

## B. Kaushik & Associates.

### Company Secretaries

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#### Ques.1 What is a Trademark?

**Ans.** A Trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights. **It is a brand or name associated with a service or product of an individual or company. It is a unique mark through which the consumers identify a product or service. It differentiates the product manufactured or service provided by an individual or an entity.**

#### Ques.2 What are different types of Trademarks that may be registered in India?

**Ans.** There are 7 different types of Trademarks that are registered in India:

1. Product Mark
2. Service Mark
3. Collective Mark
4. Certification Mark
5. Shape Mark
6. Pattern Mark
7. Sound Mark

#### Ques.3 What is Product Mark?

**Ans.** One of India's most substantial types of Trademarks is the Product mark. It is a mark linked to the products or goods, but it does not include services. The use of product marks is to recognize the source of a product and differentiate the products manufactured and sold by one person from the others.

#### Ques.4 What is Service Mark?

**Ans.** Service mark is a mark linked to the services and not the products or goods. A service mark is used to recognize the source of assistance. A service mark differentiates the services of one person from that of another. It signifies the services offered by a company and is used in the service business where the definite goods are not traded under the Trademark as provided by the Trademark Act 1999.

#### Ques.5 What is Collective Mark?

**Ans.** The mark used by the group of companies and protected by the group collectively is termed collective marks. The effect is used to represent or inform the public at large about the unique idea of the product. It is used to promote certain products with specific characteristics in that field.

#### Ques.6 What is Certification Mark?

**Ans.** A certification mark is used to describe the standards of the goods or services. It safeguards the consumers of the goods or services that such product encounters the safety and other set standards.

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The certification mark on the product signifies that the product has gone through the quantified standard tests. It safeguards and assures the consumers that manufacturers have assumed or gone through an audit process to safeguard the anticipated quality of the products.

#### **Ques.7 What is Shape Mark?**

**Ans.** A mark used to indicate the shape of goods, their packing, etc., are termed Shape Mark as provided by the Trademark Act. It is used only when it is likely to present the product's shape. These shape marks make it different from the other products. If the form has some distinctive features, such effects can be registered under the Trademark Act.

#### **Ques.8 What is Pattern Mark?**

**Ans.** A mark that comprises a pattern capable of identifying the product or services that originate from a particular undertaking and can be distinguished from the other project can be termed the Pattern Trademark as provided by the Trademark Act. The method of evaluation is similar to other Trademarks.

#### **Ques.9 What is Sound Mark?**

**Ans.** A sound mark is a mark used when a specific sound performs the purpose of uniquely classifying the source of a product or a service; it is termed as sound mark. In such cases, such sound is connected with a company or its products or services. It is provided by the Trademark Act.

#### **Ques.10 Who can apply for Trademarks?**

**Ans.** Any person who is an individual, a company, a proprietor or a legal entity claiming to be owner of the Trademark can apply for Trademark. An application can be made for registration of a Trademark actually used or proposed to be used by any person claiming to be the proprietor of the Trademark. In the case of a prior user of the mark, the concerned person is required to submit an affidavit along with evidence to support his claim of priority. In India, for the facilitation of the registration of the Trademarks, the Trademark registry operates from five locations i.e. Delhi, Mumbai, Ahmedabad, Kolkata, and Chennai. In the case of Indian applicants, jurisdiction is decided based on the principal place of business of the applicant and in the case of foreign applicants, jurisdiction is based on where an applicant's agent or attorney is situated.

#### **Ques.11 What are the benefits of registering a Trademark?**

**Ans.** Benefits of registering a Trademark:

1. Trademark registration allows a person the right to sole use of the mark in regards to the services or goods. In addition, the most important purpose in registration of a Trademark comprises powerful answers against any unauthorized use. Trademark registration allows the proprietor to begin litigation against infringement.

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2. Trademark registration also prevents others from using similar marks by making a mark easy to find when searching for Trademark availability searches. This also prevents problems before they arise.
3. Trademark registration safeguards against Trademarks that may sound too confusing.
4. Trademark registration designates the mark on the use of the application date, which is important in a system where the first use wins. Your rights are restricted to a geographic area.
5. Trademark registration affords national notice of ownership, stopping others from claiming a subsequent adoption of the mark.
6. A registered Trademark may be designated as a security, which means that the Trademark may be pledged as collateral to obtain loans in the same way other properties may be bonded.
7. Regarding tangible property, your Trademark is considered a valuable, intangible asset. Trademark registration entails the attachment of goodwill and reputation to a product.

