

Trade Marks

What is a trade mark?

A trade mark is a sign used by manufacturers or merchants to identify their own goods or services. Most trade marks are words or logos, but a trade mark may also be a colour, shape, sound or smell, provided that this is something that will be distinctive of just one trader.

A trade mark identifies where a product comes from, or who is providing a particular service, and encourages the trader to maintain quality. If customers are satisfied with the goods or services, the trade mark enables them to know what to purchase in the future thereby building brand loyalty; if they are dissatisfied, they will avoid goods or services provided under that trade mark.

How do you select a good trade mark?

A trade mark should be selected carefully as it can be difficult and costly to change once use is commenced. Examples of good trade marks include invented words (eg KODAK), suggestive or emotive words (eg SUNSILK for shampoo) and arbitrary words (eg APPLE for computers). Descriptive words (eg the normal descriptive name for a product, common surnames and geographical names) are difficult, and therefore expensive, to obtain and enforce.

Before a trade mark is adopted, searches should be conducted to ensure that the mark is not currently being used by someone else. It is important to search the Australian Trade Marks Register and checks should also be made through relevant trade information such as competitor catalogues, business name databases and the internet.

How do you obtain trade mark rights?

In Australia, trade mark rights are obtained through use (called common law rights) or through registration with IP Australia. It is not necessary to apply for registration of a trade mark before using it in the Australian market. However, a trade mark registration is a much stronger right than a common law right. Furthermore, many other countries do not recognise common law rights in the same way as Australia. The best course of action is to protect important trade marks by applying for registration.

How do you obtain a registration in Australia?

Applications to register a trade mark in Australia are filed with IP Australia. A flow-chart illustrating the process involved can be found overleaf. The registration process will take at least 6 months.

A trade mark is registered for an initial period of ten years but can be renewed indefinitely for further ten year periods. Once your trade mark is registered you can and should use the ® symbol. For unregistered marks, you can use the "TM" symbol.

How do you protect your trade mark overseas?

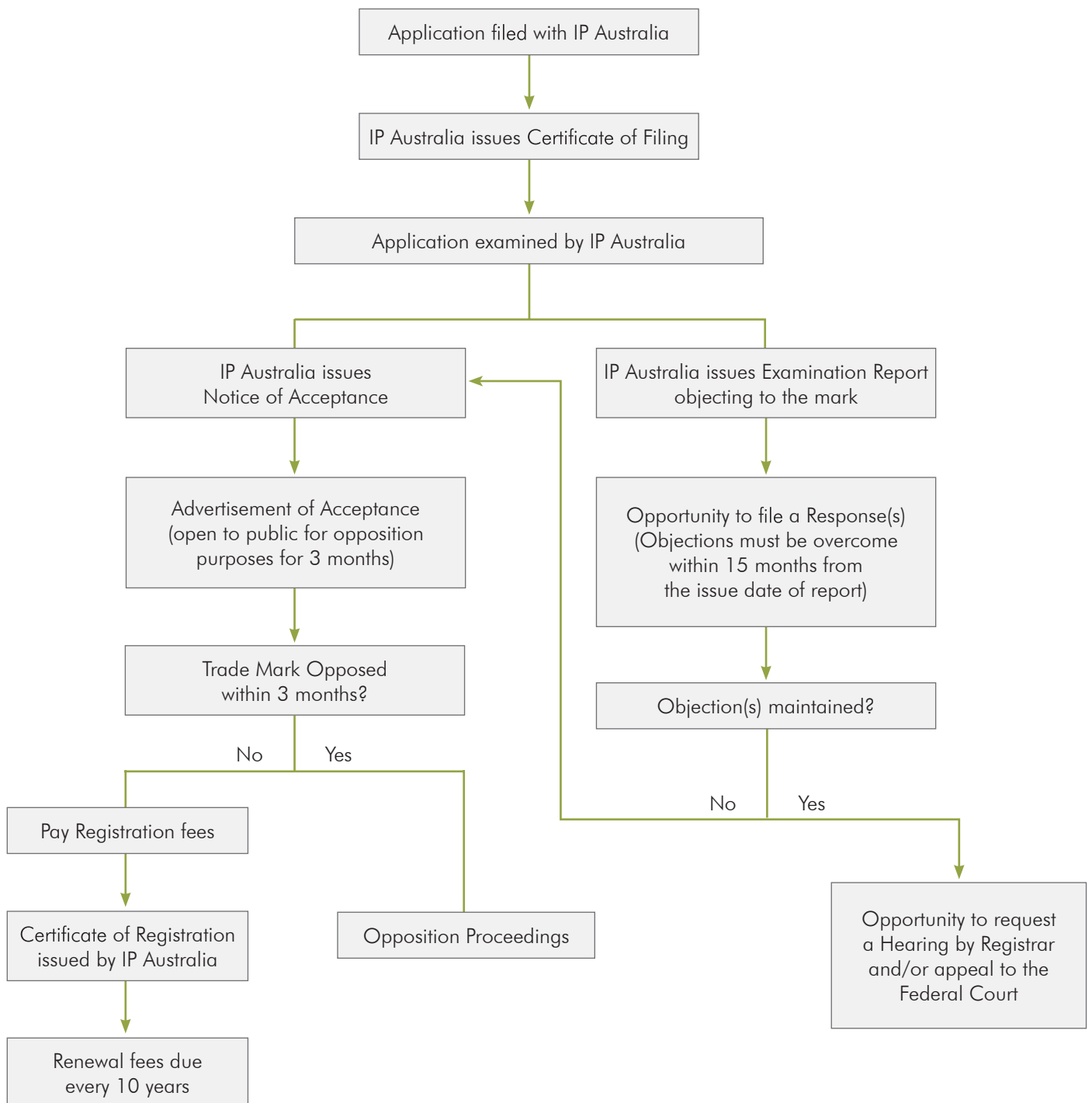
Additional searches should be conducted before commencing use overseas. You should then also apply to register the mark in each of the relevant countries; there is no single application that will provide world-wide protection.

Our trade mark services include:

- Advising on the registrability of a trade mark
- Advising you in relation to your trade mark strategy
- Professional trade mark searching
- Preparing and filing trade mark applications, both for Australia and overseas
- Prosecuting trade mark applications through to registration
- Providing trade mark infringement advice
- Trade mark portfolio management
- Monitoring your competitors' trade mark applications
- Opposing your competitors' trade mark applications
- Monitoring and paying renewal fees on your behalf
- Domain name registrations and renewals
- Many other services - please contact us for a free initial consultation



Registering a Trade Mark in Australia



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