

# Frequently Asked Questions

## **What is a trademark?**

A trademark is a distinctive sign capable of distinguishing the goods or services produced or provided by one enterprise from those of another. In general, any distinctive words, letters, numerals, drawings, colours, pictures, labels, or combination of the above used to distinguish between the goods and services of different companies may be considered a trademark.

## **What is a service mark?**

A service mark is very similar in nature to a trademark. Both are distinctive signs; trademarks distinguish the goods of one enterprise from those of others, while service marks distinguish the services of one enterprise from those of others. Services may be of any kind, such as financial, banking, travel, advertising or catering, to name a few.

## **What is a collective trademark?**

A collective mark is generally owned by an association or cooperative whose members may use the collective mark to market their products.

## **What is a certification trademark?**

A certification mark is a type of trademark that is used to show consumers that particular goods and/or services have been certified to have a certain standard or characteristic.

## **Why register a trademark?**

Registration gives you the exclusive right to prevent others from marketing identical or similar products under the same or a confusingly similar mark.

## **Is registration mandatory?**

No, but it is highly advisable.

## **How long is registration effective?**

A registration is valid for 10 years and is renewable every 10 years thereafter upon payment of prescribed fees.

## **How do I register a trade-mark?**

Any application to register a mark shall be made on the form available at the Industrial Property Office of Mauritius ( *11th Floor, Sterling House, Lislet Geoffroy Street, Port Louis*) or may be downloaded from our website ([www.foreign.gov.mu](http://www.foreign.gov.mu)).

## **How would I know which class to file my application in?**

In your application for registration of your trade mark, you must include a list of all the goods and services which you want to use the mark for.

The Nice Classification divides goods and services into 45 classes. Classes 1 to 34 relate to goods, while Classes 35 to 45 relate to services.

A clear and accurate description of the goods and/or services claimed is an important aspect of any trade mark application, because it determines the scope of the application and of any resulting registration. While

the office provides information on classification matters, the onus is on the owner or their agent to describe their goods and/or services correctly, and to apply for registration in the correct class/es.

For more general information relating to the Nice Classification please visit <http://www.int/classifications/en/nice/about> or <https://webaccess.wipo.int/mgs/>

### **Can I use one application form for all the classes of goods and services?**

You may submit one application form covering more than one class of goods and/or services. The application form should state clearly the class numbers and the corresponding goods and/or services applied for.

### **Is it advisable to conduct a search of the Office records before filing an application?**

Yes. This is to ensure that the mark you intend to use or a similar one is not already registered by another party for identical or similar products/services. You may conduct a search at the Industrial Property Office of Mauritius between **9.30 a.m. to 14.30 p.m.** upon payment of the prescribed fee of **Rs. 300.**

***WARNING:*** After searching the office database, even if you think the results are o.k do not assume that your mark can be registered. After you file an application, the office must do its own search and other review, and might refuse to register your mark.

### **What are the steps of trade-mark registration?**

Trade-mark registration usually involves:

1. a preliminary search (done by you or your representative/agent) of existing trade-marks;
2. an application;
3. an examination of your application by the Industrial Property Office;
4. acceptance and publication of the application in the *Mauritius Government Gazette*.
5. opposition period to the application by other parties (2 months as from date of publication); and
6. issuance of a registration certificate (if there is no opposition after the prescribed 2 months).

### **Do you need a trademark agent to file a trademark application?**

If you are a national or have an effective business incorporated in Mauritius, you do not require a trademark agent to file an application: you may file the application yourself. Where an applicant's residence or principal place of business is outside Mauritius, he shall be represented by a legal practitioner residing and practicing in Mauritius or an approved agent.

### **Is trademark registration in Mauritius valid internationally?**

The legal rights arising out of a trademark registration are limited to the territory within which it is registered. Hence, registration of a trademark in Mauritius gives you rights only in Mauritius.

### **What kind of marks may not be registered?**

- **Identical or confusingly similar marks.** These are marks that are alike or too closely resemble prior trade mark(s) on the office database.
- **Generic terms.** These are the actual names of the products in question. For example, if your company intends to register the trademark **Milk** to sell milk, the mark would be rejected since "*Milk*" is the generic term for the product.
- **Descriptive terms.** These are words that are usually used in trade to describe the product in question. For example the word "**Delicious**" for food products would be considered descriptive.
- **Deceptive trademarks.** These are marks that are likely to deceive or mislead consumers as to the nature, quality or geographical origin of the product. For example, applying for beef products under a mark featuring a **Sheep** would be considered deceptive, and hence, rejected.

- **Marks considered being contrary to public order or morality.** Words and illustrations that are considered to violate commonly accepted norms of morality and religion in Mauritius will not be allowed to secure registration.
- **Flags, armorial bearings, official hallmarks and emblems of states and international organizations.** For example the Mauritian flag may not be registered for marketing sugar or any other product from Mauritius without authorization from the Government.
- **Well-known marks.** These are marks that are well known in Mauritius for identical or similar goods/services.

### Who can use the ®?

You may use the ® (Registered symbol) next to your trade mark once your trade mark is registered.

### What is a disclaimer?

A disclaimer is a limitation of the exclusive rights given by registration to use and authorise the use of a trade mark. The disclaimer statement indicates that the applicant does not have the exclusive right to use that specific word of the trademark when standing alone. The exclusive trademark rights exist in the entire mark. The reasoning for disclaimers is that these types of words and/or symbols are needed by other people and businesses to describe their goods and/or services. So no one gets to claim exclusive rights to these terms. Generally, disclaimers are limited to 'non-distinctive' elements of the trademarks for e.g. geographical indications, descriptive or generic terms, well known symbols

Examples of disclaimers:

**STARBUCKS COFFEE** – No claim is made to the exclusive right to use “coffee” apart from the mark as shown.

**BURGER KING** – No claim is made to the exclusive right to use “burger” apart from the mark as shown.

### What is a priority claim?

The priority right is based on Article 4 of the Paris Convention for the Protection of Industrial Property of 1883.

To claim a right of priority, an applicant must file notice of the priority claim on Form TM 1 at the time of an application for the registration of a mark. The notice must include the following details:

- I. the Convention country in which the earlier application was filed;*
- II. the date on which the earlier application was filed, and*
- III. the goods and/or services in respect of which the right of priority is claimed.*

If priority is claimed on the basis of more than one earlier application, the notice of the claim for priority must contain the above details for each of the earlier applications.

The application must be for the **same trade mark** as that of the priority application. There must be at least one corresponding good or service covered by both the priority application and the Mauritian application. The priority claim will only apply to goods and/or services which are common to both.

A Mauritian application should be filed **within six months** after the day on which the priority application was made in the Convention country. For example, if the priority application was filed in a Convention country on 14 January 2022, the Mauritian application must be filed **on or before** 14 July 2022 for it to be able to claim priority.

**Can I withdraw an application that has been accepted?**

The applicant can withdraw their application up until registration. The applicant should fill in the form "Request for withdrawal of application".

**Can I add extra classes or additional goods/services to my application?**

It is not possible to add additional goods or services to an application as this will extend the scope of the original application. If extra goods or services need to be added, a new application will have to be filed accompanied by the appropriate fee.

**Can I get my money back if I change my mind or if my application is rejected?**

Fees paid to the Office are not usually refunded. Only under very specific circumstances will the Controller consider refunding or remitting fees, either totally or partially.