

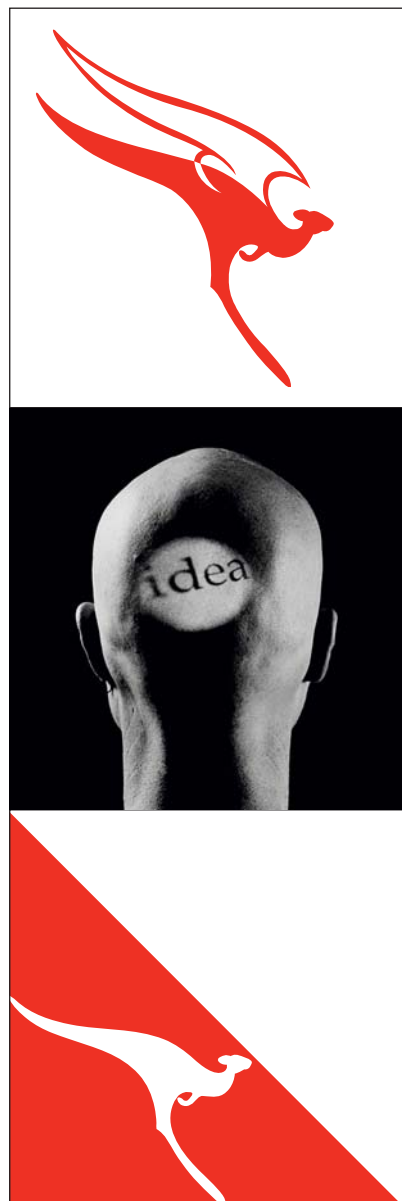


Australian Government

IP Australia

THE TRADE MARKS APPLICATION KIT

An easy guide to applying for your Trade Mark



[www.**ipa**ustralia.gov.au](http://www.ipaustralia.gov.au)



idea



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This application kit is designed to help you prepare and file a trade mark application in Australia. This kit does not cover every issue that may come up and you should not regard this kit as an authoritative statement on the relevant law and procedure. You should also note that the requirements may change from time to time and while we make every effort to ensure the information presented is accurate, you should check with IP Australia before relying on the information.



What is a **trade mark**?

Choosing a trade mark

A trade mark may be your most valuable marketing tool. With the right branding strategy, the public will identify a certain quality and image with goods and services bearing your trade mark. If you are thinking about a new product or service and you want to establish an image for it, you should also be thinking about a distinctive trade mark under which to market it.

Benefits of registering a trade mark

As the registered owner, you

- ▶ have the exclusive right* to use your registered trade mark as a brand name for the goods or services specified in the registration
- ▶ have the exclusive right to authorise other people to use your registered trade mark for the goods or services specified in the registration
- ▶ have a registered trade mark which is personal property and can be sold
- ▶ have a registration which usually covers the whole of the Commonwealth of Australia
- ▶ may give the Australian Customs Service a notice objecting to the importation of goods that infringe your registered trade mark (see page 14)
- ▶ can be in a stronger position to stop other people from using your trade mark as their brand name on the goods or services of your trade mark registration.

Is registration of a trade mark compulsory?

No. However, if your trade mark is not registered and another person uses it, you may have to take passing off action under common law, or claim for a breach of Section 52 of the *Trade Practices Act 1974* if you want to stop them. Protecting your trade mark without the benefit of registration can be more difficult and expensive than using the remedies available to owners of registered trade marks.

*Please note the Possible Limitations information on page 3

If you own a registered trade mark you have the right and the responsibility to protect your trade mark. You may take an infringement action against another person who uses your trade mark as their own on the same or similar goods or services. IP Australia grants trade mark rights but does not police or enforce those rights.

Are there any possible limitations to registration which I should know about?

Whilst uncommon, there are some circumstances which may limit your exclusive rights. For example, if another person is using an unregistered mark which is the same, or very similar to your mark, and their use of the trade mark started before you registered or started using your mark, they could possibly claim ownership of the trade mark under common law. They might rely on this as a defence against an infringement action. Sometimes a business name, or part of a company name, may have been used in this way as an unregistered trade mark.

If another person is using an unregistered trade mark that is the same, or very similar to your mark, such a mark could still be registered. That person may be able to produce evidence of prior use or honest concurrent use of their trade mark. It would then be possible for such a mark to subsequently be registered.

How long can registration of a trade mark last?

Indefinitely. Successful applications are registered for ten years from the date the application was filed.

Registrations continue as long as the renewal fees are paid every ten years.

Are all trade marks registrable?

No. To be registrable a trade mark must meet certain conditions that are spelt out in the *Trade Marks Act 1995*.

Trade marks that

- ▶ indicate the kind, quality, intended purpose or value of the goods or services, or
- ▶ are common surnames or geographical names

are usually not capable of distinguishing your goods or services.

Trade marks which conflict with an earlier trade mark, or would mislead the public about the nature of the goods or services, are also difficult to register.

