exclusive identity of the goods and/or services that a person is offering or selling from other such goods or services.

² The Trade Marks Act, 1999 (Act No. 47 Of 1999)

³ Prof. Rupinder Tewari Ms. Mamta Bhardwaj, *Intellectual Property A Primer for Academia 2021*, (Professor Gurpal Singh Sandhu Honorary Director Publication Bureau, Panjab University Chandigarh, India, ISBN: 81-85322-92-9).

⁴ *Mishawaka Rubber and Woolen Manufacturing Co. v. S.S. Kresge Co*, 316 US 203 (1942)

What are the procedure involved in registration of trademark in India?

First of all, it has to be searched for a trademark that is not used in the market and the data available with the trademark registry. The trademark should not be identical to or similar to the present trademark. “A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion⁵”. “VIENNA Codification: If the applied mark consists of figurative elements, codification of the figurative elements is done as per the VIENNA Agreement, and then the application moves for examination. Trade Marks applied as a word per se directly proceed for examination. It is expected that all applications that may require VIENNA Codification or otherwise should be processed expeditiously and serially as per priority based on the date of filing of the application⁶.

Next, an **Application for registration**⁷ with the prescribed fees (In India, the registration fee for trademarks ranges between Rs. 4500 and Rs. 9000⁸ has to be given to the registrar in writing as per the prescribed format; a single application needs to be made for different classes of goods or services. The application shall be filed with the trademark registry within the principal place of the applicant's business in India and its territorial limits. If it is a joint application, the place of business in India of the first applicant will be taken as per the application given. As per the provisions of the act, the registrar may accept or refuse the application for registration or may be subject to such amendment or modification as he may think fit. In case of refusal or conditional acceptance, the registrar shall record in writing the grounds for refusal or conditional acceptance and the materials used by him in arriving at such a decision.

The documents include the date of application, priority claim (if any), applicant information with address, applicant's address for service of process including agent information, class and specification of goods or services, statement as to use of the trademark, and the appropriate office should all be included in the advertisement of application in the trademark journal.

Then the **Examination of the application**, in case the applicant is claiming prior use of the

⁵ F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manner & Co. (P) Ltd., (1969) 2 SCC 716

⁶ Standard Operating Process Of Trade Marks Applications, available at https://ipindia.gov.in/writereaddata/Portal/Images/pdf/SoP_of_Trade_Marks_Applications.pdf.

⁷ The Trade Marks Act, 1999 (Act No. 47 Of 1999) s. 18

⁸ Trade Mark Rules 2017, available at https://ipindia.gov.in/Trademarks/form_and_fees_tm (Last visited on March 05,2026).

trademark, then a user affidavit has to be filed supporting the usage along with the evidence of his prior usage. The allotment of applications is done by the automated system serially on the basis of the date of filing. Examination in trademark registration is done in two stages: first, an examination report is prepared by an Examiner, and then the application and examination report are forwarded to the Examination Controller for approval. Examination Controller evaluates the examination report, and if found proper, approves it, and thereafter the examination report is issued to the applicant. However, if some deficiency is noted by the Controller, the examination report is reverted or referred back to the concerned Examiner with suggestions for resubmission or re-examination. “At this stage, application may be accepted, or an objection may be raised as per the provisions⁹”.

In the matter of **Fees**¹⁰ the fees and surcharges will be prescribed by the central government under this act. Until the fees is not paid the registrar will not proceed with his work.

In the registration procedure, two things become apparent which may be recapitulated as under first of all when the application for registration is received and accepted, a public notice thereof is given by publishing an advertisement thereby affording an opportunity to the public at large to file any opposition to the said application, secondly while considering such application for registration of a trade mark, the Registry would, among others, consider as to whether the trade mark as a whole is likely to create confusion. If it is so, he may refuse the registration.

The trademark application is available in “**Form TM – A**¹¹”, it is applied through “Intellectual Property Rights” through an online website, or it can be physically handed over to the registrar of trademarks based on the jurisdiction¹².

