

Trade Mark Applications

To own a trade mark you need to apply to register it. Applications for trade mark registration are now done electronically through the IP Australia website. However, before you apply to register your brand as a trade mark you will need to identify what your trade mark is and the goods and/or services that you will seek to register it for.

These might sound like simple tasks; however, there are a number of matters that you need to consider to ensure that your resulting trade mark registration is fit for purpose and to make the application process as streamlined as possible.

Some trade marks may not qualify for registration because they may not meet the requirements set out in the *Trade Marks Act 1995* (Cth). In this regard, IP Australia may refuse to register them if you apply.

There are two main reasons why IP Australia may refuse to register a trade mark:

- **Absolute Grounds** - IP Australia does not believe that the trade mark is capable of operating as trade mark; and
- **Relative Grounds** – IP Australia believes that the trade mark and the products for which its registration has been sought conflict with another trade mark already on the register.

IP Australia does not tell you when you apply whether either or both grounds of objection will apply. It will tell you this after you have filed your application and paid the necessary fee. It can be up to 13 weeks after you have applied before you will find out if any such objections will be raised or 5 days if you use their Headstart process, which is more expensive.

If you are establishing new trade mark or wanting to sure up your existing trade mark, this can be too long to wait.

For this reason, along with clearing your brand for use, and before we will apply to register your trade mark, we will assess it for compliance with the requirements of the *Trade Marks Act 1995* (Cth) in our **Pre-Application Trade Mark Reports**. Download our **Trade Mark Application Brochure** from the “Downloads” section of our

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website located at www.marshallip.com.au, for more details on the content and cost of our Pre-Application Trade Mark Reports and Trade Mark Applications.

The purpose of our Pre-Application Trade Mark Report is to provide a report on the possibility of objections being raised against the use and registration of your trade so that you have an indication of the likely issues (if any) that you may encounter in using and seeking registration of your trade mark. The Report also sets out the strategies and costs associated with overcoming any objections that we foresee as a result of our findings.

As with any professional service that is typically charged on a time (rather than task) basis, the client often bears the uncertainty of the costs. Most aspects of our trade mark registration service are based on flat fee calculations that are set out in our scale of charges, which is available on the Marshall Marks page of our website, www.marshallip.com.au.

However, by way of summary, we will not, as a rule, apply to register a trade mark without preparing a Pre-Application Trade Mark Report. The cost of this is \$550.00 (inc GST) per trade mark.

If you decide to proceed with a trade mark application after receiving the Pre-Application Trade Mark Report, the cost of the application will be determined by the number of classes contained in the application. For trade mark registration purposes there are 45 classes - 34 goods classes and 11 service classes. The number of classes in which you decide to apply to register your trade mark will depend on the goods and/or services that you offer under your trade mark and the classes into which they are classified.

In this regard, the cost to apply to register your trade mark is \$530.00 (inc GST) *per class* which includes our fees and government charges.

If your trade mark proceeds to registration, you will need to pay registration fees. Again, these are charged per class, at a rate of \$630.00 (inc GST) per class, which includes our fees and government charges.

Additional cost may also be incurred in dealing with any objections raised by the Trade Marks Office. These are generally charged at a fixed rate – but see our Schedule of Charges for more details.

Contact us today to REGISTER YOUR TRADE MARK

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