#### **Ques.12 What does TM and R signify, when can we use them?**

**Ans.** A TM (™) sign denotes an unregistered Trademark, which is a symbol often used to advertise or brand products when they have applied for Trademark registration. Companies may use the Trademark superscript, (™), after text, pictures, or other content they claim as their own but have not been formally registered with a regulatory authority. Occasionally, businesses will use ™ to indicate their first usage or that they have applied for registration. From a business perspective, it suggests that an individual selling a particular product or service believes that its identity is unique. The R (®) symbol on a product indicates that it is a registered Trademark. This means that the logo enjoys legal protection as per the Trademarks Act, 1999. Trademark registrations carry a validity of ten years with a possibility for an extension by following the renewal process. If a person or business utilizes the registered name, logo, or symbol without the owner's prior consent, they may be prosecuted for Trademark infringement.

#### **Ques.13 Where should Trademark application be filed?**

**Ans.** Trademark applications can be submitted filed physically at the Front Office Counter of the Indian Patent Office or filed online through the e-filing gateway available at the official website [www.ipindia.nic.in](http://www.ipindia.nic.in).

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### **Ques.14 What is the validity of the Trademark?**

**Ans** The Trademark is registered for ten years by the Registrar. Hence, following the date of registration indicated in the registration certificate, a Trademark registration will be valid for **ten years**. The Trademark registration must be entered into the Register of Trademarks by the Registrar when it is issued.

By submitting a Trademark renewal application to the Registrar prior to the initial registration expiry, the Trademark owner can extend the Trademark registration for an additional **10 years**.

Under the Trademark Act 1999, the duration of Trademark registration in India is ten (10) years. The renewal for a further 10-years period will require prescribed renewal fees.

You'll have to decide if you want to renew or not before the expiration date. Anyone can claim your Trademark after 10 years if not renewed.

### **Ques.15 What is classification of goods adopted in India for the purpose of trademarks?**

**Ans.** India has been following the Nice Classification system for trade mark registration. The Nice Classification comprises Class Headings, Explanatory Notes and an Alphabetical List of Goods and Services. The Class Headings indicate, in a general manner, the nature of the goods or services contained in each of the classes. Each class has Explanatory Notes which describe the type of product or service included, or not included in a class. The Alphabetical List sets out specific items of goods and services in alphabetical order, along with the appropriate class.

Classes 1-34: For Goods

Classes 35-45: For Services

### **Ques.16 Are Trademarks territorial?**

**Ans.** Yes, Trademarks are territorial in nature and must be filed in the countries the applicant seeks for protection.

### **Ques.17 What are the different grounds for refusal of registration of a Trademark under the Trademarks Act?**

**Ans.** Section 9 of the Trademarks act, 1999 provides absolute grounds, and section 11 provides relative grounds for refusal of registration of India. Trademark laws mandate Trademarks to be distinctive and non-descriptive in order to get registered. The rationale behind this provision is that non-distinctive or descriptive marks can't be granted monopoly being generic to the trade and are open for public use without any exclusive rights over the same.

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#### **Ques.18 How to select an appropriate Trademark?**

**Ans.** If it is a word it should be easy to speak, spell and remember. The best Trademarks are invented words or coined words or unique geometrical designs. Please avoid selection of a geographical name, common personal name or surname. No one can have monopoly right on it. Avoid adopting laudatory word or words that describe the quality of goods (such as best, perfect, super etc.) It is advisable to conduct a market survey to ascertain if same/similar mark is used in market. Trademark shall be unique and distinctive. It shall not be same in any manner like phonetically, descriptively and in appearance. Trademark creating confusion with other existing or applied trademark is undesirable. Adding prefix or Suffix also doesn't create uniqueness and will always be objected by the department.

#### **Ques.19 Can any correction be made in the application or register?**

**Ans.** Yes Corrections can be made in trademark application, but the basic principle is that the Trademark applied for should not be substantially altered affecting its identity. Subject to this changes are permissible according to rules detailed in the subordinate legislation. Four credentials cannot be changed in existing application, 1. Applied trademark; 2. Owner Name; 3. Class of trademark; 4. Logo (only minor variations are allowed in logo).

#### **Ques.20 Can a registered Trademark be removed from the register?**

**Ans.** It can be removed on application to the Registrar on prescribed form on the ground that the mark is wrongly remaining on the register. The Registrar also can suo moto issue Notice for removal of a registered Trademark.

#### **Ques.21 Can we get multiple Trademarks under one GST or business?**

**Ans.** Yes! You can get as many Trademarks as required under one GST or business as there is no relation between the two. However, you should note that each Trademark application has to be filed separately and with separate registration fee for each application. For example, Patanjali Ayurveda Limited has over 140 Trademarks in just one class of Trademark with different names or logos for all of its products.