Some words are protected by law and cannot be registered as trade marks. Others are prohibited as trade marks under the *Trade Marks Act 1995*, for instance, OLYMPIC CHAMPION.

Some words are affected by other legislation. For instance, the use of the word CHAMPAGNE is governed by provisions of the *Australian Wine and Brandy Corporation Act 1980*.

Trade marks, business names, company names and domain names

A trade mark is a letter, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or combination of these. It identifies a product or a service, distinguishing it from other similar products or services. Registration of the trade mark gives the owner the legal right to exclusively use or control the use of the mark for the goods or services for which it is registered. Registration is obtained under the *Trade Marks Act 1995* and covers the whole of Australia.

A business name is the name under which a business operates. The purpose of a business name registration is to identify the owners of that business. Registration is compulsory in every state and territory from which the business operates, and must be completed before the business starts trading. Unlike trade marks, business names do not provide proprietary rights for the use of the trading name.

A company name, or registrable body, must be registered with the Australian Securities and Investment Commission. If a company wishes to trade using a name other than its registered company name, it must register that trading name as a business name. Unlike trade marks, company names do not provide proprietary rights for the use of the trading name.



Domain names are site addresses on the internet. If you hold an Australian registered trade mark or pending application, you can apply to register that mark as a .com.au domain name. This means that your domain name no longer has to be your company or business name. You can apply to register separate domain names for products, services and events (among other things) that you provide. For more information on domain name issues you should refer to www.auda.org.au

Trade marks and plants

The name of a plant variety cannot be registered as a trade mark because it is not capable of distinguishing one trader's plants from another.

A plant variety name or a common name for a plant describes a particular plant. However a trade mark does not name any particular plant, it names the trade source of the plant, ie the grower, producer or seller.

During examination of your application, your trade mark will be checked to see if it is a variety name recorded on the Plant Breeders' Rights Register. It will also be checked to see if it is in use as the common name of a plant in the trade. You cannot register your trade mark if it occurs as a plant variety name or common name in these searches.

If you are not sure whether you need trade mark registration or plant breeders' rights registration, please contact IP Australia on (02) 6283 2999.

Trade marks and wines

Before choosing a trade mark or designing a label under which wine will be imported, exported or sold on the Australian market, you need to be aware of the requirements of the *Australian Wine and Brandy Corporation (AWBC) Act* and regulations, as well as the requirements of the *Trade Marks Act*.

For more information refer to our brochure for class 33 applications available under Trade Marks forms and publications at www.ipaustralia.gov.au. You could also contact either the AWBC www.awbc.com.au (08) 8228 2000 or IP Australia (02) 6283 2999.

Goods & Services

Trade marks are connected with particular goods and/or services. Goods and services are divided into 45 classes under the Nice international system of classification. For instance, cars are in class 12, while beer is in class 32. A list of the 45 classes begins on page 26. This list is not exhaustive, however, and you are advised to call our Customer Services Network on (02) 6283 2999 if you are unsure of the correct class for your goods or services. When you search the Trade Marks database it may be necessary to search in several classes to ensure your search finds all possible conflicting trade marks.

Searching

You can search the Trade Marks database before using a new trade mark and before filing an application to register it. Identical or similar trade marks for the same or closely related goods or services could block your application for registration. The search could also save you trouble and money by alerting you to existing trade marks which are so similar to the one you plan to use, that you may face legal action from the owners of those trade marks.

When you search the Trade Marks database, look for other trade marks that are identical or similar to your own trade mark, and which relate to similar goods and services.

The Trade Marks database is accessible online in the Trade Marks section of the IP Australia website — **www.ipaustralia.gov.au**. Click on 'Search the trade mark database using ATMOS' to start your search.

You can also use the facilities at our state offices to search for similar trade marks (see page 18 for contact details). Professional searches are available from patent and trade mark attorneys, legal practitioners and trade mark search firms.

Applicants for business names

If you wish to check whether your business name is identical or very similar to a pending or registered trade mark, IP Australia also provides a search service, the **Business Names Applicant Search Service**.

For further information on this service or to apply for a search, please contact IP Australia on (02) 6283 2999.

* Please note that this is not the same search carried out when examining a trade mark.



Applying for a trade mark

Who can apply?

Anyone can apply for registration of a trade mark. This could be an individual, a company, an unincorporated club, or an association. However a business name is not acceptable as an applicant. The application should be made in the name/s of the person (or people) who own the business name registration.

Use

Applicants must use, or intend to use the trade mark in relation to the goods or services identified in the application. If the trade mark is to be used by a body corporate about to be formed, the applicant will need to assign the trade mark to the new body.

Costs

There is a basic fee for filing your application. Additional fees are payable at filing where:

- ▶ your application covers goods or services in more than one class; or
- ▶ you have applied for a series* of trade marks.

If your application covers goods or services in more than one class, it is called a multiclass application.

If your application is accepted for registration, the appropriate registration fee must be paid before your trade mark can be registered.