After the examination of the trademark application by the Registrar, if there is no objection on the part of the Registrar, then it will be advertised for the public to raise objections to the trademark within a period of 4 months. In case of any objection raised by the registrar, a reply has to be given within 30 days with supporting arguments and evidence. As per¹³, the statute states that when the application for registration of the trademark is accepted by the registrar

⁹ The Trade Marks Act, 1999 (Act No. 47 Of 1999) ss. 9, 11, 18(4)

¹⁰ Ibid, s. 150 Fees and surcharge.

¹¹ Trade Mark Rules, 2017 First Schedule Entry No.1, available at https://ipindia.gov.in/Trademarks/form_and_fees_tm (Last visited on March 05, 2026).

¹² The Trade Marks Act, 1999 (Act No. 47 Of 1999) s. 18(3).

¹³ Ibid, s. 20 Advertisement of Application.

under some condition or limitation within due course, it will be published for advertisement in the prescribed manner. If, after the advertisement, any correction or amendment is made in the application, then it will not be published again; instead, it will be notified that the amendment or correction has been made in this application. “Once an application for registration is made and accepted by the Registrar, the Registrar has to cause the application to be advertised¹⁴”. “Where an application has been accepted either absolutely or subject to certain conditions or limitations, it has to be advertised, though the Registrar may advertise it even before its acceptance in certain situations contemplated by that section¹⁵”.

The time period of four months will be given to the public to review the mark, and if any objection is raised from the public, then a reply has to be filed within the stipulated time. “The trademark journal is available on the official Trademark Registry. This website usually gets updated every Monday of the week¹⁶”. If it is not approved, or further clarifications are requested by the Trademark Examiner, a trademark hearing will be held, and the same will be informed with a notice. In the post-examination, if the registrar or the examiner verifies that all the rules and procedures are followed by the applicant, after the examination, the examiner submits the report. If the report is not satisfactory and also with the reply given, then it will call for a hearing in which it will decide to accept or reject the application if any objection still persists. In the Rule 50 Hearing and decision¹⁷, the registrar, after the closure of the evidence, called for the first hearing of the parties. If any party needs adjournment with reasonable cause, fill in “Form TM – M” with a prescribed fee. Only two adjournments are possible; each adjournment must not be for more than 30 days. If the applicant is not present at the adjournment date and time mentioned in the notice, the application may be treated as abandoned.

Further, if there is any **opposition to registration**¹⁸, any person gives notice of opposition to registration in writing in the prescribed format by paying the fees¹⁹ to the registrar, then it serves a copy of the notice to the applicant and provides **two months** of time for reply. The

¹⁴ American Home Products Corporation v Mac Laboratories Private Limited (1986) 1 SCC 465.

¹⁵ Whirlpool Corporation v Registrar of Trademarks (1998) 8 SCC 1.

¹⁶ Dr. S. Madhuri Paradesi, S. Sireesha, “Trademark Registration: A Comprehensive Analysis of Legal Process and Protection” *International Journal of Creative Research and Thoughts* Volume 12, Issue 11 November (2024).

¹⁷ Trade Mark Rules, 2017.

¹⁸ The Trade Marks Act, 1999 (Act No. 47 Of 1999) s. 21.

¹⁹ Trade Mark Rules, 2017 First Schedule, Entry No. 2 available at https://ipindia.gov.in/Trademarks/form_and_fees_tm (Last visited on March 05, 2026).

aggrieved person can file the notice of opposition in “Form TM – O” within four months from the date of advertisement of the application²⁰. If any objection is raised by any person, then a counter-statement#_ftn4 application has to be filed by the applicant with the supporting evidence, as well as a hearing to get the trademark registered and to satisfy the examiner. The registrar shall, after hearing the parties and evidence, decide that, with conditions or limitations, it can be accepted or may take into account that the ground the opponent is relying upon is satisfied, can deny the application. In case any correction or amendment is needed in the counter-statement or in a notice of opposition at the request of the registrar, if he permit can be done as per the registrar may think fir. In *Krishna Oil Industries v Assistant Registrar of Trademarks*²¹ the court held that the registrar has the power to grant an extension of time for filing evidence in support of opposition.

