

Registration Of A Brand Name

written by Juhi Chandel | November 4, 2022



Brand names are valuable assets to any business. A brand name identifies the specific product or name of the company. These names are carefully crafted in order to imbibe a positive image or emotion to any product/service of the brand. A Trademark is registered and listed in a database of registered and pending trademarks. When one uses a trademark, it is a legal presumption that one owns the Trademark and has the right to use the same. So how do you trademark a brand name and do registration of a brand name?

Every business wants to hire the best trademark attorney in order to ensure that legal compliance is met. However, one question remains - do you really need an attorney to initiate the process of trademark registration in India? In this article, we will discuss how trademarking a brand name is helpful, and the process, fees and documentation involved in the same.

In today's modern era, consumers are continuously exposed to trademarks and after a while, it becomes a sub-conscious effort of the mind to relate to any product basis the branding that the product is using. Often a brand or trademark becomes synonymous with the product or service. For instance, Xerox® is often associated with copy.

The Trademark Act of 1999 [1] in India provides the opportunity for trademark registration in India. While the purpose of a brand name is to provide easy recognition of the product or service, Trademark provides legal protection to the brand name. Intellectual property Lawyers in India can be approached to legally commence trademark registration in India. Thus, Trademark registration in India is crucial for brand protection. It is essential to register a trademark because doing so prohibits others from imitating it and

using it fraudulently on their products.

- How to register a trademark?

- Step 1: Choosing a Trademark

- Step 2: Mark Search

- Step 3: Filing Application

- Online Trademark Registration Process and Registration Of A Brand Name

- Step 1: Surfing for Brand Name

- Step 2: Creating a trademark application

- Step 3: Submitting the brand name registration application

- Step 4: Analysing the brand name application procedure

- Step 5: The brand will be published in Indian Trade Mark Journals [5]

- Step 6: Opposing a trademark (in some cases)

- Step 7: Hearing on opposition to a trademark (in some cases)

- Step 8: Issuance of the trademark registration certificate

- Conclusion:

- FAQs

- Can I register a trademark myself in India?

- Is GST required for a trademark?

- Where do I file a trademark in India?

How to register a trademark?

Brand or Trade names can be registered as trademarks at a local/state or international level. The registrar of trademarks is authorized for trademark registration in India. [2] Trademarking a brand name is not an easy process as there are several filings involved which may take time and effort more than one may imagine. One may want to hire trademark attorneys in India to execute this process. It could be as simple as searching trademark lawyers near me on a search engine or one could conduct thorough research and explore options of best trademark attorneys or law firms.

Step 1: Choosing a Trademark

One must select a special and distinctive design to represent the company. The other essential factor is figuring out which class the trademark falls into. There are 45 categories of products and services under which a trademark can now be registered. Classes 1-34 cover goods, and 35- 45 cover services.

Step 2: Mark Search

Once, one has decided on a trademark, it is wise to search to see if it is comparable to any existing registered marks or not. Trademark attorneys in India will not only be able to run this search but also will be able to advise on classes where registering the trademark would be necessary. Another option is to accomplish this on your own by visiting the Controller General of Patents, Designs, and Trademarks' website and running a public search on the website.

Step 3: Filing Application

A single application may be submitted for several classes, series, or collective trademarks. An Intellectual Property Lawyer can be engaged to complete form TM-A for this. A trademark can be registered for more than one class using this form. This form filing includes two distinct price tiers:

Description	For Physical filing	For E-filing
Where the applicant is an Individual / Startup/Small Enterprise	5,000	4,500

In all other cases (Note: Fee is for each class and for each mark) 10,000 9,000

One fits into the first category when:

When the business type falls under the category of start-up, a small business, or an individual. The charges payable are Rs. 4,500 for electronic filing and Rs. 5,000 for physical filing of the form. On the other hand, if they are not a start-up, a small business, or an individual then the charges are 9,000 for physical filing and Rs. 10,000/- for electronic filing. [3]

Online Trademark Registration Process and Registration Of A Brand Name

Step 1: Surfing for Brand Name

First, search the internet for a "creative enough" brand name. Choosing a specific name necessitates a short research procedure to make sure that it is not already in use. The best aspect of this is that one may coin or invent certain terms using a combination to give a distinctive brand name.

Step 2: Creating a trademark application

For online trademark registration, the following supporting documents must be submitted with the application:

- Business Registration Proof:

In support of the registered business (such as a sole proprietorship or similar entity), one must show evidence of the directors' identities and addresses.

- Identification Proof:

PAN and Aadhar Card are acceptable forms of identification for sole proprietorship businesses to submit.

- Address Proof:

The evidence of address proof for a corporation must be submitted in the case of individuals.

Step 3: Submitting the brand name registration application

The two methods for submitting the registration application are:

- a. manual filing and
- b. electronic filing (form TM-A) [4].

If one selects "manual filing," then they will have to travel to the Registrar Office of Trade Marks, which is in major Indian cities including Delhi, Mumbai, Kolkata, Ahmedabad, and Chennai, and manually deliver an application for registration. Depending on what is most convenient, one can submit it online, by themselves, or through an agent. If filed electronically, confirmation of filing will be completed instantly; if filed physically, it could take up to 15-20 days.

Step 4: Analysing the brand name application procedure

Once the application has been submitted, the Registrar of Trademarks will review it to ensure that all requirements have been met and that the brand name complies with the law. Additionally, there should not be any likeness to or identity with any already registered or pending trademarks.

