

Understanding Trademarks

I. What is a trademark?

A trademark is a sign, or combination of signs, which distinguishes the goods and services of one undertaking (company or person) from those of another. A trademark functions as a distinctive symbol on the market and a quality standard, so that consumers can be confident when they buy a product or service bearing a particular mark that they are getting the product or service they expect. Trademarks are also used in sales promotion and as an instrument of commercial strategy.

A good trademark stands out positively and sticks in the mind of the target group. By registering your trademark your business obtains an exclusive right to use it and can prohibit others from using a similar mark for similar products.

II. Scope of protection offered by trademarks

A trademark gives the owner the exclusive right to prohibit others from using the same mark, or a mark that causes a risk of confusion, for goods or services that are similar to the owner's goods or services.

Trademarks are registered for specific goods and services only. The exclusive right offered by the trade mark is linked to these specific goods and services. This is the principle of speciality. Moreover, trademark protection is limited to the territory where the mark is registered.

Well-known marks, such as McDonald's, are also protectable in Seychelles.

Unlike other IP rights, trademarks can be renewed indefinitely. In Seychelles, the initial trademark registration can be granted for a period of 10 years from the filing date of the application for registration. Upon request of the trademark owner and payment of renewal fees, the registration can be renewed for consecutive periods of 7 years each.

There are a number of different ways in which trademark protection can end. The protection can end if the renewal fees have not been paid. The owner of the trademark has also the right to renounce the trademark. Any interested party can require cancellation of a trademark that has not been used by the registered owner or a licensee for an uninterrupted period of 3 years or more. Also, a trademark can still be declared invalid if, after registration, an absolute ground for refusal is identified or where peaceful co-existence on the market is no longer possible.

The scope of protection is broad, but some use by others is allowed, for example for private purposes only.

III. There are many sorts of trademarks

A trademark may be, for instance, a word or a set of words, a figurative element, a slogan, or a combination of any of these, a sound or a three-dimensional mark. For instance, the shape of a product (think Coca-Cola bottle) or of its packaging functions as a trademark. A trademark may also be for instance a multimedia mark or a position mark (see examples below).

A trademark can consist of words, designs or a combination of both. The words may be fictional (e.g., EXXON, XEROX, KODAK) or they may be any words that do not describe the goods and services identified by the mark (e.g., APPLE for personal computers). A mark may also be a series of letters (e.g., BMW, KPMG, LG), of numerals (e.g., 501 for jeans), or a combination of both (e.g., 3M, F1). A logo may be a geometric or abstract design (e.g., the Mercedes Benz three-pointed star in a circle or the Nike swoosh), a stylization of everyday objects or images (e.g., the stylized scallop

shell of Shell Oil Company), or a word mark depicted in a stylized typeface (e.g., the COCA-COLA mark in a unique script).

A trademark may also be a proper name (e.g., GIORGIO ARMANI, HUGO BOSS, MARILYN MONROE), a slogan (e.g., JUST DO IT), a symbol (e.g., McDonald's golden arches), a product design (e.g., the design of Apple's iPod), a package design (e.g., the shape of the Coca-Cola bottle), an animated image (e.g., Microsoft's "Windows" logo formed from coloured squares), or a combination of these elements, that serves a source-identifying purpose.

In some jurisdictions, even a sound (e.g., NBC's chimes and MGM's roaring lion), a colour (e.g., Tiffany's robin egg blue for jewellery), a smell (e.g., freshly cut grass for tennis balls), or a hologram can be a trademark. These are referred to as non-traditional marks.

Three-dimensional marks: the mark consists of for example the appearance of the product or of its packaging (see examples below).