#### **Ques.22 If I have a company registered, is its name protected from use by anyone else?**

**Ans.** A registered company's name is protected against use by any other company or LLP for their business, but a third party can still get a Trademark registered in that name. But on the other hand, if you get a Trademark for the name, the name can neither be used by a company, LLP nor any individual for any purpose under the class that you have registered. Therefore, protection by a Trademark supersedes the protection of name by incorporating a company. But Existing entity can apply to commercial court for infringement of Intellectual Property Rights.

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#### **Ques.23 Can we get logo, name and tagline, all registered under a single Application?**

**Ans.** Trademark Registration consists of 2 types. Word and Device.

- If you want to register your brand name only, then you can choose a Word type.
- If you want to register your brand name and logo, then you can choose a Device type. The cost of Trademark registration includes the logo registration.

#### **Ques.24 Do we get Trademark for lifetime?**

**Ans.** No, Trademarks are valid for a period of 10 years. After the completing of 10 years, one can file application for its renewal and paying the renewal fee. If it is not renewed, it will be marked abandoned and will be available for anyone to use. Even after the death of owner of Trademark, the same can be transferred to his legal heirs.

#### **Ques.25 Do we get worldwide protection after registering Trademark in India?**

**Ans.** No, Trademark registrations are territorial in nature, which means they are valid only in the country of their registration. For protection in various countries, you need to file separate applications in all those countries.

#### **Ques.26 Do I require a DSC to file an application for Trademark?**

**Ans.** Yes, to file a Trademark application, a DSC is required. In addition, the applicant also needs to create an account on the Trademark Registry. It is advisable to consult a Trademark attorney who can help you with the Trademark registration and hence you will not need to get a DSC. Physical Application can also be filed but that's much troublesome as compared to online application.

#### **Ques.27 What is meant by "Sent to Vienna Codification" during the Trademark registration process?**

**Ans.** It is during the initial stages of the Trade Mark registration process that the status on the Trade Mark Registry website shows as "Send to Vienna Codification". This is one of the first steps taken for any Trademark that comprises any figurative element or logo. This codification is done to facilitate Trade Mark Code for an artwork or logo.

#### **Ques.28 Is Trademark registration an online process?**

**Ans.** Yes, the Trademark can be registered online through the e-filing gateway available at the official website. However it can also be filed physically at the front office counter of the respective office or can be sent by post.

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#### **Ques.29 How can I check my Trademark registration status?**

**Ans.** By following the below given steps you can Check Trademark Status

Step 1: Access IP INDIA Website. <https://ipindiaservices.gov.in/eregister/eregister.aspx>

Step 2: Select National/IRDI Number.

Step 3: Provide Trademark Application Number.

Step 4: View Trademark Application Information on clicking on application number reflecting as hyperlink.

#### **Ques.30 How can we know whether a similar mark have already been registered in same type of goods in India?**

**Ans.** A Trademark search can be conducted in India on the Indian Trademark registry at public search link provided below:

Step 1: Visit the official website of Intellectual Property India at

<https://ipindiaservices.gov.in/tmrpublicsearch/frmmain.aspx>

Step 2: Under the dropdown menu in the "Search type" select 'Wordmark'

Step 3: Here three options are available

- 'Start with' which display all the search results that start with the data you have entered;
- 'Contains' which display all the search results that contains the data you have entered;
- 'Match with' which display all the search results that exactly matches the data you have entered there.

Step 4: Enter the applicable class, class can be ascertained from <http://euipo.europa.eu/ec2/> by mentioning Search term and clicking on search button at right side of the browser;

Step 5: Click on search and list of trademark registered or application for registration of trademark will be displayed.

#### **Ques.31 What is Trademark Search?**

**Ans:** Trademark searches refer to any action taken for the purpose of determining whether and/or a Trademark is used in commerce. Trademark searches can be narrow in scope or can include results from every avenue for Trademark protection for every mark is remotely similar to the mark that is the subject of the search. An appropriate search strategy will consider the nature of the mark, the nature of the goods/services the mark covers, the timeline for bringing the mark to commerce, and the applicant's allocation of resources.

#### **Ques.32 What is Trademark Application ?**

**Ans.** After all the prerequisites have been met, the next step in the Trademark registration process would be the filing of the Trademark application. The application is submitted online to the relevant intellectual property office, requesting an examination and approval of the mark. It includes crucial details such as the applicant's information, a representation of the mark, and the specified class of

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goods or services for which it is intended to be used. Accuracy and completeness are paramount at this stage to ensure a smooth progression through the Trademark registration process step by step.