Step 5: The brand will be published in Indian Trade Mark Journals [5]

The brand name will be published in the Indian trademark journal following the inspection process by the Registrar of Trademarks. There should be no objection within four months, or 120 days, from the date of publication. This is undeniably the most crucial step of the trademark registration process in India. The Registrar of Trademarks will proceed with issuing the Trademark Registration Certificate if there is no opposition. If there will be any objections to the trademark, Step 6 and Step 7 will come into force.

Step 6: Opposing a trademark (in some cases)

The Registrar of Trademarks will provide a copy of the notice of any opposition if it is made by a third party within three months after the trademark's publication in the trademarks journal. Within a certain amount of time, one must submit a counterstatement in response to the opposition notice. One will be given two months to submit the counter statement or the trademark application will be deemed abandoned and refused. [6]

Step 7: Hearing on opposition to a trademark (in some cases)

If your mark is opposed, hiring the best trademark attorney to defend the trademark is necessary.

If there is no trademark opposition, one will not be subject to this Step. The Registrar of Trademarks will provide a copy of the counter-statement to the third-party opposing trademark registration. Subsequently, a notice will be issued by the Registry to both parties for submitting the evidence. After the submission of the evidence, [7] the Registrar will offer both the party a chance to be heard. The Registrar will issue a decision regarding the trademark application's acceptance or denial following a hearing from both parties and consideration of the available evidence. Registration will be issued if the Registrar of Trademarks accepts the trademark application. [8]

Step 8: Issuance of the trademark registration certificate

If no opposition is filed during the allotted 120 days, the Registrar will accept the trademark application or the trademark application will be accepted following a trademark opposition hearing. And the Registrar issues the Registration Certificate bearing the Trademark Registry seal. One can use the registered trademark sign (®) next to the brand name as soon as they receive the certificate.

Conclusion:

Trademarks are distinctive characteristic signs that are used to distinguish products or services belonging to a particular company. They may be designs, images, signs, etc. It is crucial since it sets the products distinct from those of the competitors. It might be connected to the business or a certain item. The Trademark Act of 1999 protects trademarks and associated rights. The exclusive right to use a name in connection with the goods and services for which the name is registered is granted to a company or trademark owner upon registration.

This prevents rivals from using the name or coming up with names that sound similar, and it gives you a legal defense against those who pull off devious, fraudulent acts. Another benefit of trademarking is the legitimacy that comes with having one, as well as the legal usage of the ® sign next to a name. A registered trademark limits the ability of competitors to mislead customers of any product or service with false claims or representations. While it is not necessary to register a trademark, a registered brand name proves ownership, eliminating the need for copious amounts of evidence should a necessity arise for the same. A registered trademark can also be used as a basis for filing for trademark protection in foreign countries as well.

FAQs

Can I register a trademark myself in India?

The procedure for registering a trademark is trickier than it seems. To safeguard the name, tagline, and brand of your business, register a trademark right away. We at King Stub & Kasiva made it simpler:

Step 1: Search for trademarks

Our best trademark attorney will conduct a thorough search of the trademark database once you have provided us with the essential details about the product or service you wish to register as well as the sector in which you work. This is done to determine whether the trademark you intend to register is already taken. Then you choose a trademark that is available, and then we go to step 2.

Step 2: Document gathering and class selection

The next step is to choose the class or classes that are right for the company. In order to cover every element of your organisation, the classes you choose will be guided by our best trademark attorney. In your dashboard, you can simultaneously begin uploading each of the necessary documents (a list is provided below) for trademark registration.

Step 3: Submitting a trademark application

Our best trademark attorney will then check all the documents once you have uploaded them. After that, on your behalf, our best trademark attorney will file the trademark application form with the supporting documentation.

Is GST required for a trademark?

No, GST is not required prior to applying for a trademark. But if an individual or sole proprietor firm or the company or the Partnership firm has taken GST in its Name, it must be used.

Where do I file a trademark in India?

The Controller General of Patents, Designs and Trademarks, (Office of the Registrar of Trademarks), Ministry of Industry and Commerce, Government of India, registers trademarks in India.

Here are some reasons to select King Stubb & Kasiva Advocates & Attorneys for your trademark registration needs: We provide you best Intellectual property Lawyers in India to check over the TM directory thoroughly. Our team of trademark attorneys will assist you throughout the registration process, from choosing the classes you should apply for, and submitting applications to the Registrar, to assisting you in case of disputes.

[1] The Trademark Act, 1999 (Act 47 of 1999)

[2] <https://ipindia.gov.in/about-us-tm.htm>

[3] <https://ipindia.gov.in/form-and-fees-tm.htm>

[4] <https://ipindia.gov.in/writereaddata/Portal/Images/pdf/FORM-TM-A.pdf>

[5] <https://ipindia.gov.in/journal.htm>

[6] TM-Rules-2017, Chapter: Opposition to Registration

[7] TM-Rules-2017, Rule no. 45 and 46

TM-Rules-2017, Rule no. 50

[8] TM-Rules-2017, Rule no. 33

King Stubb & Kasiva,

Advocates & Attorneys

Click Here to Get in Touch

New Delhi | Mumbai | Bangalore | Chennai | Hyderabad | Mangalore | Pune | Kochi

Tel: +91 11 41032969 | Email: info@ksandk.com