

## **B. Kaushik & Associates.**

### **Company Secretaries**

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#### **Ques.101 How to check name availability?**

**Ans.** Before making application for registering the mark, one must check the name availability.

Following are the steps to check it:

Step1: Go to the official website of Trademark registry for Public Search from the link given herewith: <https://ipindiaservices.gov.in/tmrpublicsearch/frmmain.aspx>

Step 2: Choose the search type “Wordmark”

Step3: Choose the search parameter, such as “starts with, “contains, or “phonetically similar;

Step4: Enter the proposed trademark name in the search box;

Step5: Enter the relevant class you want to applied for;

Step6: Click on the search button;

The search results will show you that the proposed mark you want to registered is whether already registered by someone else or not, or if yes then the possibility of getting the same mark is less because it will likely to conflict with already registered mark. One shall use all possible permutation and combination while making search for best results.

#### **Ques.102 How to check status of Application?**

**Ans.** Any person can check the status of Application from the site of Trademark Registry, you just need the Application Number for the same.

Following are the steps for checking the status of Application:

Step1: Go to the Official site of Trademark Registry from the link given herewith: <https://ipindiaservices.gov.in/eregister/eregister.aspx>

Step2: Click on the Trademark Application /Registered Mark option;

Step3: Select the National/ IRDI Number;

Step4: Enter the Trademark Application number and captcha code and click on the view button;

Step5: Click on the Trademark number;

Step6: On the top left side, you can see the status of your application.

#### **Ques.103 How to search Class?**

**Ans.** Goods and services are classified from Class 1 to 45 for Trademark. You can check within which class your Goods or Services falls from the website given herewith:

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<https://euipo.europa.eu/ec2/>

Following are the steps to check it:

Step 1. Go to the website as above mentioned;

Step 2. Once you reached the website, Click on the “Classification Resources” tab which is shown on the top interface of the page;

Step 3. After that, click on the “Nice Class Headings”

Step 4. Class wise list of terms will be displayed on the page;

Step 5. Enter the name of Goods or Services in the “Search bar” you want to search;

Step 6. After that you will get the List of terms under which your searched item falls.

### **Ques 104. What is meant by “Formality check fail” in Trademark?**

**Ans.** In the initial stage while examining the application if applicant defaults in filing proper documents or essential information, registry sends a notice regarding this and the application made by the applicant faces the formality check fail.

### **Ques105. What is the status of “Formality Check Pass” ?**

**Ans.** When after examination, the registry establishes that the applicant has passed all the basic checks, the trademark status shows ‘formalities check pass.’ The trademark registry checks basic requirements, such as uploading the POA, translation, and applicant details.

### **Ques 106. What are the reasons behind Formality check fail in Trademark?**

**Ans.** The following are some reasons behind an application faces the Formality check fail:

- **Incorrect Class-** Trademark is divided into 45 classes. The appropriate class need to be selected after checking the list of items a particular class covered. If the class is not correct, your applicaton will not proceed futher and marked as “Formality check fail” in Trademark by the department.
- **Improper Information-** The name, address, state and other details must be as per power of attorney; category of mark, class, product description, agent registration number, etc. all the relevant information must be filled.
- **Improper Documents-** Power of Attorney, User Affidavit must be properly notarized, If applicant opt for MSME/ Start-up benefit in Trademark, then in such a case MSME/ Start-up Registration certificate must be attached with the application. Also on POA & User Affidavit appropriate amount of stamp duty shall be made as per Schedule I of Stamp act of respective state.
- **Inappropriate goods or services description-** Description must be provided accordingly for the goods or services applicant is dealing with.

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#### **Ques 107. What is MIS F?**

**Ans.** MIS F is reply to formality check. Applicant can file a Formality check from the tab “miscellaneous reply” by selecting “reply to formality check (MIS-F)” and providing an application number.

#### **Ques 108. What is the status of “Marked for Exam”**

**Ans.** If your application status is showing “Marked for Exam”, it shows that your application will be reviewed by the examiner to determine its registrability. Examiner will check whether the application made by you qualifies for registration or not. Trademark examiner will also check the documents and informations submitted by you.

