

B. Kaushik & Associates.

Company Secretaries

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Q51. What is the meaning of goods under the definition of trademark act 1999?

Ans. Goods means anything which is the subject of trade or manufacture.

Q52. What is the meaning of services under the definition of trademark act 1999?

Ans. Services means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

Q53. Who is registered proprietor?

Ans. Registered Proprietor means a person whose name has been entered in the register as proprietor of the trade mark.

Q54. How to find out under which class any goods or services falls?

Ans. Go to TM CLASS SEARCH, classification of goods and services are listed from Class 1 to Class 45. Once you reached the site, click on the Classification Resources tab, and select "Nice Class Heading", a list of terms along with Class will be displayed. You can find it from the link given herewith. <https://euipo.europa.eu/ec2/>

Q55. What happen when a trademark application is published?

Ans. After the acceptance of the mark, trademark is published in TM Journal. If no opposition is filed within four months from the date of publication of the trademark, the published trademark becomes eligible for registration. The issuance of registration certificate is done through automated TM system.

Q56. What is Form 48 in trademark?

Ans. When a trademark application is filed by a trademark attorney or a trademark agent or a constituted attorney, then a power of attorney (Form TM 48) must be executed by the applicant in favour of the trademark filing agent. Form TM-48 must be printed on Non-Judicial Stamp Paper taking note of stamp value as per respective state.

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Q57. How does Trademark Registration benefit your MSME?

Ans. Trademark registration fees for MSME and Startups have been reduced to 50% as compared to other entities. MSME stands for micro, small and medium enterprises. These businesses have recently gained popularity due to their marginal investment needs, shorter gestation period, and supportive government initiatives. For getting the benefit under the trademark registration.

Q58. What are the documents required for trademark registration of MSME's?

Ans. Following are the documents required for Trademark Registration of MSME's:

1. Name of owner of trademark;
2. Address of owner of trademark;
3. Nature of business – name of products or services specifically;
4. Trademark/ Logo;
5. Using date of trademark;
6. Mail ID;
7. Mobile Number.
8. MSME/ Startup registration certificate

Q59. What is the purpose of Form TM M?

Ans. Form TM-M is used when the trademark application is pending for registration. It is used for the correction of any error in or in connection with his application or any amendment of his application. You can select any of the following suitable heads:

- AMENDMENT OF REGULATION OF A COLLECTIVE MARK;
- CERTIFIED COPY OF ENTRY IN THE REGISTER (U/S 137) / COPY OF A DOCUMENT;
- CORRECTION OF CLERICAL ERROR OR FOR AMENDMENT U/R 37;
- DETAIL OF ADVERTISEMENT OF MARK;
- DIVISION OF APPLICATION;
- EXTENSION OF TIME;
- EXPEDITED LEGAL CERTIFICATE;
- PRELIMINARY ADVICE;
- REGULATION FOR GOVERNING THE USE OF A COLLECTIVE TRADEMARK OR A CERTIFICATION TRADEMARKS;

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- REQUEST FOR ADVERTISE A NOTE OF CERTIFICATE OF VALIDITY;
- REQUEST FOR INCLUSION AS WELLKNOWN MARK;
- REQUEST FOR PAYMENT OF MISC. FEE FOR OTHER PURPOSE;
- REQUEST FOR THE INSPECTION OF THE DOCUMENT UNDER RULE 121;
- REQUEST SUBMITTING AUTHORISATION OF AGENT;

Q60. What is trademark Class 35 ?

Ans. Trademark Class 35 covers a variety of business services. It includes services involving business management, operation, organization and administration of a commercial or industrial enterprise, as well as advertising, marketing and promotional services.

Q61. In which class pharmaceutical, medical and veterinary items covered?

Ans. Trademark Class 5 covers Pharmaceuticals, medical and veterinary preparations; Sanitary preparations for medical purposes; Dietetic food and substances adapted for medical or veterinary use, food for babies; Dietary supplements for human beings and animals; Plasters, materials for dressings; Material for stopping teeth, dental wax; Disinfectants; Preparations for destroying vermin; Fungicides, herbicides.

Q62. Can I register my clothing brand?

Ans. Yes you can register your clothing brand. Trademark Class 25 covered Clothing, Footwear Headwear and other accessories.

Q63. How to download trademark registration certificate online?

Ans. Trademark registration certificate can be downloaded from the Official Trademark Registry Website. It can be downloaded by the applicant or the general public.

