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# TRADEMARK AND TRADEMARK REGISTRATION PROCEDURE IN INDIA

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## INTRODUCTION

Trademarks serve as distinctive identifiers, aiding consumers in making informed choices and enhancing brand recognition in competitive markets. The advantages of registration include exclusive usage rights, legal protection, the creation of a valuable intangible asset, and licensing opportunities. The renewability of trademarks ensures long-term brand protection. Successfully navigating this process results in the issuance of a Registration Certificate, offering legal recognition and protection for the brand. In summary, trademark registration in India is a strategic investment for safeguarding brand identity, expanding market presence, and capitalizing on the myriad benefits of a registered trademark.

A trademark is an area of intellectual property that consists of a unique sign, symbol, logo, word, or phrase used to identify and distinguish one business's goods or services from those of another.

- . Trademarks help consumers in identifying and connecting products or services with a particular brand, thus allowing them to make wise choices.
- . Trademarks can be legally protected by registering them with appropriate government authorities. The owner acquires exclusive rights to use the trademark in connection with specific goods or services within a specific geographic area upon registration.
- . The right of trademark owners to protect their exclusive rights against unauthorised usage by others existing. This could involve bringing legal action to stop the violation and seek damages.

Section 2(zb) of the Trademark Act defines a trademark as a mark capable of being represented

visually and distinguishing one business's goods and services from those of another.

In India, trademarks are primarily regulated by the Trade Marks Act of 1999 and the Trade Marks Rules of 2017. The Trade Marks Act of 1999 was enacted to provide for trademark registration and protection in India. It superseded the Trade and Merchandise Marks Act of 1958, bringing important modifications and modernization to the trademark law context.

The Trade Marks Rules, 2017, in addition to the Trade Marks Act, give procedural details and recommendations for the Act's implementation. The regulations address various aspects of the trademark registration process, such as application form and content, examination procedures, and opposition proceedings. Trademarks in India are classified into numerous types based on the nature of the goods or services for which they are used.

There are a total of 45 classes, with classes 1–34 covering goods and classes 35–45 covering services. Based on the nature of their goods or services, businesses must identify the appropriate class or classes under which they want to register their trademarks.

The different types of trade mark provided by the trademark act, 1999 are as follows:-

- Word mark, Words used as trademark like the name of the company or name of the product
- Logo mark, logo or sign used as trademark like the graphical representation or symbols
- Collective mark, marks used for collective people or group of peoples
- Certificate mark, certificate are used as trademark
- Shape mark, shape of the product or goods being used as trademark
- Pattern mark, the specific pattern used as trademark
- Sound mark, specific sound used for classifying the trademark.

The benefits of registering a trademark in India are numerous for both businesses and individuals. Trademark registration bestows a variety of rights and benefits.

- **Exclusive rights:** Registration grants the owner exclusive rights to use the trademark in connection with the specified products or services. This exclusivity aids in preventing others in the same class from using similar or identical marks.
- **Legal asset:** A trademark registration is a valuable legal asset. It gives the owner a legal basis to take legal action against any unauthorised use, imitation, or infringement of the trademark. A registered trademark is considered an intangible asset, and its worth may rise over time as the company expands and the brand becomes more well-known.
- **Differentiate:** The presence of a registered trademark can serve as a disincentive to others from utilising similar marks. Potential infringers are more likely to avoid using a mark if they are aware that it has already been registered and legally protected.
- **Brand recognition:** By giving a unique and protected identity, registration improves a company's market presence. This is especially significant in competitive marketplaces where brand recognition is critical.
- **Licensing:** Trademark registration makes it easier for enterprises to enter into licensing or franchising agreements. It enables the owner to offer others authorization to use the trademark in exchange for royalties or fees.
- **Legal remedy:** Trademark registration establishes a legal foundation for pursuing remedies in the event of infringement. To address unauthorised use, this may include obtaining injunctive relief, damages, or other legal measures.
- **Renewable:** Trademark registration can be renewed indefinitely as long as the mark is used and renewal fees are paid. This provides long-term brand protection.