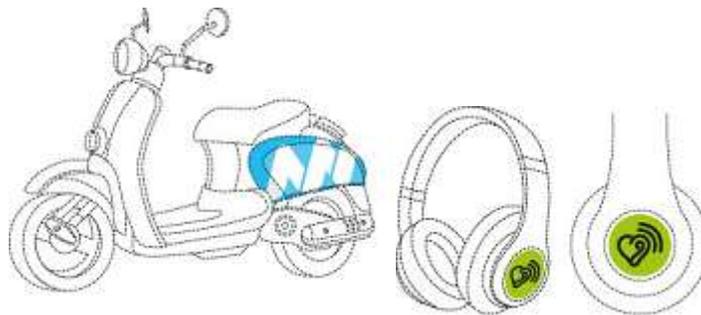


Source: EUIPO.

Multimedia mark: the mark consists of the combination of image and sound

Sound mark: the mark consists of a sound or a combination of sounds

Position mark: the mark consists of the specific way in which the mark is placed or affixed on the product (see examples below).



Source: EUIPO

IV. When will a trademark registration be refused?

A lack of distinctive character is an absolute ground for refusal of registration. Descriptive or generic trademarks are not capable of fulfilling the origin function. Other absolute grounds for refusal include signs that are contrary to public policy and the principles of morality.

Relative grounds for refusal exist where the peaceful co-existence of two marks is not possible because of the likelihood of confusion on the part of the consumer.

V. What is the difference between trademarks and trade names?

A trade name is intended to distinguish a particular company from other companies, whereas a trademark is intended to distinguish the products of that particular company from competitors' similar products on the market. A trademark is an important distinctive symbol in business marketing.

VI. Trademarks and tourism

If you own a hotel or restaurant, manage a travel agency, are a tour guide, run a rental car business, rent out snorkelling gear, or any number of such businesses that provide services to tourists, then trademarks may be helpful for:

- creating a distinctive market identity
- creating and protecting your competitive edge, or
- adding a revenue stream.

Creating a distinctive market identity is of interest to individual businesses, cities, regions and even countries. Recent efforts to brand places also known as “destination branding” is an example of efforts by cities or regions to create a distinctive appeal that will resonate amongst visitors and they have done so by relying on a trademark, whether by virtue of a registered logo or tagline.



Source: WIPO.

St. Moritz – Top of the World

The Swiss mountain resort St Moritz was one of the first to register the name “St Moritz” and the tag line “Top of the World”, not only in Switzerland but also in the Office of Harmonization for the Internal Market, the Trademark Office of the European Community.

Virginia is for lovers

“Virginia is for lovers” is a slogan that has succeeded in capturing the hearts and minds of visitors who see Virginia through this logo as a vivacious, lively and dynamic state with something for all.



Source: GeekWire.

Certification trademarks

A certification mark certifies the nature or origin of the goods or services to which it has been applied. This could include the region, location or origin of the goods or services, the materials of construction, method or mode of manufacture or provision, quality assurance, accuracy of the goods or services or any definable characteristic of the goods or services. Certification marks can also certify the manufacture or provision of services by members of an organisation that meet certain standards.

Certification trademarks, which certify that the trademark user complies with certain required criteria, are popular in the tourism industry where many small businesses can acquire a certain distinctiveness and visibility through the application of such marks. There are numerous profit and not for profit authorities that lend their logos to enterprises in the tourism sector, certifying that they have complied with such criteria as are important for tourists. The Green Globe Certification, a global “eco-tourism label” that promotes sustainable tourism, is one such example.



Source: Greenglobe.com

Collective marks

A collective mark is a trademark that is owned by an organisation and is used by its members to identify themselves with a level of quality or accuracy, geographical origin, or other characteristics set by the organisation. Collective marks do not show the source of origin of the goods from a single trader, but rather from a group of traders. Collective marks may be used only by the members of the organisation which owns them. Unlike collective marks, certification marks may be used by anybody who complies with the standards defined by the owner of the particular certification mark. This is the key difference between certification and collective marks.

Collective marks are another way in which small businesses have gained in visibility and reputation. For instance, “Logis de France” is a registered trademark of the Fédération Nationale des Logis de France, which is an association of independent hoteliers bound together with the objective of promoting privately owned hotels in a rural setting grouped under the same label.



Source: Logishotels.com



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