#### **Ques.33 Define the Trademark Fees Payment structure?**

Ans. Once the application is filed, the process for Trademark registration necessitates the payment of requisite fees. These fees cover the costs associated with processing the application, conducting examinations, and other administrative functions. Applicants need to be aware of the fee structure applicable to them, based on the type of entity and the number of classes their Trademark is being registered in. Fee with respect to particular forms can be checked from <https://ipindia.gov.in/form-and-fees-tm.htm>

#### **Ques.34 How Trademark Examination be done?**

Ans. This stage involves a meticulous review of the proposed Trademark by the intellectual property office to assess its uniqueness and availability. The objective is to ensure that the mark meets the criteria for distinctiveness, non-descriptiveness, and adherence to other legal formalities. An examination report is prepared by the Examiner, highlighting any objections that may cause hindrance in the Trademark registration process. Majorly the trademark objections are in class 9 and class 11 or rule 25 if user date is earlier to application date.

#### **Ques. 35 Explain the timeline of Replying to Objections?**

Ans. Addressing objections raised during the examination stage is extremely crucial to take the Trademark registration process further. The applicant must respond to the objections meticulously within 30 days from the date on which they were raised. If the examiner is satisfied, they will proceed to the next stage. However, if unsatisfied, the examiner may summon a show cause hearing to resolve the issue.

#### **Ques.36 What is the next step after settlement of Objections?**

Ans. Upon settlement of the objections, the approved Trademark application moves to the publication stage. The mark is published in the Trademark journal, a publicly accessible document inviting potential third-party oppositions. Third-party oppositions may arrive on grounds like the similarity of the mark with other marks. These need to be settled before the application is finally processed for Trademark Registration.

#### **Ques.37 Is there any Settlement of Third-Party Opposition?**

Ans. In instances where third parties raise objections or oppositions during the specified period, resolution becomes a critical aspect of the Trademark registration process. This step involves negotiation, settlement, or legal proceedings to address the concerns raised by opposing parties. Only after a successful resolution of all public oppositions, the department will consider proceeding with the application.



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#### **Ques.38 What is the validity of Trademark Certification Granted?**

Ans. The last milestone of the Trademark registration process step by step is achieved when the applicant is granted a Trademark Certificate. This official document serves as tangible proof of the exclusive rights conferred to him. Once issued, it remains valid for 10 years from the date of application. Throughout this period, the Trademark remains protected against unauthorised use and plagiarism.

#### **Ques.39 Is renewal of Trademark necessary?**

Ans. Trademark protection is not perpetual, Trademark owners must proactively renew their Trademarks to maintain their rights. Failure to renew before the expiry may result in the loss of its protection. The renewal process is almost similar to the original registration process. Moreover, there is no restriction on the number of times a Trademark can be renewed.

#### **Ques.40 Is proof of use necessary for filing of Trademark in India?**

Ans. No use of mark prior to registration is not mandatory in India. Trademark that are proposed to be used can also be registered in India. But it is always suggestable to mention the user detail.

#### **Ques.41 Which Trademark cannot be registered?**

Ans. A mark shall not be registered as a Trademark if-

1. the mark is likely to deceive the public or cause confusion;
2. the matter contained or comprised in the mark is likely to hurt religious susceptibilities of any class or section of the citizens of India;
3. it contains or comprises of scandalous or obscene matter;
4. its use is prohibited under the Emblems and Names Act, 1950.

#### **Ques.42 How much fees will i have to pay for Trademark registration?**

Ans: The government fees for Trademark registrations are as under:

- Where applicant is Individual/Startup/Small Enterprise the fees for E-Filing would be 4500 whereas for the physical filing fees would be 5000.
- In all other cases fees for E-Filing would be 9000 and for physical filing fees would be 10000

#### **Ques.43 What are the documents required for Trademark registration?**

Ans: Documents required for trademark registration are as follows:

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;

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6. Mail ID;
7. Mobile Number.
8. MSME/ Startup registration certificate

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#### **Ques.44 Can I use the TM symbol in my LOGO after I applied for the registration of the Trademark?**

**Ans:** Yes, The TM symbol is used when an application for Trademark is made with the Trademark registry. The TM symbol is thus used to indicate the fact that a Trademark application exists with respect to the Trademark and serves as a warning for infringers and counter-fitters.

#### **Ques.45 How much time will it take to get my Trademark registered?**

**Ans.** Trademark Registration is a lengthy process and it takes around 18-24 months to obtain registration in a straight-forward case, without any objections or oppositions. However, the Trademark application number is usually issued within one or 2 days after filing.