#### **Ques 109 What is the status of “Awaiting reply to Examination Report” ?**

**Ans.** When Trademark examiner serves an Examination report containing objection under Section 9 (absolute grounds) and Section 11(relative grounds), the trademark application status shows Objected with an alert- awaiting for reply to examination report.

#### **Ques 110. What is the reason behind the status of “Refused” ?**

**Ans.** If the examiner examines the trademark application and, after hearing the applicant’s response to the objection, he/she refuses the application, the trademark status shows ‘refused.’

The trademark status can also show ‘refused’ in cases when a third party is able to oppose the trademark application successfully.

The following are the reasons for refusal of Trademark Registration:

- Lack of Distinctiveness;
- Similarity to existing Trademarks;
- Deceptive or Misleading in nature;
- Improper Classification;
- Lack of proper description of Goods or Services;
- Misrepresentation in respect to false statements of ownership, user detail of trademark;
- Similarity to well-known Trademarks;
- Offensive or Immoral Trademarks;
- Failure to respond to Trademark registry actions;
- Infringement of existing Trademarks;

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- Misleading Trademarks which are likely to deceive people;
- Lack of evidence of use;

#### **Ques 111. What to do when your application status is showing “Refused” ?**

**Ans.** If the registration is refused the applicant has the final option of appealing to the Intellectual Property Appellate Board (hereinafter referred to as IPAB). An appeal to the IPAB must be filed within three months of the date of issuance of the refusal order by the registrar.

#### **Ques 112. What is the status of application showing “ Advertised before accepted” ?**

**Ans.** If any trademark is added to the trademarks journal and advertised there, the status of the trademark application shows ‘Advertised before accepted.’ Any third party can oppose such trademark application within 4 months of being advertised.

If no opposition is lodged against the trademark, the trademarks officer has to accept the trademark application before issuing the certificate. Once the certificate is issued, the status changes to ‘advertised and accepted’ and later changes to ‘registered.’

#### **Ques.113 What is the purpose behind advertisement of Trademark in the TM Journal for 4 months?**

**Ans.** The simple motive behind the publication of Trademark in the TM Journal is to give general public a window of 4 months to raise their objection on the applied Trademark if the said mark is likely to create conflicts or unnecessary trouble to their already applied/registered marks.

#### **Ques.114 Who publishes the Trademark Journal?**

**Ans.** The Indian Trademarks Office publishes the Trademark Journal of India and contains information on trademarks registered or applied in India. It is a public record that anybody can occasionally inspect and raise public opposition if needed.

#### **Ques.115 What is the status of Trademark application “Opposed” ?**

**Ans.** When a third party opposes the application within 4 months from the advertisement date, then the trademark application status shows as ‘opposed.’ A third party is most likely to file an opposition only if the trademark application is not similar to another trademark already in use.

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#### **Ques.116 Why an application for registration of Trademark get abandoned?**

**Ans.** The trademark application status shows as “Abandoned” when the applicant failed to respond within the stipulated time period prescribed under the act.

The following are some reasons, why an application is abandoned:

- No response has been filed to an examination report within the stipulated period of one month from receipt of examination report;
- If the applicant forgets to file a counter statement within 2 months of receiving the notice of opposition, the trademark status will change to ‘abandoned’;
- Show-cause hearing has not been attended when the hearing was scheduled;

#### **Ques.117 How much time does it take to get a trademark approved?**

**Ans.** A trademark application requires a minimum of 18-24 months to get approval if the application is accepted without any opposition or objection. However, if any opposition or objection is raised against the application, it might take more than 24 months to approve your trademark application. However, the trademark application number is usually issued within one or 2 days after filing.

#### **Ques.118 Can TM be used without registering?**

**Ans.** Even though a TM can be used without filing application for registration but using it without registering will not provide legal protection against its infringement, and your competitors can still copy your logo.