The final step is to register²² the trademark. When an application for registration has been accepted by the registrar, the application for opposition must not be there; if any present should be expired. If the application has been opposed but has been decided in favor of the applicant. The registrar shall register the trademark unless the central government directs, within eighteen months from the date of filing of the application and when the trademark is registered will be registered as the date of making of the said application and the date shall be decided subject to the provision of Section 154 of the Trademark Act, 1999, be deemed to be the date of registration. When the registration is complete, the registrar shall provide the certificate of registration in the prescribed manner with the seal of the trademark registry. In case the registration of the trademark is not completed within twelve months and the fault is with the applicant, then the registrar will issue a notice in the prescribed manner as the application of the applicant is being abandoned, unless it is not completed in this behalf, in which the time specified in the notice expires. The registrar has the discretionary power to amend the register or certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

If there is no objection, then the trademark will be auto – generated the registration certificate will be issued within one week. Once the registration certificate is obtained from the trademark registry, it will be valid up to 10 years²³, after that, it has to be renewed accordingly.

²⁰ Ibid.

²¹ (2008 (37) PTC 162 (IPAB)).

²² The Trade Marks Act, 1999 (Act No. 47 Of 1999) s. 23.

²³ The Trade Marks Act, 1999 (Act No. 47 Of 1999) s. 23.

What all challenges faced by MSMEs in trademark protection and the precedents that are given by the courts?

In the case of **Nirmala Kabra v. Registrar of trademarks and another**²⁴, this is a civil writ petition filed by the appellant for a delay of fifteen years in the registration of a trademark. The application seeking registration has been pending for its adjudication for more than one and a half decades, that is, for more than fifteen years, and that is a clear act of violation of the mandatory provisions contained under Rule 50 of the Rules of 2017. In this case, additional direction was issued to the respondent-Registrar to decide the pending application expeditiously as early as possible within a period of three months from the date of receipt of the certified copy of this order. The court allowed the appeal and ordered the registration of the trademark.

In **Sapat International Pvt. Ltd v. Girnar Food and Beverages Pvt.Ltd**²⁵ the plaintiff was granted registration of the mark under a certificate dated 2 July 2012 with registration date of 14 December 2007. The time period taken for the registration of trademark in this case is 4 years and 7 months.

In **Sun Pharma Laboratories Ltd v.Dabur India Ltd. and Another**²⁶, the appeal raises an important question as to the time limit within which evidence is to be filed in opposition proceedings before the Trademark Registry. As per Section 21(1) of the Trademark Act 1999, the time limit for opposing a trademark which is advertised is clearly prescribed as four months from the date of advertisement. As per Section 21(2) of the Act, upon the statement of opposition being served to the Applicant, the counter-statement has to be filed within two months from the receipt of the notice of opposition by the applicant.

In the present case, the counter statement was served on the Opponent on 12th June, 2007. Evidence was filed by the Opponent with the Trade Marks Registry on 10th August, 2007. The error or lapse that had happened on behalf of the Opponent was that before filing the hard copy of the evidence in support of the opposition in the Trademark Registry, a copy of the same was not served on the Applicant within the prescribed time. The same was only served by courier sent on 14th August, 2007, and received by the Applicant on 16th August, 2007. So, there was

²⁴ 2025 SCC Online Raj 4072.

²⁵ 2016 SCC OnLine Bom 16020: (2016) 2 Bom CR 360: (2016) 3 AIR Bom R 541: (2016) 65 PTC 499.

²⁶ 2022 SCC OnLine Del 2421.

a delay of a couple of days in the service of the evidence upon the Applicant, though the same was filed with the Trade Mark Registry within the timeline prescribed as per the statute. The court held that considering the fact that the evidence was filed within time before the Trademark Registry, and the lapse was only in the delay in service to the applicant. So this delay should not be considered, and the Registrar of Trademarks shall proceed with the hearing of the opposition on the merits and pass a final order.