Trademark registration in India is essential for businesses to protect their brand identification and prevent others from utilising identical marks. Trademarks are registered under the Trade Marks Act of 1999. There are several steps involved in the trademark registration procedure in India. It is critical to carefully follow these steps to ensure the effective registration and protection of your trademark. Here is a brief description of the Indian trademark registration process:

1. **Trade mark search:** Conduct a thorough search to confirm that the proposed trademark is distinct and does not clash with any other trademarks. The search aids in the identification of any similar or identical marks that have already been registered or applied for in the same or similar classifications.
2. **Trademark Application Filing:** Once the search has been completed, you can file a trademark application with the Indian Trademark Office. The application can be filed either online via the official website of the Intellectual Property India (IPI) office or in person at the appropriate office.
3. **Examination report:** The Trademark Office examines the application to ensure that it complies with the legal requirements. Checking for distinctiveness, potential issues with existing trademarks, and compliance with rules and regulations are all part of this process. The examination report is issued, and the applicant has an opportunity to address any examiner objections.
4. **Publication in the Trademark Journal:** If the application is approved, it will be published in the Trademark Journal. This publication enables third parties to object to the registration if they believe it infringes their rights. The trademark application is open for opposition for four months after it is published.
5. **Opposition Proceedings (if any):** If no oppositions are filed or if the opposition proceedings conclude in favour of the applicant, the trademark is registered. If an opposition is filed, a separate procedure is held in which both parties state their contentions and the Registrar makes a decision.
6. **Registration certificate:** The Trademark Office issues the Registration Certificate if there are no oppositions or if the opposition procedures are decided in favour of the applicant. This certificate validates the trademark registration and gives legal protection for ten years.
7. **Renewal:** Trademarks must be renewed on a regular basis in order to remain valid. The initial renewal is due ten years after registration, and future renewals are necessary every ten years after that.

When an objection is raised during the trademark registration process in India, it typically occurs after the examination of the trademark application by the Trademark Office. Objections can be filed for a number of reasons, including a lack of distinctiveness, similarity to existing trademarks, or failure to satisfy legal requirements.

1. **Examination Report:** The Trademark Office issues an examination report that details any objections or concerns caused during the trademark application's evaluation. The applicant or their authorised representative receives this report.
2. **Response to Examination Report:** The applicant has an opportunity to respond to the objections raised in the examination report. Each objection should be handled separately in the response, and evidence or arguments should be provided to overcome the issues.
3. **Hearing (if required):** The Trademark Office may schedule a hearing to decide on circumstances to let the applicant submit their case in person or through a representative. The hearing allows for a thorough discussion and explanation of any points raised in the examination report.
4. **Decision:** The Registrar of Trademarks makes a decision after evaluating the applicant's response and any other substance provided during the hearing. Acceptance of the trademark application, conditional acceptance, or outright refusal could be the ultimate result.
5. **Conditional Acceptance or Refusal:** The trademark may be conditionally accepted for publication if the Registrar is satisfied with the response and any modifications made to the application. A refusal will be issued if the objections are not sufficiently addressed or if the Registrar considers that the trademark should not be registered.
6. **Publication and Opposition Procedures:** If a trademark application is conditionally accepted, it is published in the Trademark Journal. During this time, third parties may object to the registration if they believe it infringes on their existing rights. If an opposition is filed, the subject is resolved in a separate proceeding.

7. **Registration:** If there are no oppositions or if the opposition proceedings conclude in favour of the applicant, the trademark continues to register and a Registration Certificate is issued.

## CONCLUSION

In a nutshell, trademark registration in India is a critical legal system that provides businesses and individuals with a variety of rights and benefits. Trademarks function as distinguishing identifiers, helping consumers to make educated decisions and increasing brand identification in competitive markets. The registration process, which is governed by the Trade Marks Act of 1999 and the Trade Marks Rules of 2017, entails extensive searches, application filing, examination, publication, and potential opposition proceedings. The advantages of registering a trademark are numerous, ranging from exclusive usage rights and legal protection to the development of a valuable intangible asset and the convenience of licencing options. Brand protection and recognition are ensured via renewability.

The article highlights its importance of executing the registration procedure thoroughly, from completing a thorough trademark search to successfully adjusting to examination reports and potential objections. A successful trademark registration culminates in the issuing of a Registration Certificate, which provides legal recognition and protection for the brand.

Overall, trademark registration in India is a strategic investment for firms looking to protect their brand identification, increase market presence, and capitalize on the numerous benefits afforded by a registered trademark.