Steps to download the trademark registration certificate:

Step 1: Go to the official trademark registry site;

<https://ipindiaservices.gov.in/eregister/eregister.aspx>

Step 2 Click on the Trademark Application /Registered Mark option;

Step 3 Select the National/ IRDI Number;

Step 4 Enter the Trademark Application number and captcha code and click on the view button;

Step 5 Click on the Trademark number;

Step 6 Click on the View Registration Certificate option;

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Step 7 The trademark Certificate will be displayed in a new tab. Click on the download icon, it will be saved in pdf form.

Q64. What happen when a trademark owner failed to renew the registration ?

Ans. Trademark is valid for 10 years only. An application for TM renewal must be filed six months prior to expiry of the 10years period. If the trademark owner fails to renew the trademark registration within the stipulated time , the trademark becomes abandoned. Once the trademark is abandoned, it becomes available for other to use and filed the application for the same mark.

Q65. What is the meaning of trademark application status “Abandoned”?

Ans. When the applicant failed to respond within stipulated time period prescribed in the act, the status of the application shows as “Abandoned”.

Trademark registry abandoned the application on the following grounds:

1. If trademark registry come across to any defect in the application, an examination report is sent to the applicant with objection under section 9 or section 11. If the applicant failed to respond or failed to attend the hearing called by the registry, then in such scenario your application status be shown as Abandoned;
2. A trademark registration is valid only for 10 years. After the expiry of this it needs to be renewed. If owner of the trademark fails to renew the trademark within 1 year after the expiry date, it is likely to be abandoned by the trademark Registry and afterwards any person can claim for such mark;
3. If a trademark application is opposed then in such a case counter statement against such opposition must be filed in form TM O within 2 months, delay in filing of documents can lead to the status of Abandoned.

Q66. How do I find out who opposed my trademark Application?

Ans. Whenever a Trademark Application is opposed, applicant received a notice from the Trademark registry. You can also check it from E-Register -

Following are the steps to know who had opposed your Trademark Application:

Step 1: Go to the official trademark registry site;

<https://ipindiaservices.gov.in/eregister/eregister.aspx>

Step 2 Click on the Trademark Application /Registered Mark option;

Step 3 Select the National/ IRDI Number;

Step 4 Enter the Trademark Application number and captcha code and click on the view button;

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Step 5 Click on the Trademark number;

Step 6 In case your Trademark application is opposed, Status will appear as “OPPOSED” on the top left side of the master page.

Step 7 On the master page, when you go down to the page it will show the details of Opponent name and address, details information can also be downloaded from there.

Q67. Can Opponent check the supporting document filed with reference to the opposition by the applicant?

Ans. Yes, all the supporting documents filed with reference to the application/ opposition/ or Counter Statement are available in the official trademark registry site . You just need to enter the Application number and thereafter you can check the notices and evidences submitted by the parties.

<https://ipindiaservices.gov.in/eregister/eregister.aspx>

Q68.What is the permissible size of the logo while filing the application for trademark in Form TM A ?

Ans. While filing the application for registration of trademark in FORM TM A, if applicant wants to go with the device then the permissible size for the logo is 8cm x 8cm.

Q69. What is covered under Class 7 ?

Ans. Machines, machine tools, power-operated tools; Motors and engines, except for land vehicles; Machine coupling and transmission components, except for land vehicles; Agricultural implements, other than hand-operated hand tools; Incubators for eggs; Automatic vending machines

Q70. Which type of material covered under Class 19?

Ans. This Class includes, in particular:

- semi-worked woods for use in building, for example, beams, planks, panels;
- wood veneers;
- building glass, for example, glass tiles, insulating glass for building, safety glass;
- glass granules for marking out roads;
- granite, marble, gravel;
- terra-cotta for use as a building material;
- roofing, not of metal, incorporating photovoltaic cells;
- gravestones and tombs, not of metal;
- statues, busts and works of art of stone, concrete or marble;

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- letter boxes of masonry;
- geotextiles;
- coatings being building materials;
- scaffolding, not of metal;
- transportable buildings or structures, not of metal, for example, aquaria, aviaries, flagpoles, porches, swimming pools.

Q71. Can I take registration of trademark under the business household items?

Ans. Yes you can register your trademark/ brandname, it is covered under class 21. It includes Household or kitchen utensils and containers; Cookware and tableware, except forks, knives and spoons; Combs and sponges; Brushes, except paintbrushes; Brush-making materials; Articles for cleaning purposes; Unworked or semi-worked glass, except building glass; Glassware, porcelain and earthenware.

Q72 What is Class 41 as per trademark act 1999?