#### **Ques.46 What is Trademark Watch service?**

**Ans:** Trademark registration is a long process which has to pass through various steps. Trademark watch provides the services of keeping a close watch at the each stage of the Trademark registration process and even after that and do the needful as and when needed to prevent the client from missing out on any important stage which can affect the registration of the Trademark.

#### **Ques.47 What options are available when the Trade Mark Application gets rejected?**

**Ans.** To understand the remedies for the refusal of the application, it is essential to know the grounds on which the Trade Mark Application was rejected. For this purpose, the applicant should request a copy of the grounds for refusal. Once the copy is received, within 30 days of the refusal notice, the applicant can file a review petition.

Section 127 (C) of the Trade Marks Act 1999 empowers the Registrar, on an application made in the prescribed manner, to review their own decision regarding the registration. This review application must be filed in form TM-M within one month from the date of the application or within an additional one month as allowed by the Registry. The review application should be accompanied by a statement setting out the grounds for the review.

The review of the decision is generally considered by the same officer who passed the initial decision. After giving the parties an opportunity for a hearing, the Registrar will then dispose of the review petition, either allowing the Trademark to be advertised in the journal or maintaining the refusal. If the applicant is still unsatisfied with the outcome, they can appeal to the Intellectual Property Division of the High Court.

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#### **Ques.48 What kind of Trademarks cannot be registered?**

**Ans:** A Trademark has to have one basic feature that is it should be unique and create a brand identity for a product. So if a Trademark is such that does not create any brand for a product can't be Trademarked.

In general,

- Generic words can't be Trademarked. For example you can't Trademark the words like TV, Fridge, scooter, car etc.
- The names of the cities and countries cannot be Trademarked.
- The names of Gods and Goddesses and the names of religious books cannot be Trademarked. For example you can't Trademark Lord Ram or Ramayana
- Surnames cannot be Trademarked under normal circumstances. For Example you can't Trademark Sharma
- Names of Constitutional Posts or Government posts can't be Trademarked. For examples you can't Trademark Prime Minister of India
- Words which denote illegal or Immoral acts can't be Trademarked. For example you can't Trademark \*Let's cheat or Let's grope
- Words which are prohibited under names and emblems act can't be Trademarked. For example, you can't Trademark the official sign of Government of India.

#### **Ques.49 What is the step-wise guide for Trade Mark Registration in India?**

**Ans.** Following is the step-wise guide for Trademark Registration in India:

• **Step 1:** Trade Mark Search:

This step is of utmost importance before filing a Trademark application, as it aids the owner in determining whether their Trademark is unique and distinctive and whether there exists another Trademark that closely resembles the owner's mark. Merely having a unique brand name in mind does not guarantee that it is not already registered by another business, making the Trademark search an essential and unavoidable process. This search can be conducted either through the Trademark Office or via the Online Portal. On the Online Portal, you can select a specific class and search the database accordingly.

• **Step 2:** Prerequisite Documents: The following are the documents required during Trademark Registration:

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.

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#### 8. MSME/ Startup registration certificate

- **Step 3:** Examination of Trade Mark Application: After the submission of the Trademark Application, the Examiner must submit an examination report which may or may not include any objections that can be absolute, relative or procedural.
- **Step 4:** Respond to the Examination Report: Within 30 days of receiving the examination report, you must file a reply to assert the arguments in favor of the application and address any objections that may have been raised. This period provides ample opportunity to address objections and resolve any concerns raised during the examination process. If the application is not yet accepted after fulfilling the conditions, then a hearing can be requested. If the examiner believes that the Trademark should be registered then, it will be published.
- **Step 5:** Acceptance and Publication: After a thorough examination, the Trade Mark is published in the Indian Trade Mark journal. The purpose of this advertisement and publication is to invite objections from anyone who may oppose the registration of the Trade Mark, providing a fair opportunity for such opposition. In case of opposition, the applicant is required to present a case justifying why the registration should be granted to them. Upon receiving an opposition, a counter-statement must be filed within two months using Form TM-O.
- **In the event of a refusal, the examiner declines to register the Trade Mark.**

OR

- **If the Trade Mark Registrar approves the application without any objections, a Trade Mark Registration Certificate will be issued, bearing the Trade Mark Registry Seal**

#### **Ques. 50 Whether we can file a single application for multiple classes?**

**Ans:** Yes, we can file a single application under multiple classes mentioning the proposed class and their description in the application. The procedure for filing a multiclass trademark application is similar to the procedure of filing an application under a single class. It should be noted that the government fee for filing a multiclass application is to be paid per class.