* Series — You can apply to register more than one trade mark on one application if the trade marks are essentially the same. To qualify as a series application, the differences between the trade marks must be extremely minor and must not affect the identity of the trade mark, eg. Stock-Flex, Stockflex; Moonlight 1, Moonlight 2, Moonlight 3; realisation, realization. A series application can only be made for goods or services in a single class. See the section on 'Trade Marks Fees' for current costs (pg 15).

Special trade marks

Applications for trade marks containing or consisting of sounds, scents, shapes, colour or aspect of packaging should be accompanied by a concise and accurate description of the trade mark. All trade marks, including these special trade marks, must be capable of being graphically represented.

How to apply and pay

You need to fill in the application form included in this kit. Please read the instructions carefully as they will help you complete the form. Alternatively you can apply online (if paying by credit card) using the online application form on IP Australia's website at **www.ipaustralia.gov.au**. If you have any questions please ring our Customer Service Network on (02) 6283 2999.

The relevant fees must accompany your application. Please see pages 15 and 16 in this kit for a list of fees.

You may file your completed application with the correct fees:

- ▶ Online (your personal or business credit card will be required when you pay online) at **www.ipaustralia.gov.au**.
- ▶ At our state offices (cash, cheque, money-order, debit or credit card) — see page 19 for location of state offices.
- ▶ By post (cheque, money-order, 'Payment Options' form for credit card) — to the **Registrar of Trade Marks, IP Australia, PO Box 200, Woden ACT 2606**.
- ▶ By fax (using the 'Payment Options' form for credit card) to our secure business transactions **fax (02) 6283 7999**.
- ▶ By Electronic Funds Transfer (EFT) — remittance advice required. To arrange please contact **1300 361 541**.

Cheques should be made payable to IP Australia. We accept MasterCard, Visa and BankCard credit cards.



Care is needed

Please be very careful when completing your application. After you file your application, the goods or services cannot be extended and only very minor amendments are allowed to the trade mark. If you need assistance with filling in the paper or online application forms, or with choosing the correct classes for your goods and services, or with calculating the correct fees, please phone our Customer Service Network during business hours on (02) 6283 2999, or email us at **assist@ipaaustralia.gov.au**.

Looking after your application

You can file and look after your own application or you can use the services of a registered patent or trade mark attorney or a solicitor experienced in trade mark matters.

Examination

Applications are examined in order of filing.

The period of time taken between filing and examination of applications can vary considerably due to significant fluctuations in the number of applications lodged at any given time. For the current waiting time, please contact IP Australia on (02) 6283 2999.

If you believe that you will be seriously disadvantaged because of the time taken between filing and examination, you may request that your application be examined sooner. Although there are no fees associated with lodging an application to expedite, it must be accompanied by a Declaration (witnessed) detailing the reasons for your request. Requests are assessed on their individual merit and are more likely to be accepted if any delay in examining your mark is likely to result in a particular commercial or other form of disadvantage.

When your application for registration is examined, it will be assessed to see if it meets the requirements of the *Trade Marks Act 1995*. If your application meets all the requirements, it will be accepted for registration. If not, you will be sent a report setting out any requirements that need to be addressed. You should reply in writing and address the matters which have been raised.

You may ring the examiner to discuss your application and how you might proceed with it. However, IP Australia staff cannot give you legal advice on what are essentially business decisions. You may choose to seek professional advice from registered patent and trade mark attorneys or solicitors experienced in trade mark matters.

Timeframes

The *Trade Marks Act 1995* allows you 15 months from the date of the examiner's first report in which to meet any requirements identified by the examiner and to have your application accepted by the Registrar. If you need additional time, you may request and pay for extensions of time. From 15 to 21 months, extensions will be granted on payment of the appropriate fee, providing the request is made before the date specified in the examiner's report.

Late requests and requests for extensions beyond 21 months must be accompanied by the appropriate fee and must be made on specific grounds. You must also provide a Declaration (witnessed) supporting the ground(s) and setting out the reason(s) why you need further time.

If your trade mark application is not accepted and it runs out of time, it will **lapse**.

After acceptance of your application

When your trade mark is accepted for registration, the details of the application will be advertised in the *Official Journal of Trade Marks*.

For three months after the advertisement date, anyone who believes that your trade mark should not be registered may oppose its registration.

Registration

If no opposition is filed against your application, or if opposition is unsuccessful, your trade mark will be registered when you pay the registration fee. The fee should be paid no later than six months from the date acceptance is advertised. IP Australia will then send you a Certificate of Registration and record the details of your trade mark in the *Register of Trade Marks*.

Your trade mark will be registered from the date you filed your application, not from the date it was examined or accepted.



The earliest date your trade mark can be registered is seven and a half months after an application is filed. This fulfils our international obligations to allow six months for applicants to claim a priority date based on an overseas filing.