Ans. Class 41 covers a variety of services like:

- organization of exhibitions for cultural or educational purposes, arranging and conducting of conferences, congresses and symposiums;
- translation and language interpretation services;
- publication of books and texts, other than publicity texts;
- news reporters services, photographic reporting;
- photography;
- film direction and production services, other than for advertising films;
- cultural, educational or entertainment services provided by amusement parks, circuses, zoos, art galleries and museums;
- sports and fitness training services;
- training of animals;
- online gaming services;
- gambling services, organization of lotteries;
- ticket reservation and booking services for entertainment, educational and sporting events;
- certain writing services, for example, screenplay writing, songwriting.

Q73. Can I register myself under various classes of goods and services with the same mark?

Ans. Yes you can make application for registration of the trademark under various classes of goods and services subject to separate fees for each class.

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Q74. Can registration be granted to more than one proprietor for the same mark?

Ans. In the case of honest concurrent use or of other special circumstances which in the opinion of the Registrar, make it proper so to do, he may permit the registration by more than one proprietor of the trade marks which are identical or similar (whether any such trade mark is already registered or not) in respect of the same or similar goods or services, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

Q 75. If two people are using the same mark and neither is registered, who has more rights?

Ans. If two people are using the same trademark and neither is registered, each party would have common law rights that are limited to their geographical reach. However, if the geographical reach as well as the field of goods or services overlap one another, then the party who can establish an earlier date of use of the trademark would generally have “prior rights.”

Q76. Can I file a trademark application for registering the name of my book?

Ans. The name of a series of books may be federally registered as a trademark. To determine whether your work is a book series or a “single creative work,” which is not eligible for registration, consult an Intellectual Property attorney.

Q77. Can I trademark my company’s slogan?

Ans. A company slogan used to indicate the source of goods or services can be registered as a trademark, provided all use requirements are met. Slogans or phrases used on T-shirts or buttons that are not used to identify a source of goods or services are not eligible for trademark registration.

Q78. What is Intellectual Property refers to in India?

Ans. Intellectual property in India refers to the patents, copyrights and other intangible assets in India.

Q79. What is meant for address for service?

Ans. Every applicant or opponent or any person concerned in any proceeding under the Act or rules shall furnish to the Registrar an address for service in India comprising of a postal address in India and a valid e-mail address and such address shall be treated as the address for service of such applicant or opponent or person:

Provided that a trademark agent shall also be required to furnish a mobile number registered in India.

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Q80. What is NICE Classification ?

Ans Classification of goods and service for the purpose of registration of trademark, the goods and services shall be classified as per current edition of “the International Classification of goods and services (NICE classification)” published by the World Intellectual Property Organization (WIPO). <https://euipo.europa.eu/ec2/>

The Registrar shall publish a class wise and an alphabetical index of such goods and services, including goods and services of Indian origin.

Q81. What is the difference between the status shown as “OBJECTED” & “OPPOSED” ?

Ans. When the Trademark examiner examines the application, he may object the application if it violates the act and rules. The objection raised by the examiner is known by Trademark Objection. The examiner raise the objection in the form of Examination Report, the applicant should file the reply to examination report within 1 month.

When the application for Trademark is published in TM journal for public to view, any person can within four months from publication in the journal can file an opposition. The purpose of Trademark opposition is to prevent a person from using the same, identical mark which may create confusion among the public.

Q82. What is statement of user in applications?

Ans. An application to register a trademark shall, unless the trademark is proposed to be used, contain a statement of the period during which, and the person by whom it has been used in respect of all the goods or services mentioned in the application.

In case, the use of the trademark is claimed prior to the date of application, the applicant shall file an affidavit testifying to such use along with supporting documents.

Q83. What happens if name or representation of any person appears in your trademark application ?

Ans. If the name or representation of any person appears on a trademark, the applicant shall, if the Registrar so requires, furnish him with the consent in writing of such person in case he is living or, in case his death took place within twenty years prior to the date of the application for registration of the trademark, of his legal representative, as the case may be, to the use of the name or representation and in default of such consent the Registrar may refuse to proceed with the application for registration of the trademark.

Q 84. What is examination report?

Ans. While considering the application made by the applicant, if the registrar has any objection to the acceptance of application or propose to accept it but subject to some conditions, amendments, modifications or limitations as he may think fit to impose. In such

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case, the Registrar shall communicate such objection or proposal in writing to the applicant in the form of an examination report.

Q85. What will happen if I failed to respond to the examination report?