#### **Ques.119 What will happen if your applied class for the Trademark is wrong?**

**Ans.** Trademark examiner will reject the application if the class you have applied and the description is not matching or can issue formality check fail notice. Trademarks are divided into different classes, and if your trademark is not in the appropriate class, it may be rejected.

The best solution to avoid the unnecessary delaying in registration is to consult with a trademark attorney to ensure that your application is filed in the appropriate class with appropriate goods or services description.

#### **Que.120 What are the different steps of Trademark Registration?**

**Ans.** To register a Trademark, owner needs to go through the following steps:

1. Trademark Search;
2. Filing an Application;

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3. Examination Process;
4. Post Examination Procedures;
5. Publication of the Trademark Application;
6. Notice of Opposition;
7. Filing of Counter Statement against Notice of Opposition;
8. Registration;

#### **Ques.121 What is the mode of replying to Examination report?**

**Ans.** The response to office objections mentioned in the examination report, should be submitted by the applicant or applicant's authorised agent concerned, as the Reply to Examination Report.

In case the applicant/applicant's authorised agent has a level III digital signature he may send the Reply to Examination Report online through the gateway provided at the home page of the office website [www.ipindia.nic.in](http://www.ipindia.nic.in)

The Reply to Examination Report may also be submitted at the Head Office/appropriate office of the Trade Marks Registry, personally or by post.

***Any affidavit and supporting documents may also be submitted along with the Reply to Examination Report***

#### **Ques.122 What to do in case of Objections as to formality requirements?**

**Ans.** In case of objections as to formality requirement(s), the applicant should comply the requirements as desired by the office. The applicant may however submit to establish that as per Trade Marks Act and Rules the formality requirement(s) called by the office are not necessary. For example if the office may has called for consent of the person whose portrait appears on the trademark, the applicant may state that portrait appearing on the trademark is not of a particular person, but it is general picture of a man or woman.

#### **Ques.123 What to do in case of Objections to the effect that goods and services mentioned do not fall in the class as mentioned in the Application?**

**Ans.** In case of objection to the effect that goods or services mentioned in the application do not fall in the class mentioned in the application, the applicant may file a request for amendment of the application by correcting the class; **the applicant may however submit that as per classification of goods or services published by the Registrar, goods or services have been rightly classified.** In case of objection to the effect that some goods or services

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mentioned in the application do not fall in the class, the applicant may file a request for amendment of the application by deleting items that do not fall in the relevant class. the applicant may however submit that as per classification of goods or services published by the Registrar, all items fall in the class mentioned in the application.

#### **Ques.124 What to do when registry sends you objection on the relative grounds of refusal?**

**Ans.** In case of objections on relative grounds of refusal because of identical or similar trademarks in respect of similar goods or services, existing on records, the applicant may submit to the effect that trademarks cited as conflicting marks in the examination report are different than the applicant's trademark; or goods or services mentioned in the application are different than those covered in marks cited as conflicting in the examination report. The applicant may also produce consent/No objection from the proprietor of marks cited as conflicting in the examination report

#### **Ques.125 When the matter of registering a Trademark application set down for hearing?**

**Ans.** In case the office objections to acceptance of the application for registration cannot be waived even after considering the applicant's response to examination report, the matter is set down for hearing through the system.

This hearing commonly known as **show cause hearing** is scheduled and conducted at the appropriate office of the Trade Marks Registry.

#### **Ques.126 How to know that when is my hearing for Trademark is scheduled?**

**Ans.** A hearing notice shall be sent to the applicant/agent/attorney concerned, intimating him about the Application No. & Date of Hearing. The hearing notice shall be sent approximately 15 days before the date of hearing.

#### **Ques.127 What is the meaning of status "Ready for Show Cause Hearing"**

**Ans.** It is shown when Trademark registry had sent a Notice for Hearing and the hearing date is scheduled. The Hearing Officer shall patiently hear submissions of the applicant or applicant's authorised agent concerned and peruse all other documents submitted or referred to during the course of hearing.

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#### **Ques.128. Define the ground of objection under Section 9?**

**Ans.** Section 9 describes “absolute grounds for refusal of trademarks” which are not prima facie “capable of distinguishing” the goods/services of one person from those of another person are devoid of distinctive character.