Warning — unofficial register/services

Trade mark owners may be sent unsolicited documents from companies which offer, for a fee, to register trade mark information for the implied purpose of protecting trade mark rights. Some of these companies identify themselves as

- ▶ **Globus Edition SL, Palma de Mallorca, Spain**
- ▶ **Company for Economic Publications Ltd, Vienna, Austria**
- ▶ **IT & TAG, Switzerland**
- ▶ **Company for Publications and Information Anstalt, Liechtenstein**
- ▶ **INFOCOM, Schaan, Switzerland.**
- ▶ **Edition The Marks KFT**

These companies are sending documents resembling invoices to trade mark owners which offer 'entry' of trade mark details in an annual publication. They are usually sent after the trade mark details have been advertised in the Official Journal.

These companies **are not** associated with IP Australia and have no official or governmental authority. The service they offer does not provide official trade mark registration or trade mark rights in Australia or any other country.

At any stage

At any stage after filing your application, you may apply in writing to record

- ▶ changes in the details of your application/ registration.
Note: Goods or services cannot be extended and only very minor amendments are allowed to the trade mark itself.
- ▶ another party's claim of interest to, or right in, your trade mark
- ▶ an assignment or transmission of your trade mark to another party.

Important points

- ▶ A trade mark does not have to be registered. However if you use an unregistered trade mark, we suggest that you search our database of registered and pending trade marks (www.ipaustralia.gov.au). This will help ensure that you do not inadvertently infringe the rights of registered trade mark owners.
- ▶ Although TM can be used with your trade mark at any time, ® can only be used with a registered trade mark.
- ▶ A trade mark is not registered as soon as the application is filed. The application must be examined first. You cannot claim that the trade mark is registered until you receive the Certificate of Registration.
- ▶ If your trade mark is registered, the protection given by registration is from the date you filed your application — not from the day it was examined or accepted.

Remember

You must have an address for service in Australia. All correspondence from this office will be sent to that address and it is very important that you advise us whenever you change that address.

Renewal

The initial period of registration of your trade mark lasts for ten years from the filing date.

Registration of your trade mark can be renewed within 12 months before or after its expiry date. Late fees apply if the registration is renewed after the expiry date.

Two months before the expiry date we will send a reminder notice to your address for service telling you how to renew your registration. Therefore it is important that you notify our office if your address for service changes.

The Registrar will renew your trade mark registration when the renewal fee is paid.



Protecting your trade mark

Infringement

It is your responsibility to protect your trade mark. If someone uses your trade mark without your permission, they may be infringing your trade mark and you should seek legal advice as soon as possible. IP Australia grants trade mark rights but does not police or enforce those rights.

Infringement of trade marks on the Internet

Doing business over the Internet has significant implications for owners of registered trade marks, because of the possibility of inadvertent infringement of trade marks registered in other countries. Many trade mark owners do not realise when they begin trading over the Internet that they are entering a global marketplace. Registration of a trade mark in Australia does not give any rights in relation to that mark overseas. If you offer goods or services for sale via the Internet, you may be sued for infringement in a country where someone else owns the trade mark.

To minimise the risks of liability arising from unintentional Internet infringement Australia recently joined other member states of the World Intellectual Property Organization (WIPO) in establishing guidelines designed to protect trade mark owners who trade over the Internet. (The text of the guidelines and explanatory notes are contained in document SCT/7/2, which is located at **www.wipo.int/meetings/en/doc_details.jsp?doc_id=1922**)

Trade mark owners need to be aware of the potential risks they face when trading over the Internet. You should seek legal advice on the best ways you can avoid or minimise those risks. Most importantly, you should seek legal advice if you receive notice from an overseas trade mark owner alleging that you are infringing their trade mark via the Internet.

Trade mark owners contemplating trading over the Internet should also consider the potential benefits for their business of applying for registration of their trade mark overseas using the Madrid Protocol. (See **International Trade Mark Registration**, over the page.)

Generic use

Once registered, it is important to ensure that your trade mark continues to be regarded as a trade mark. If your trade mark becomes known as the generic name for your goods or services and ceases to be recognised as a trade mark, an application to the courts to have the registration cancelled may be successful.

Removal of trade mark from Register for non-use

A person aggrieved by your trade mark registration can apply to have your trade mark removed from the Register. Such applications can be made if you have not used your trade mark for a period of three years, or if you have not used your trade mark and you had no intention of using the trade mark when the application was filed. The person applying for removal is often a trade mark applicant whose registration is being hindered by the registered trade mark.

Objecting to importation of goods

You can give a notice to the Australian Customs Service, objecting to the importation of goods which infringe your registered trade mark.

For more information please contact the Australian Customs Service on (02) 6275 6577.

International trade mark registration

Do you want protection for your trade mark overseas?

There are two different ways Australian trade mark owners can seek trade mark protection overseas. An application can be filed directly with each country, or a single international application can be filed through IP Australia nominating the countries in which protection is required. This single international application operates under the Madrid Protocol and there are more than 65 member countries party to the Madrid Protocol.