Ans. If, within one month from the date of receipt of the examination report, the applicant fails to respond to the communication, the Registrar may treat the application as abandoned.

Q86. What will happen If the registrar is not satisfied with the response to examination report?

Ans. If the response to the examination report is not satisfactory or where the applicant has requested for hearing, the registrar shall provide an opportunity of hearing to the applicant and the same shall be conducted as per rule 115.

Q87. What will happen if I failed to appear at the scheduled date of hearing?

Ans. In case the applicant fails to appear at the scheduled date of hearing and no reply to the office objection has been submitted by the applicant, the Registrar may treat the application as abandoned.

Q88. In which form Trademark renewal application be filed?

Ans. An application for the renewal of the registration of a trademark shall be made in Form TM-R along with the fee as prescribed in the first schedule and may be made at any time not more than one year before the expiration of the last registration of the trademark. <https://ipindia.gov.in/form-and-fees-tm.htm>

Q 89. What happens when a trademark application is ready for show cause hearing?

Ans. Ready For Show Cause Hearing is a status given to a trademark application when the Examiner has determined that the application requires further review. The applicant will then be required to attend a hearing to explain why the trademark should be granted registration.

Q 90. Who can appear for trademark hearing?

Ans. The applicant can attend the trademark hearing either in person or through a Trademark Agent/Attorney. However, if no objections are raised, the application is approved and then published in the Journal.

Q91. What happens after trademark hearing?

Ans. In hearing applicant is allowed to present their arguments and evidence and respond to any concerns or objections raised by the Examiner. After the hearing, the hearing officer will issue a written order or decision either approving or rejecting the trademark application.

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Q92. What is the time period for filing the opposition?

Ans. A notice of opposition shall be filed within four months from the date of publication of the trademark journal in which the application for registration of trademark was advertised.

Q93. What is evidence in support of opposition?

Ans. The opponent must file the evidences in support of trademark opposition within two months of receipt of a copy of the counterstatement or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition.

Q 94. What is evidence in support of application?

Ans. The applicant must file evidence in support of a trademark application within two months of receipt of copies of affidavits in support of opposition or intimation that the opponent does not desire to adduce any evidence in support of his opposition.

In case the applicant adduces any evidence or relies on any evidence already left by him in connection with the application, he shall deliver to the opponent copies of the same, including exhibits, if any, and shall intimate the Registrar in writing of such delivery.

Q95. What is evidence in reply by the opponent?

Ans. The opponent may within one month from receipt of copies of the applicant's affidavit, file evidences by affidavit in reply and shall deliver the copies of the same including exhibits, if any, to the applicant and shall intimate the Registrar in writing of such delivery.

Q96. When the trademark be entered in the register of Trademark?

Ans. Where no notice of opposition to an application advertised or re-advertised in the Journal is filed within the period specified, or where an opposition is filed and it is dismissed, the Registrar shall enter the trademark on the register.

The entry of a trademark in the register shall specify the date of filing of application, the actual date of the registration, the goods or services and the class or classes in respect of which it is registered.

Q97. What will happen if the applicant died in between the process of trademark registration?

Ans. In case of death of any applicant for the registration of a trademark after the date of his application and before the trademark has been entered in the register, the Registrar may, on request on form TM-M and on proof of the applicant's death and on proof of the transmission of the interest of the deceased person, substitute in the application, the name of successor in interest in place of the name of such deceased applicant, and the application may proceed thereafter as so amended.

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Q98. How certificate of registration of trademark be granted?

Ans. The certificate of registration to be issued by the Registrar under sub-section 2 of section 23 shall be on Form RG-2 and shall include the trademark. It shall bear the seal of the Trade Marks Registry.

The Registrar may issue duplicate or further copies of the certificate of registration on request by the registered proprietor in Form TM-M accompanied by the prescribed fee.

Provided that, no such duplicate or copy of certification of registration shall be issued where such request is received after the expiry of time limit for renewal of registration and restoration of registered trademark.

Q99 What will happen if the owner didn't pay the renewal fee of Trademark?

Ans. If at the expiration of registration of a trademark, the renewal fees has not been paid, the Registrar may remove the trademark from the register and advertise the fact forthwith in the Journal.

Q100. What will happen if no application for renewal of trademark be made within stipulated time period?

Ans. If no application for renewal of the registration is made in the prescribed form (FORM TM-R) with the specified fee, the registrar shall send within six months before the expiration of registration of trademark a notice in FORM RG-3 at the address of service informing the registered proprietor of the approaching date of expiration and the conditions, if any, subject to which the renewal of the registration may be obtained.