The judgment of the IPAB in **Sahil Kohli v. Registrar of Trade Mark**²⁷, In the said case, IPAB has taken a view that under Rule 45 of the 2017 Rules read with Sections 21 and 131 of the Act, the Registrar has the discretion to extend the time period for filing the evidence in support of the opposition.

What are the Procedure for Registration of Trademark in United Kingdom?

First of all, file the Application for Registration²⁸ in which with the application it shall contain a request for registration of a trademark, the name and address of the applicant, a statement of goods or services in relation to which it is sought to register the trademark, and the representation of the trademark to the Registrar²⁹. The application fees have to be paid as per the class or classes of registration³⁰.

The date of filing will be considered if the required documents under section 32(2) of the Trademark Act, 1994 are furnished before the registrar by the applicant. The date of submission is considered the date of filing. If the documents are submitted on different days, the last day when the full document is submitted will be considered the filing date.

In the Examination of Application, the Registrar of Trademarks shall examine that the applicant has satisfied all the requirements for registration under this statute and has followed all the rules prescribed as per the law. While on the examination, if the registrar understands that the applicant has not met the requirements of the application, then the applicant will be informed and will be given time to represent himself or amend the application within the prescribed period as the registrar specifies. In case the applicant fails to amend or inform the registrar within the prescribed time as specified by the registrar, the Registrar shall refuse to accept the

²⁷ 2018 SCC OnLine IPAB 55.

²⁸ Trade Marks Act, 1994 (1994 Chapter 26), s. 32.

²⁹ Ibid, s. 32(2).

³⁰ Ibid, s. 32(4).

application. At last, in the examination of the application, if the registrar is satisfied that all the requirements of the registration are satisfied, the registrar of trademarks will accept the application of the applicant³¹.

After that, when the application has been accepted by the registrar of trademarks, the registrar shall publish the application in the prescribed manner. From the date of publication, any person can give notice of opposition to the registrar within the prescribed period. While the notice is being served to the registrar, it should be written in writing and the grounds of opposition should be mentioned³².

In case of withdrawal, restriction or amendment of an application, the applicant can at any time withdraw his application or restrict the goods or services under this application. If in case the application has been published, then the withdrawal or restriction shall also be published. In case the application may be amended at the request of the applicant only for correcting the name or address of the applicant, errors of wording or copying, or obvious mistakes³³.

In Registration, where an application has been accepted and there is no notice of opposition is given within the prescribed period against the applicant and all opposition proceedings are decided or withdrawn in favour of the applicant. Unless the prescribed fees within the prescribed time have been paid for the registration, the trademark will not be registered. If the fees have not been paid, it shall be deemed to be considered as withdrawn. The trademark, when registered, shall be registered as of the date of filing of the application for registration, and that date shall be the date of registration. At last, the registrar, being satisfied, publishes the registration in the prescribed manner and issues the certificate of registration to the applicant³⁴.

In Fees³⁵ ***“There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed”***. “Form No. TM3 Application to register a trademark (Online Application), Cost is £170 and Form No. TM3 Application to register a trademark (Paper Application), Cost is £200. Form No. TM7 Notice of opposition and statement of grounds (Opposition based on Section 5(1) and/or 5(2) only), Cost is £100. Form

³¹ Ibid, s. 37.

³² Ibid, s. 38.

³³ Trade Marks Act, 1994 (1994 Chapter 26), s. 39(2).

³⁴ Ibid, s. 40.

³⁵ Ibid, s. 79 (1).

No. TM7 Notice of opposition and statement of grounds (Opposition based on, or including, any other grounds), Cost is £200. Form No. TM7F Notice of FAST TRACK opposition and statement of grounds, Cost is £100. Form NO. TM8 Notice of defence and counterstatement, there is no fees³⁶”.