If you are interested in finding out more about international applications then you should visit our website **www.ipaustralia.gov.au**.



Trade marks fees

Please note that these fees are subject to change. GST does not apply to these statutory fees under Division 81 of the *GST Act 1999*.

These are the basic fees that apply to a typical application.

There are a number of other fees that apply to other actions that may be required on your trade mark application.

Applying

Application for registration of a trade mark — these are the fees that apply at time of filing (except for online filing — see below):

Application to register a trade mark (single class)	\$150
For each additional class covered by the same application	\$150
Application to register a series* of trade marks	\$200
(A series application must only be for a single class)	

* There are additional conditions which series applications must meet — see page 7.

Online filing

A reduced fee applies only when filing your application online using the official online form which is available at www.ipaustralia.gov.au.

Application to register a trade mark (single class) online	\$120
For each additional class covered by the same application online	\$120
Application to register a series* of trade marks online	\$170

*There are additional conditions which series applications must meet — see page 7.

Please visit the trade marks section of the IP Australia website www.ipaustralia.gov.au or call the IP Australia Customer Service Network (02) 6283 2999 for up to date information on fees.

Registering

Registration of your trade mark occurs after your trade mark has been examined, accepted for registration and has passed through any opposition. A trade mark is initially registered for a period of ten years (from the original filing date) and continues indefinitely as long as the renewal fees are paid.

Registration fees, which must be paid within six months of acceptance, are:

Registration of a trade mark (single class)	\$300
For each additional class covered by the same application	\$300

Renewing

Registrations continue as long as the renewal fees are paid every ten years:

Renewal of registration of a trade mark (single class)	\$300
For each additional class covered by the same registration	\$300

FEES PAYABLE WHEN REGISTERING IN MORE THAN ONE CLASS

You may, for example, want to apply to register a trade mark for perfume, clothing and sunglasses.

Perfume is in class 3, clothing is in class 25, and sunglasses are in class 9.

You should file a multiclass application covering classes 3, 9 and 25.

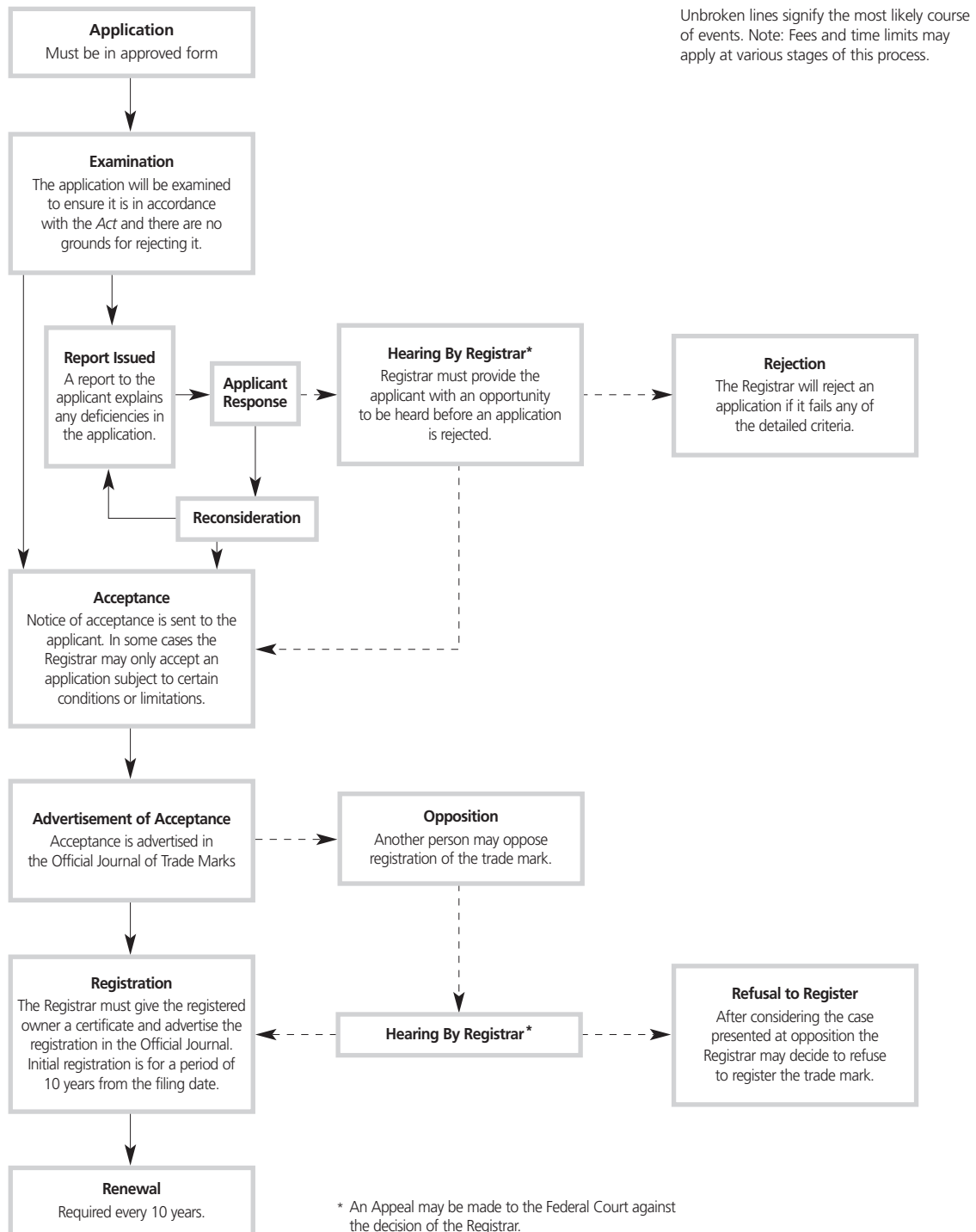
There are 3 classes so the fee you would have to pay at filing is \$450 (\$150 x 3), or \$360 (\$120 x 3) if filing online using the official online form.