#### **Ques.129 How to overcome the objections raised under Section 9?**

**Ans.** In order to overcome office objections raised under Section 9(1) the applicant may submit the mark has acquired a distinctive character by virtue of its prior use.

The use of trademark must be established by adequate evidence. Under section 129 of the Act, ‘in any proceeding before the Registrar, evidence shall be given by affidavit. But the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit’.

#### **Ques.130 Define the ground of objection under section 11 ?**

**Ans.** Section 11 sets out “relative grounds for refusal” by reason of conflict with prior trademarks and well-known marks, however under Section 12 a mark could be registered on the basis of “honest concurrent use” when supported by evidence to that effect.

#### **Ques.131 How to overcome the objections raised under Section 11?**

**Ans.** Objections raised under Section 11 can be overcome by the applicant by :

- removing the conflicting goods/services by way of amendment;
- obtaining consent from the proprietor of the cited mark(s) under Section 11(4);
- filing evidence to establish honest concurrent use to secure registration under section 12;
- By securing rectification of register excluding such goods/service of the same description from the specification of the cited mark, under section 57;

#### **Ques.132 Can hearing of Trademark be adjourned?**

**Ans.** If the applicant or his authorized agent is not prepared or is unable to appear for hearing and files an application for adjournment of hearing, the Hearing officer may allow the request for adjournment and then a next date will be fixed for hearing. However no adjournment will be given on frivolous grounds. Hearings may also be adjourned and may be fixed on another date due to administrative reasons. In all adjournments of hearing, a fresh hearing notice fixing hearing on another date shall be issued to the applicant/agent/attorney concerned.



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#### **Ques.133 What is the next step taken by the registry after the hearing ?**

**Ans.** After duly considering the evidence of use of the mark, the distinctive nature of the mark, existence of earlier similar marks, if any, the nature of goods/services covered under the application and other relevant facts, the Hearing Officer may accept the application for registration or he may accept the application with condition as to use of the trademark or limitation as to area of trade, as he thinks fit; or he may propose the application to be advertised before acceptance or may refuse to register after giving reasons of refusal.

#### **Ques.134 Can applicant withdraw the application of registering the Trademark?**

**Ans.** During the course of hearing the applicant may desire to withdraw the application, or the authorised agent of the applicant may desire to withdraw the application on behalf of the applicant. In such circumstances, the Hearing officer will require the withdrawal letter to be submitted in writing. The withdrawal letter will be uploaded in the system.

The genuineness of withdrawal letter as well as the authority of the person withdrawing the application shall be verified by the Hearing Officer on the basis of records of the application. If withdrawal of application is done by the competent person, the Hearing officer concerned will treat the application as withdrawn, enter his remarks in the system to this effect and update the status of application accordingly.

#### **Ques.135 What will happen if the Hearing officer is not convinced with the submissions made during the hearing?**

**Ans.** If the Hearing Officer is not convinced with the materials produced & submissions made in the course of hearing and he may refuse the application for registration after giving appropriate reasons.

#### **Ques.136 How Hearing officer communicate his decision to the applicant?**

**Ans.** A communication letter shall be generated through the system, in respect of all types of orders passed by the Hearing Officer. The said letter shall be sent to the applicant/applicant's authorised agent concerned, latest within one week of the order.

#### **Ques.137 What does Trademark Journal contains?**

**Ans.** The trademark journal contains –

- Public Notices and notifications, if any, issued by the office;
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- Trade Mark applications which are accepted or ordered to be advertised before acceptance;
- Re -advertisements of applications, if ordered by any competent officer;
- Corrigenda or further notification in respect of earlier published application;
- List of trademarks, which are registered, renewed, removed, application withdrawn, etc;
- Post registration changes including Assignments/transmission recorded;
- International non -proprietary names as published by WHO from time to time;
- Other information as considered necessary to be published from time to time.

