



## **DISCLAIMER**

Trade mark registration is a regulated legal process, and clients are advised to carefully note the limitations and responsibilities set out below.

By proceeding with a trade mark enquiry or instruction to our firm, the prospective client acknowledges and agrees to the following:

### **1. No Guarantee of Registration**

Trade mark registration is an administrative process conducted by the Companies and Intellectual Property Commission ("CIPC") and/or the Trade Marks Office.

While our firm provides professional services in preparing and prosecuting trade mark applications, trade mark registration is not automatic, and **no guarantee is given or implied** that any application will be accepted, advertised or ultimately registered.

Clients must understand that an application may be refused, as registration is subject to the Trade Marks Office's assessment.

Clients are further advised that, once an application is accepted and advertised, any third party may lodge an opposition if they believe the mark infringes their common law trade mark rights, or conflicts with an earlier pending application or existing registration that is confusingly similar. Such opposition proceedings may delay or prevent registration.

### **2. Client Responsibility for Due Diligence**

Given that the registrability of a mark depends heavily on whether similar marks already exist or are in use, clients remain solely responsible for conducting their own due diligence in respect of the mark(s) they wish to apply for.

This includes ensuring, to the best of their ability, that:

- the mark is distinctive and original;
- the mark is not already in use by another party;
- the mark is not associated with a well-known foreign brand; and
- the mark does not infringe any third-party rights, whether registered or unregistered.

Clients are strongly encouraged to conduct independent investigations such as:

- general internet searches (e.g. Google);
- social media and online marketplace checks;
- domain name searches;
- competitor and industry reviews; and
- enquiries into international or overseas use.



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This is particularly important because trade mark rights may arise even where a mark is **not registered**.

## ➔ **Common Law Trade Mark Rights**

Clients are specifically advised that a business may acquire enforceable trade mark rights simply by **using a mark in the marketplace**, even without registering it. These are known as **common law trade mark rights**.

For example, if another business has been trading under a similar name or logo for some time, it may have the right to object to your application or prevent your use of the mark, even if it never registered that mark with CIPC.

Such rights are often identifiable through online presence, advertising, social media activity, or marketplace use, rather than through the official register alone.

Accordingly, the firm cannot accept responsibility for refusal, objection, or opposition arising from prior rights or reputation that could reasonably have been identified through broader independent enquiries.

### **3. Trade Mark Searches and No Confirmation of Availability**

In order to assist clients, the firm may conduct trade mark searches on the official Trade Marks Register. However, clients must appreciate the inherent limitations of such searches.

Any search conducted by the firm is limited in scope and is based only on available records at the time.

Clients acknowledge that:

- register searches do not reveal unregistered/common law marks already being used in the marketplace;
- pending applications may not yet be visible;
- third-party rights may arise through reputation and use rather than registration; and
- international well-known marks may be protectable even if not registered locally.

For this reason, a register search is an indicative risk-assessment tool only and **does not constitute confirmation of availability**, nor does it eliminate the possibility of refusal or third-party challenge.

Clients remain responsible for broader due diligence, including online and market-based investigations.

### **4. Refusal, Objections and Examiner Discretion**

Even where due diligence has been undertaken and searches appear favourable, the Trade Marks Office may still object to or refuse an application.

Applications may be refused or queried for reasons including:



- similarity to existing marks;
- lack of distinctiveness or descriptiveness;
- conflict with well-known marks;
- classification issues; or
- procedural or formal requirements.

Trade mark examination involves an element of administrative discretion, and the firm cannot be held responsible for decisions made by the Trade Marks Office.

## **5. Third-Party Opposition and Post-Filing Risk**

Clients must further note that acceptance by the Trade Marks Office does not conclude the process.

Once a mark is accepted and advertised, third parties may still oppose the application on various grounds.

Accordingly:

- registration is not immune from challenge;
- third parties may assert prior rights at any stage; and
- opposition proceedings may require further legal steps and costs.

The firm cannot guarantee that third parties will not object to or challenge the mark, even after filing.

## **6. Timelines and Administrative Delays**

Trade mark prosecution timelines are dependent largely on the Trade Marks Office and external administrative processes.

Clients acknowledge that delays may arise due to:

- CIPC backlogs;
- examiner capacity;
- opposition proceedings;
- system interruptions; or
- other administrative inefficiencies beyond the firm's control.

The firm cannot be held liable for delays caused by such external factors.

## **7. Limitation of Liability**

Given the inherent uncertainty in trade mark registration and the role of third-party rights, the client agrees that, to the fullest extent permitted by law, the firm shall not be liable for any loss, damage or costs arising from:



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- refusal or objection by the Trade Marks Office;
- opposition by third parties;
- conflicts with prior registered or unregistered rights;
- reliance on preliminary search results; or
- commercial loss resulting from an inability to secure registration.

## 8. **No Commercial or Business Advice**

The firm provides legal services only. Nothing in this pack constitutes business, branding, marketing or commercial advice regarding the viability or profitability of any name, logo, or mark.

Clients remain responsible for their own commercial decisions concerning branding and use.

## 9. **Accuracy of Client Instructions and Information Provided**

Trade mark applications rely heavily on the accuracy of information supplied by the client.

Clients are responsible for ensuring that all instructions, representations, and details provided to the firm are accurate and complete.

The firm shall not be responsible for adverse outcomes arising from incorrect, incomplete or delayed information provided by the client.

## 10. **Acceptance**

By proceeding with a trade mark enquiry, instruction or application, the client confirms that they have read, understood and accepted the terms of this disclaimer.

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