If your trade mark is accepted for registration you would then have a registration fee to pay. This would be \$900 on current costs (\$300 x 3).

For a listing of class headings please see page 26. For extra assistance in choosing the correct classes for your goods or services, please contact our Customer Services Network on (02) 6283 2999 during business hours, or email assist@ipaustralia.gov.au



Flowchart of an application





Contacting *IP Australia*

IP Australia staff are happy to help you and to answer your queries. However we cannot assist clients on legal matters or provide business advice. You may wish to consult a patent or trade mark attorney, a solicitor experienced in intellectual property matters, or your business adviser.

IP Australia subscribes to the **Telephone Interpreter Service**. If you need help communicating in English, you can phone the interpreter service on 131 450 for the cost of a local call from anywhere in Australia.

All written correspondence regarding trade marks should be directed to *The Registrar of Trade Marks*.

Postal Address: **PO Box 200, Woden ACT 2606**

Phone: **(02) 6283 2999**

Customer Service Network — for assistance with subscriptions, sale of patent publications, electronic communication and more detailed assistance with trade mark enquiries.

Phone: **1300 651 010**

General Enquiries — for the cost of a local call contact your **nearest state office** for general information relating to trade marks, designs or patents.

Fax: **(02) 6283 7999**

Business Transactions Fax — for lodgements, filings and business related correspondence such as financial and confidential material. Faxes received at this secure number are receipted at Australian Eastern Standard/Daylight Saving time.

Email: **assist@ipaaustralia.gov.au** — for general enquiries. However lodgement of documents is not available through this address.

Website: **www.ipaustralia.gov.au** — for information relating to intellectual property, to submit online applications for trade mark registration, and to download forms and other documents.

State Offices

Our state offices are open from 9.00am to 5.00pm weekdays (except local public holidays) and can provide assistance, resources including computers to search our databases and published reference materials.

Canberra

Ground Floor
Discovery House
47 Bowes Street
PHILLIP ACT 2606
Fax (02) 6283 7999

Adelaide

Level 10
Origin Energy House
1 King William Street
ADELAIDE SA 5000
Fax (08) 8239 4507

Brisbane

Level 1
Grant Thornton House
102 Adelaide Street
BRISBANE QLD 4000
Fax (07) 3007 1107

Hobart

Level 4, AMP Building
27 Elizabeth Street
HOBART TAS 7000
Fax (03) 6235 6307

Melbourne

Level 6, OCBC House
565 Bourke Street
MELBOURNE VIC 3000
Fax (03) 9612 9807

Perth

Level 2, Eastpoint Plaza
233 Adelaide Terrace
PERTH WA 6000
Fax (08) 9220 8907

Sydney

Level 1
45 Clarence Street
SYDNEY NSW 2000
Fax (02) 9249 5807

For general enquiries or to contact your nearest IP Australia State Office please call **1300 651 010**.

We encourage you to use our business transactions fax number (02) 6283 7999 to obtain certainty of time and date for lodgement of applications and other correspondence

Customer Service Charter

IP Australia is committed to being a customer focused organisation. To help our customers, IP Australia has a Customer Service Charter outlining the standards of service you can expect from us. To obtain a copy of the charter, simply ring 1300 651 010 or visit our website.

Communicating electronically with IP Australia

The date which information is provided to IP Australia can be critical to the certainty of IP rights.

IP Australia has implemented a set of business rules which establish that when you communicate with us electronically (eg email, fax or online) using our preferred contact numbers and methods, the date and time of communication will be Australian Eastern Standard/ Daylight Saving time.

Our preferred means of communication are:

- ▶ the IP Australia website — **www.ipaustralia.gov.au**;
- ▶ our business transactions fax number — **(02) 6283 7999**; or
- ▶ email — **assist@ipaustralia.gov.au**

Communication sent to other contact points electronically (eg state office fax numbers) will be processed in accordance with the date and time at the place of receipt. These communications will not gain the benefits provided by the *Electronic Transactions Act* such as security and certainty of receipt.