As per the trade marks journal, the registrar shall make the rules for the publication to the journal containing particulars of any application for the registration of the trademark including representation of the mark and such other information relating to the trademark as the registrar thinks fit³⁷. After applying for the trademark registration the Intellectual Property Office will examine the application within two weeks, after the detailed examination it will be published in the trade mark journal within two months and if there is no opposition then the trademark will be registered after two weeks³⁸.

The total time period taken in the United States is approximately four to six months. There is a protection available; the trademark of European countries will be protected in all European countries. The deadline for claiming such priority is six months.

Comparative analysis between India and United Kingdom’s Trademark Registration Timelines

In India as per the Act of legislature of Trade Mark Act, 1999, within 18 months from the date of application, the trade mark is registered by the registrar. It may move from 18 – 24 months in certain cases of delay, opposition to registration, counter-statement by the applicant etc.

United Kingdoms is the fastest and most predictable trademark registration and it takes four to six months for the registration of a trademark. “The United Kingdom’s trademark procedure is considered as the most efficient & cost-effective compared to other countries³⁹”.

In summary, the United Kingdoms is taking less time within a period of six months in a most

³⁶ Intellectual Property Office, Trade Mark Forms and Fees, available at <https://www.gov.uk/government/publications/trade-mark-forms-and-fees/trade-mark-forms-and-fees> (Last visited on March 05, 2026).

³⁷ Trade Marks Act, 1994 (1994 Chapter 26), s. 81.

³⁸ Trade Marks Act, 1994 (1994 Chapter 26), available at <https://assets.publishing.service.gov.uk/media/62ac254e8fa8f535738bae26/Trade-Marks-Timeline.pdf> (Last visited on March 05, 2026).

³⁹ Vrinda Saran Mathur, “Comparative Analysis Of Trademark Laws In India And United Kingdom” *International Journal Of Advanced Legal Research* Volume 4 Issue 4 May (2024).

efficient and effective manner, but in India it takes eighteen to twenty four months for the registration of the trademark and the backlogs of the registrar. Compared to other countries the United Kingdoms is taking less time in a faster manner in the matter of registration of the trademark.

What all issues are faced by the MSMEs when delay in the Trademark registration happens?

For the registration of the trademark, it may take 18 – 24 months' time. So, it is a long period for registration in which the whole four months are given for the public to raise objections. The whole four months are a lock-in period in which nothing can be done. When a delay happens, the cost will be increased, the competitors in the market will be claiming the trademark, the goodwill of the product will be affected, because it takes a long period for the registration process, and the burden is always on the applicant. The opposition time period begins from the date of publication in the journal of the trademark registry. The four months are a long duration until and unless the end date of the advertisement is not completed, until that time, nothing can be done by the applicant. The registrar is taking a long period of time for the examination of the application; this scrutiny must be made in a perfect manner within a stipulated time. **Nirmala Kabra v. Registrar of Trademarks and another (supra)** this case clearly shows the inefficiency in the part of the registrar of trademarks and the legislature prevailing. If there had been no absence from the registrar's duties, the registration would have been done long before. For more than eight years, there was no response on the part of the registrar. So the rules should be stringent to be effective for the applicants.

When we look at the United Kingdom, the registration is done within a period of six months, and the way they make the procedure is perfect, and it is effectively and efficiently used in the country. The objection period given for the public is two months only from the date of publication in the journal of trademarks. The main highlighted thing is that it is done in a cost-effective manner, so the applicants are affordable and they are satisfied with the rules and procedures of the country.

Conclusion

There should be a speedy mechanism for the registration of the trademark in India, the legislation of the country should be amended for the fastening the process of registration. It has

to adopt the mechanism of United Kingdoms, so that it can be efficiently and effectively in a perfect manner within a short period of time the process of registration can be completed. In that it will be cost – effective, from that the dispute with the court can also be decreased. The trademark journal is on the official Registry, at present it is updated every Monday, but it has to be updated twice or thrice in a week so that the time can be consumed on the publication. The gap that happens can be filled if it is updated in between. When the procedure of trademark registration is amended, it makes it easier for the applicant to get it registered.