



TRADEMARK FILING REQUIREMENTS

BRUNEI



OCTOBER 2014



RECEIPT OF THE APPLICATION

The application must be filed using the prescribed application form. The filing language is English.

The official trademark application form may be downloaded from the website of the Brunei Intellectual Property Office (BruIPO) (<http://www.bruipo.com.bn>). The Office accepts paper applications only.

REPRESENTATION

There is no requirement for representation, but an address for service in Brunei is required. The Registrar may require the representative to provide evidence of authority to act on behalf of the applicant.

SEARCH, FORMALITY AND SUBSTANTIVE EXAMINATION

The Registrar shall determine whether the minimum requirements for a filing date (A) are met and whether the application meets the other formal requirements (B) and the criteria for registrability of the mark. The Office undertakes a search of conflicting marks in the course of the examination of the mark sought to be registered.

A. Minimum Filing Requirements.

The filing date of an application shall be the date on which the application forms constituting the request for registration of the trademark and the following requirements are completed:

- (a) Name and address of the applicant;
- (b) Statement of the goods or services for which the registration is sought;
- (c) Representation of the mark;
- (d) Statement that the trade mark is being used, by the applicant or with his consent, in relation to the goods or services listed in the application, or that he has a bona fide intention to use the mark himself or with his consent; and
- (e) Filing fee.

B. Other Formality Requirements.

- (a) If convention priority is claimed, the details of the claim (priority date, country of earlier filing, and number) must be indicated in the application.
- (b) If the application is for a series of marks, the number of marks in the series must be stated.
- (c) If the application is for the registration of a 3-dimensional shape, this must be indicated in the application.
- (d) Where colour is claimed as part of a trade mark, this must also be stated in the application.
- (e) Disclaimer or limitation, if there is any.
- (f) Translation or transliteration of non-English words or foreign character/s, and a certified copy of the translation.
- (g) Address for service in Brunei.



C. Registrability.

The following absolute grounds for refusal will prevent the registration of the mark:

- (a) signs that are not visually perceptible and capable of being represented graphically and capable of distinguishing goods or services of one undertaking from those of other undertakings;
- (b) trademarks which are devoid of any distinctive character;
- (c) trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or of rendering of services, or other characteristics of goods or services;
- (d) trademarks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade:

Provided that a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.

- (e) if the mark consists exclusively of —
 - (i) the shape which results from the nature of the goods themselves;
 - (ii) the shape of goods which is necessary to obtain a technical result; or the shape which gives substantial value to the goods.
- (f) if the mark is
 - (i) contrary to public policy or to accepted principles of morality; or
 - (ii) of such a nature as to deceive the public.
- (g) A trade mark shall not be registered if or to the extent that its use is prohibited in Brunei Darussalam by any law;
- (h) if the mark is consists of or is a specially protected emblems listed below:
 - (i) A trade mark shall not be registered if or to the extent that the application is made in bad faith.

The following are specially protected emblems referred to in item (h) above:

- (a) A trade mark which consists of or contains —
 - (i) a representation of the Emblem, Arms and Regalia of Brunei Darussalam, including the Royal Arms, State Crest, the Insignia of Royalty, armorial bearings and other insignia and emblems of Brunei Darussalam; or any device so closely resembling any of them as to be likely to be mistaken for them;
 - (ii) a representation of the Royal crowns, and His Majesty the Sultan and Yang Di-Pertuan's Standard or any other Royal flag, or any colourable imitation thereof;
 - (iii) a representation of His Majesty the Sultan and Yang Di-Pertuan or any member of the Royal family, or any colourable imitation thereof;
 - (iv) any word, letter or device likely to lead persons to believe that the applicant either has or recently has had Royal patronage or authorisation; or



- (v) any name or thing which is a specified name or specified emblem as defined in section 2 of the Emblems and Names (Prevention of Improper Use) Act (Chapter 94), or any colourable imitation thereof, shall not be registered, unless it appears to the Registrar that consent has been given by or on behalf of His Majesty the Sultan and Yang Di-Pertuan or, as the case may be, that member of the Royal family.
- (b) A trade mark which consists of or contains a representation of the national flag of Brunei Darussalam shall not be registered if it appears to the Registrar that the use of that trade mark would be misleading or grossly offensive.
- (c) A trade mark shall not be registered in the cases specified in section 55 or 56. (National emblems etc. of Paris Convention and World Trade Organisation countries and Emblems etc. of certain international organisations).
- (d) Provision may be made by rules prohibiting in such cases as may be prescribed the registration of a trade mark which consists of or contains —
 - (i) arms which a person is authorised to use by virtue of a grant of arms by His Majesty the Sultan and Yang Di-Pertuan; or
 - (ii) insignia so closely resembling such arms as to be likely to be mistaken for them, unless it appears to the Registrar that consent has been given by or on behalf of that person. Where such a mark is registered, nothing in this Act shall be construed as authorising its use in any way contrary to any law relating to arms.

The following are relative grounds for refusal of registration:

- (a) If the mark is identical with an earlier trade mark, and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.
- (b) if the mark
 - (i) is identical with an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, and there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark; or
 - (ii) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.
- (c) A trade mark which —
 - (i) is identical with or similar to an earlier trade mark if, or to the extent that, the earlier trade mark has a reputation in Brunei Darussalam and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.; and
 - (ii) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected, shall not be registered if, or to



the extent that, the earlier trade mark has a reputation in Brunei Darussalam and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

- (d) A trade mark shall not be registered if, or to the extent that, its use in Brunei Darussalam is liable to be prevented —
- (i) by virtue of any law protecting an unregistered trade mark or other sign used in the course of trade; or
 - (ii) by virtue of an earlier right, other than those referred to in subsections (a), (b) and (c) or in paragraph (i), or by any law relating to the infringement of copyright or registered designs.

PUBLICATION, OPPOSITION AND REGISTRATION

An application which has been accepted for registration shall be published in the Gazette upon directive from the Registrar.

An opposition to the registration of a trade mark may be filed within 3 months of the date of publication in the Gazette. If no opposition to the registration of the mark is lodged with the Registrar, the mark will be registered and the Certificate of Registration issued.

CONTACT

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