The *Electronic Transactions Act* business rules address a range of issues including:

- ▶ identifying the appropriate form of electronic communication to use for different types of correspondence;
- ▶ choosing electronic payment options;
- ▶ receiving notifications; and
- ▶ utilising supported electronic formats.

Further details on IP Australia's electronic communication business rules can be found at **www.ipaustralia.gov.au/about/site_eta.shtml**



Application to register a trade mark

Standard, certification, collective and defensive trade marks

Before filling out the application form, please read the instructions carefully. The application may be considered as not filed if you do not correctly complete this form or if insufficient fees are paid. Refunds are not provided for applications which do not gain registration.

Instructions for filling in the Application Form

If there is not enough room provided to complete any part of the form please use the additional space provided on the last page of the form. You may attach as many additional pages as necessary.

Please keep a photocopy of the application form for your own records.

1. Name of applicant

Print the full name of the applicant (owner) of the trade mark. The applicant may be an individual, a company, or an association or a combination of these. A business name or trading name is not acceptable as the name of the applicant. If a trade mark is owned by a corporation, the application should be made in the corporation's name and not in the name of directors or shareholders. A Trust is to apply in the name of the Trustees.

Please provide the company number (ACN) or registered body number (ABRN) if applicable. Do not include a registered business name number (ABN) on the application form.

More than one name?

If there is more than one applicant, then all names should be provided.

An application should not be filed in the name of more than one individual or company unless:

- ▶ the use of the mark by one of them counts, at law, as a use by both or all of them — for example, a legally constituted partnership — **or**
- ▶ the mark is used on goods and/or services with which both/all of them are connected in the course of trade — for example, if both/all parties are involved in a joint venture or if both/all of them carry out work on the goods and/or services **or**
- ▶ they are in business together **or**

- ▶ have agreed to share ownership of the trade mark.

Joint applicants are considered to be “in business together” if they intend to use the trade mark in relation to goods or services which the applicants offer or provide for a shared business purpose. All joint applicants should be aware that, for the purposes of the *Trade Marks Act 1995*, they will be considered co-owners of the trade mark.

2. Full address of the applicant

Print the full address of your business. This may be a post office box.

If there is more than one applicant and the applicants have different addresses, each address should be included.

3. Address for service of correspondence within Australia

Print an address in Australia where all correspondence about this application should be sent. This may be a post office box. An address in Australia must be nominated for correspondence even if the applicant’s own address is not in Australia.

Telephone numbers and fax numbers of the address for service are not compulsory but, if we need to contact you, they can be useful.

Note: The names and addresses you provide in response to points 1, 2 and 3 above will be made available on the internet.

4. Trade Mark

Write or put the trade mark in the box.

Please ensure the trade mark is placed in the box the right way up **AND** is clear enough to reproduce (without retouching) for publication purposes.

If the trade mark is other than in plain typescript, we need the trade mark put in the box on the form **AND ALSO** an additional identical copy of the trade mark in the box on the scanning sheet (included in this kit). The scanning sheet should then be attached to the application form.

If the trade mark does not fit within the box provided, please try to reduce the size while clearly retaining all the features of the trade mark. If the trade mark cannot be reduced to fit, please put a copy of your trade mark in the extra space on the back of the form **AND ALSO** put an identical copy on an oversize scanning sheet, if you have one, or simply provide us with one extra copy of your trade mark.

Note: If this trade mark application might become the basis for an international application (see page 14) the trade mark must not be greater than 8cm x 8cm.

We do not need a coloured representation unless you intend to restrict your registration to specific colours. A trade mark is usually taken to be registered for all colours.



If your trade mark contains non-English words or foreign characters, Question No.6 on the application form should also be completed.

5. Convention priority details

If the applicant applied for this trade mark in another convention country in the last six months and wants to claim the earlier filing date, then information about that convention application should be included on the application form.

If a different priority claim applies to different goods and/or services in an application and you claim multiple priority dates, please use the extra space provided on the last page. You **MUST** indicate which goods and/or services apply to the various priority dates.

6. Non-English words and foreign characters

If your trade mark contains non-English words you are required to provide a translation of those words into English. For example, *"I advise that the English translation of the German word PFEIL appearing in the trade mark is ARROW"*. Similarly, if your trade mark contains foreign (non-Roman) characters then you are required to provide a transliteration and translation of those characters.

7. Goods and/or services covered by this application

Please list the goods and/or services for which you want to register your trade mark. If your application covers goods or services in more than one class, please group them together by class in numerical order. When selecting your class/es consider the products or services which your business sells. While you may use your mark on various products for advertising you require protection only for the goods/services you sell.

Please note: The descriptions "all goods" or "all services" in the class or including "all other goods" or "all other services" are not acceptable.

