

**Dehns**

# **Dehns Guide to Trade Marks**



# What is a Trade Mark?

A Trade Mark is a sign, such as a logo, brand or company/trading name, which distinguishes your goods or services from those of another trader. Other signs that can potentially be registered as Trade Marks include sounds, smells, colours or colour combinations, 3D marks, holograms and movement marks, though not all of these can be registered as Trade Marks in all countries.

Generally speaking, in order to be registrable, a Trade Mark must be distinctive and not descriptive of the goods or services for which it is to be protected. There may be exceptions to this general rule where a mark has acquired secondary meaning as a result of its extensive use.

Dehns can help you determine which sign(s) to protect, and in which form(s) to obtain the best protection.

## **Why and when should I start thinking about registering a Trade Mark?**

Broadly speaking, registering your Trade Mark gives you the right to prevent others from subsequently using or registering your mark (or a similar mark), for the goods or services for which it is registered (or similar goods/services), where this is likely to cause confusion as to the commercial origin of the goods/services. Marks that are well-known can benefit from additional protection, for instance against free-riding on or tarnishing of their reputation.

A registered Trade Mark acts as a good deterrent to third parties, and helps you to stop and reduce the likelihood of others adopting similar marks, the use of which could lead to confusion in the marketplace, divert business, or damage your brand's image. Registered trade mark protection therefore helps to protect your business interests and the value built up in your brand over time.

Although an unregistered Trade Mark may benefit from some use-based protection (e.g. under the UK law of passing-off), it is much more difficult (and expensive) to enforce

unregistered rights than it is to enforce a registered Trade Mark.

If you are already using a name or mark that is not currently registered as a Trade Mark, you should consider seeking registered Trade Mark protection. Likewise, if you are considering launching a new brand or using a new name/mark, you should start thinking about Trade Mark protection as early in the process as possible.

There is a risk that, if you do not seek registration of your (proposed) Trade Mark at the earliest possible opportunity, a third party could get in first, and obtain a registration of the identical mark or a closely similar mark, which they could then use to try to prevent you from using (or continuing to use) your mark. This could potentially mean you having to adopt an entirely different mark. Clearly, a forced re-brand could have serious financial and other implications for your business.

A registered Trade Mark can be a very valuable asset, which can be exploited to increase revenue, for example by licensing it for use by another person or organisation (and collecting royalties), or selling it to a third party when it is no longer of commercial interest to you.

A registered Trade Mark can also make your business more attractive to investors.

## **Do I need to register my Trade Mark if I already have my company name and domain names registered?**

Trade Mark registration, company name registration and domain name registration are entirely separate processes, and neither a company name registration nor a domain name registration will confer any Trade Mark protection. Whilst both a company name registration and a domain name registration might help if trying to assert unregistered rights in a particular name or mark, neither can be relied on in an action for Trade Mark infringement, and neither give you the right to use the name/mark.

It is therefore important to seek separate registered Trade Mark protection if you wish to put yourself in the strongest position possible against third parties.

## **What do I need to think about before using or registering a new Trade Mark?**

You need to consider whether you wish to have any availability/clearance searches conducted. Such searches are not compulsory, but are a useful way of identifying potential obstacles to the use/registration of your proposed Trade Mark, before you have invested too much time and money in the mark/brand. Clients usually prefer to be aware of potential obstacles as early as possible in the process, as it can be a lot more difficult and costly if forced to stop using a mark several months/years down the line.

We can offer different types of searches to suit your requirements/budget.

## **How do I register my Trade Mark?**

In order to seek registration of a Trade Mark in a particular territory, an application must be filed with the relevant Trade Mark office. As a minimum, an application will need to specify the mark and the goods/ services for which protection is required, and the applicant's details. Depending on the territory or territories concerned, it may also be necessary to provide a declaration that the applicant is using, or has a genuine intention to use, the mark, and/or to specify another filing basis (e.g. corresponding home application/ registration). Supporting documents, such as a Power of Attorney, may also be required in some territories.

## **How long does it take to get a Trade Mark registration?**

Many factors can affect the length of time it takes for a Trade Mark application to achieve registration, and the timescales involved can vary greatly from case-to-case and country-to-country.

In some cases/countries, a mark can achieve registration in as little as 3–4 months. In others, the process may take several years, particularly if the application encounters third-party opposition or if there are use requirements that must be fulfilled before registration.

For a straightforward UK application that doesn't encounter any objections, oppositions or other issues, you are likely to be looking at about 4 months from filing to registration.

## **How long does a Trade Mark registration last?**

In most territories, a Trade Mark registration lasts for an initial period of 10 years, and is renewable then and every subsequent 10 years on payment of a renewal fee.

In some countries, it is necessary to prove that a mark is in use at the time of renewal. This is not necessary in the case of a UK or EU Trade Mark.



## How much does it cost to register a Trade Mark?

The costs vary from country to country, and will depend on the number of classes of goods/services to be covered. Goods and services are classified into 45 classes for Trade Mark registration purposes.

By way of example, the cost of preparing and filing a UK application to register a Trade Mark in one class is £595, inclusive of our fees and official fees (but not VAT). If more than one class is required, there will be an additional charge for each extra class. The cost of preparing and filing an EU Trade Mark application, covering all of the EU Member States, in one class is approximately £1,450, subject to exchange rate variations. This includes our fees and official fees (but not VAT). Again, there will be additional charges for each extra class.

If a UK or EUTM application passes through the examination and publication stages without encountering any citations, objections or opposition, further costs up to and including registration should be no more than about £250 - £500, plus VAT.

In terms of applications elsewhere, by way of a very rough guide, one might expect the initial cost of filing an application for one mark in one class to average out at about £1,200 - £1,500 per country, including our fees, official fees and our local associates' fees (but excluding VAT). We can provide more accurate cost estimates for any territories where you might be considering seeking protection for a Trade Mark.

If an application does encounter objections, oppositions or other difficulties, there will be costs associated with dealing with them. These costs will be largely time-based, so will vary greatly from case-to-case, depending on the number/nature of the obstacles encountered and on the country.



## **How can I stop others using, or trying to register, my Trade Mark or a similar Trade Mark?**

Whilst formal action may be necessary/ appropriate in some cases, it is often possible to resolve conflicts without the need to get involved in formal legal proceedings.

Therefore, should you become aware of a third party using a mark which is identical to your mark, or which is sufficiently similar so as to be likely to cause confusion, you should get in touch with a Trade Mark Attorney as quickly as possible. They will be able to advise as to your options, and devise an appropriate strategy based on the particular circumstances and your budget and priorities.

Many clients have Trade Mark watches in place, which alert them should a third party application for a Trade Mark that might conflict with their own existing Trade Mark(s) in a particular territory be published.

We can arrange Trade Mark watches in most territories of the world, on a country-by-country, regional or worldwide basis.

We can also arrange other types of watches, such as applicant watches, domain name or company name watches, web watches and social media watches, all of which can be useful tools for Trade Mark owners.

## **I'm interested in getting protection for my Trade Mark or understanding more about Trade Marks. What do I need to do next?**

If you already have a Dehns contact, talk to them, and they will put you in touch with one of our Trade Mark specialists. Otherwise, please email us at [trademarks@dehns.com](mailto:trademarks@dehns.com).

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