#### **Ques.138 What is MIS R?**

**Ans.** MIS-R (Miscellaneous R) is used to file the objection reply. Following are the documents attached as reply:

- A copy of examination report reply with appropriate submissions;
- A power of attorney that the applicant duly signs;
- Documented proof against the objection. This can be anything like affidavit, permission, etc.

#### **Ques.139 Is there any fees associated with the reply ?**

**Ans.** There is no fee associated with the reply. However, as you will need the assistance of a professional for this process, they will charge you a nominal fee. Before the submission, you, as a client, would check if the reply is correct.

#### **Ques.140 What to do next after filing the reply to the objection?**

**Ans.** Once the reply has been submitted, there is a waiting time of 15 days. After this time, you will get either a positive or negative response. A positive reaction will advertise your trademark in the journal. A negative one will prompt you to appear in a trademark hearing.

#### **Ques.141 What is the provision for Trademark renewal?**

**Ans.** The Trade Marks Act, 1999, provides for the renewal of a registered trademark for a period of ten years from the date of expiration of the original registration or the last renewal. To initiate the renewal process, the registered proprietor must apply to the Registrar of Trademark in FORM TM-R along the fees of INR 9,000 (in case of e-filing) , within one year before the expiration of last registration of the Trademark. Upon receiving

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the application and payment of the prescribed fee, the Registrar will renew the registration for another ten-year term.

#### **Ques.142 Is there any limit on the number of times a Trademark can be renewed?**

**Ans.** There is no limit on the number of times you can renew your Trademark. You must remember that with every renewal, validity is extended for another ten years.

#### **Ques.143 What is the process of Trademark Renewal?**

**Ans. Following are the easy steps for renewal of Trademark:**

- Step 1: Filing of Application for Trademark Renewal;
- Step 2: Verification and Examination;
- Step 3: Publication in Trademark Journal;
- Step 4: Issuance of Renewal Certificate;

#### **Ques.144 How to file application for Trademark Renewal?**

**Ans.** Submit a renewal application to the Trademark Registry in Form TM-R. Include the following details:

- Trademark registration number;
- Current status of the trademark;
- Applicant's contact information;

#### **Ques.145 How registry will verify and examine the renewal application?**

**Ans.** The Registry will verify the application and examine the trademark for any potential conflicts. It will also assess the renewal eligibility based on the validity period of the trademark and compliance with renewal requirements. If a conflict is found, the registry will raise objections and seek clarifications from the applicant. The clarification must be filed within the prescribed time frame.

#### **Ques.146 Is renewal application also published in TM Journal for opposition?**

**Ans.** No the renewal application is not published in TM Journal for opposition.

#### **Ques.147 When will renewal certificate be granted by the registry?**

**Ans.** Upon successful completion of the publication period and resolution of any opposition or if no opposition arise, then the Registry will issue the Trademark Renewal Certificate. This certificate confirms the renewed validity of your trademark for the next 10 years.

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#### **Ques.148 Who can made application for renewal of Trademark?**

**Ans.** The application for renewal may be made by a person who is proprietor of the registered Trademark or by a person who is his duly authorized agent.

If someone else is representing the trademark owner, a Power of Attorney is necessary.

#### **Ques.149 What is the Due date for filing of renewal application of Trademark?**

**Ans.** The application for Trademark Renewal must be filed before its expiry.

You may be able to file the trademark renewal application one year prior to the expiry of its registration.

In case the registration of the trademark has lapsed as it was not renewed before its expiry, it can be renewed within six months after its expiry with an **additional surcharge** in government fee of trademark renewal.

If the trademark application is not renewed, before its expiry or with additional fee within six months after the expiry date, then the trademark registration gets cancelled. A cancelled trademark can be restored if an application is filed within six months of cancellation.

#### **Ques.150 What is the fees for renewal of Trademark?**

**Ans.** The government fee for Trademark Renewal is Rs 10,000 (for offline filing) and Rs.9,000 for (for online filing) if the application for the renewal is filed before the expiry of the trademark. If the application is filed within 6 months after the expiry, the applicable surcharge over and above the renewal fees would be Rs.4,500 per class (for e-filing) and Rs.5,000 per class (for offline filing).