

Registration of Trade Marks

REGISTRATION OF TRADE MARKS IN FRANCE

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The registration of trade marks in France is governed by the french 'Code de la propri'et' intellectuelle'. Both the Madrid Treaty (International Registration of Trade Marks) and the EC Directive 89/104 are implemented in the french code.

It is possible to apply for three types of registration :

- a national trade mark - protects the mark exclusively in France
- an international trade mark - subject to the rules set out in the Madrid Treaty, permits protection in the countries set out in the treaty and may specifically define France thus assuring both the national and international protection
- a european trade mark - protects the trade mark throughout the member states

This note is limited to the registration procedure for a national trade mark in France.

The application is made to the 'Institut National de la Propri'et' Industrielle' (INPI) either in PARIS, or to one of the local INPI offices, or alternatively to the Commercial court/County Court in which the applicant has its registered office. It is prudent to instruct a trade mark agent to advise on drafting the application.

The applicant must class the products/services for which trade mark protection is sought in accordance with one or more of the 34 classes of goods or one or more of the 11 classes of services defined in the 'NICE' list ('Arrangement de Nice').

The applicant must check that the trade mark is available ó i.e. that there are no conflicting marks already in existence. This search is made to the INPI by the applicant

or with the assistance of a trade mark agent. The INPI has no obligation to check or guarantee that the mark is available.

There are specific application forms (ëcerfaí) which the applicant must use to lodge the demand for trade mark. These forms are available free of charge from the INPI. The application must be presented in French language, in five originals. All documents established in a foreign language which are lodged in support of the application must be presented with a french translation.

The application may be lodged by way of recorded delivery letter/personally or by fax (exclusively to the INPI offices). If the application is made by fax, it must be confirmed by recorded delivery letter within five days of sending the fax. The registration charge (calculated on the basis of the number of classes under which the mark is to be registered) must be paid at the same time the application is lodged. If the application is lodged by fax, the INPI must have the registration charges in hand on the same day that the faxed application is received by them. Trade mark applications for colours may not be lodged by fax.

In principle protection is afforded to the trade mark from the date the application is lodged.

Provided the application is accepted by the INPI (refusal is possible if the INPI consider that the mark has no distinctive character or it is contrary to public policy) it will publish the application - to put third parties on notice of the application and trigger the period within which objections may be lodged.

Objections to the application must be lodged with the INPI on the specific ëcerfaí applications within two months of publication of the application for trade mark.

The INPI must accept or refuse the objection within six months of the expiry of the two month delay for lodging objection. If the INPI fails to respond to an objection the objection is deemed refused.

Notice of accepted or deemed accepted trade marks are published by the INPI.

The trade mark is protected for a period of ten years from the date of the application. Application for renewal of the trade mark must be lodged prior to the expiry of the ten year period.

N.B. News On Patents The court of appeal in Paris has recently issued an interesting decision, the court judged that the description of a patent can be sufficient even if it is not possible to obtain the result provided in the description (Air Liquide Chemoxal Seppic v Cair LGL S.A. Sagal et Axell). This decision is interesting since the court considered that a defect in the result described was not a cause of invalidity. This means that a patentable invention can be considered susceptible of industrial application, even if the result expected by the invention is not reached.

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