It is important that you provide a clear, succinct description of your goods and services. The list of class headings and a brief description of the goods or services is shown on page 26. A detailed list of goods and services in each class can be viewed at our state office in each capital city, or a classification search may be done on the internet at IP Australia's website at www.ipaustralia.gov.au (go to the ATMOSS trade marks search and click on the Goods/Services link available there).

Email assist@ipaustralia.gov.au or phone 02 6283 2999 for further help.

8. Signature

Signing the form is optional.

9. Series Details

A series is a single application for registration of two or more trade marks if there are only very minor variations eg

STOCK-FLEX, STOCKFLEX;

MOONLIGHT 1, MOONLIGHT 2, MOONLIGHT 3;

REALISATION, REALIZATION.

Please note: a series application can ONLY be for goods or services in ONE class. You can only apply for a series of trade marks if you intend to USE each of the different variations.

Remember to place the trade marks in the box provided on the front of the application form. If all the trade marks do not fit in the box, please place all of them on the back page of the application form. Attach a scanning sheet if necessary.

10. Special kinds of signs

A trade mark must be represented graphically. Where the sign is a shape, scent, sound or colour you need to give a clear description of the sign. If there is no other form of graphic representation of these kinds of trade marks, the description may also be used as the representation (at No. 4).

Please indicate colour ONLY if your trade mark consists of particular colour(s) applied to your goods or their packaging or is used in a special way in respect of your services.

11. Other than standard trade marks

Most trade marks are standard trade marks. They distinguish the goods or services of one trader from the goods or services of any other person. If your trade mark is a standard trade mark, you do not need to complete this section.

Certification trade mark — This is a sign used to distinguish goods or services dealt with or provided in the course of trade and certified by the trade mark owner (or by another person approved by the owner) in relation to quality, accuracy or some other characteristic including origin, material or mode of manufacture. The Woolmark is a well-known example of a certification trade mark. After examination of the application by IP Australia, the rules governing the use of a certification trade mark must be approved by the Australian Competition and Consumer Commission.



Collective trade mark — This is a sign used in the course of trade by members of an association. The association must not be a body corporate. Collective trade marks cannot be assigned to a new owner at a future date.

Defensive trade mark — Such an application may be filed because a registered trade mark has become so well known in relation to some goods or services that its use by another trader in relation to other goods or services may be confusing to consumers. The owner is not required to use the trade mark on these goods or services. Evidence is required to support the application.

12. Divisional application

Where an application for a trade mark has been made in Australia (referred to as the initial application), and that application is still pending, a divisional application may be made for:

- (i) part of the trade mark in respect of some or all of the goods and/or services included in the initial application;
- (ii) the trade mark in respect of some of the goods and/or services included in the initial application;
- (iii) the trade mark in respect of any or all of the goods and/or services which have been excluded from the initial application.

A divisional application is taken to have the filing date of the initial application on which it is based. Strict time limits apply to the filing of divisional applications. (Please contact IP Australia for more information on the timeframes involved.)

13. Please note

- ▶ **The earliest date a trade mark can be registered is seven and a half months after an application is filed. This is to fulfil our international obligations to allow six months for applicants to claim a priority date based on an overseas filing.**
- ▶ **Information provided in your application form, including personal details, will be made available on the internet. eg. applicant name/address.**

If you need assistance with any aspect of your trade mark application, please contact IP Australia by email at assist@ipaustralia.gov.au or by phone on (02) 6283 2999.

Classes of goods and services

Please note: If your goods or services are not listed, or you need help completing the application form, contact IP Australia by phone on (02) 6283 2999, or by email at assist@ipaustralia.gov.au.

Classes of goods

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry
2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colourants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists
3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices
4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks for lighting
5. Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides
6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores
7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand operated; incubators for eggs
8. Hand tools and implements (hand operated); cutlery; side arms; razors
9. Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus
10. Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopaedic articles; suture materials



11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes
12. Vehicles; apparatus for locomotion by land, air or water
13. Firearms, ammunition and projectiles; explosives; fireworks
14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments
15. Musical instruments
16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks
17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal
18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery
19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal
20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics
21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; unworked or semi-worked glass (except glass used in buildings); glassware, porcelain and earthenware not included in other classes
22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastic); raw fibrous textile materials
23. Yarns and threads, for textile use
24. Textiles and textile goods, not included in other classes; bed and table covers
25. Clothing, footwear, headgear

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers
27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile)
28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees
29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats
30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice
31. Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt
32. Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages
33. Alcoholic beverages (except beers)
34. Tobacco; smokers' articles; matches

Classes of services

35. Advertising; business management; business administration; office functions
36. Insurance; financial affairs; monetary affairs; real estate affairs
37. Building construction; repair; installation services
38. Telecommunications
39. Transport; packaging and storage of goods; travel arrangement
40. Treatment of materials
41. Education; providing of training; entertainment, sporting and cultural activities
42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services
43. Services for providing food and drink; temporary accommodation
44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services
45. Personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals



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