

## **REGISTRATION OF TRADE MARKS IN BRAZIL**

### **CAMPINHO ADVOGADOS**

#### **BRAZIL**

The registration of trade marks in Brazil is regulated by the Industrial Property Law (nº. 9.279) issued in 1996.

Trade marks are distinctive signs which purpose is to identify and distinguish them from others products or services available on the market.

There are two ways of identification: direct and indirect form.

The first one consists of identify certain product or service. It is called service mark or product mark, and it is used to distinguish one product or service from identical, similar or related others.

The second one, indirect form, called certification mark (when is used to certificate a product or service in accordance with some rules or technical specifications) or collective mark (when is used to identify services or products that are from members of certain entity or association).

Any distinctive signs like words, denominations, symbols, figures, for example, are possible to register as a trade mark. If it is created only by images, figures, it is called figuration mark; if only by signs or words is called verbal mark; and if it is created by both of them is called mixed mark.

The extensive legal registration restriction list is presented on article 124 of the referred Industrial Property Law. Here are some examples: colors and its names; coat of arms; flags; letters, dates – when doesn't have any additional specification; name – civil, familiar, assignment; scientific, literally or artistic work etc.

The INPI (National Institute of Industrial Property) is the official government body responsible to ensure the registration of a mark in Brazil, after a detailed search for any conflicting marks already in existence.

The holder of trade mark rights is one who first requests its registration, because of the principle “first to file”, adopted by Brazilian Industrial Property law.

The exclusive right to a mark can be required by a natural person or a legal entity.

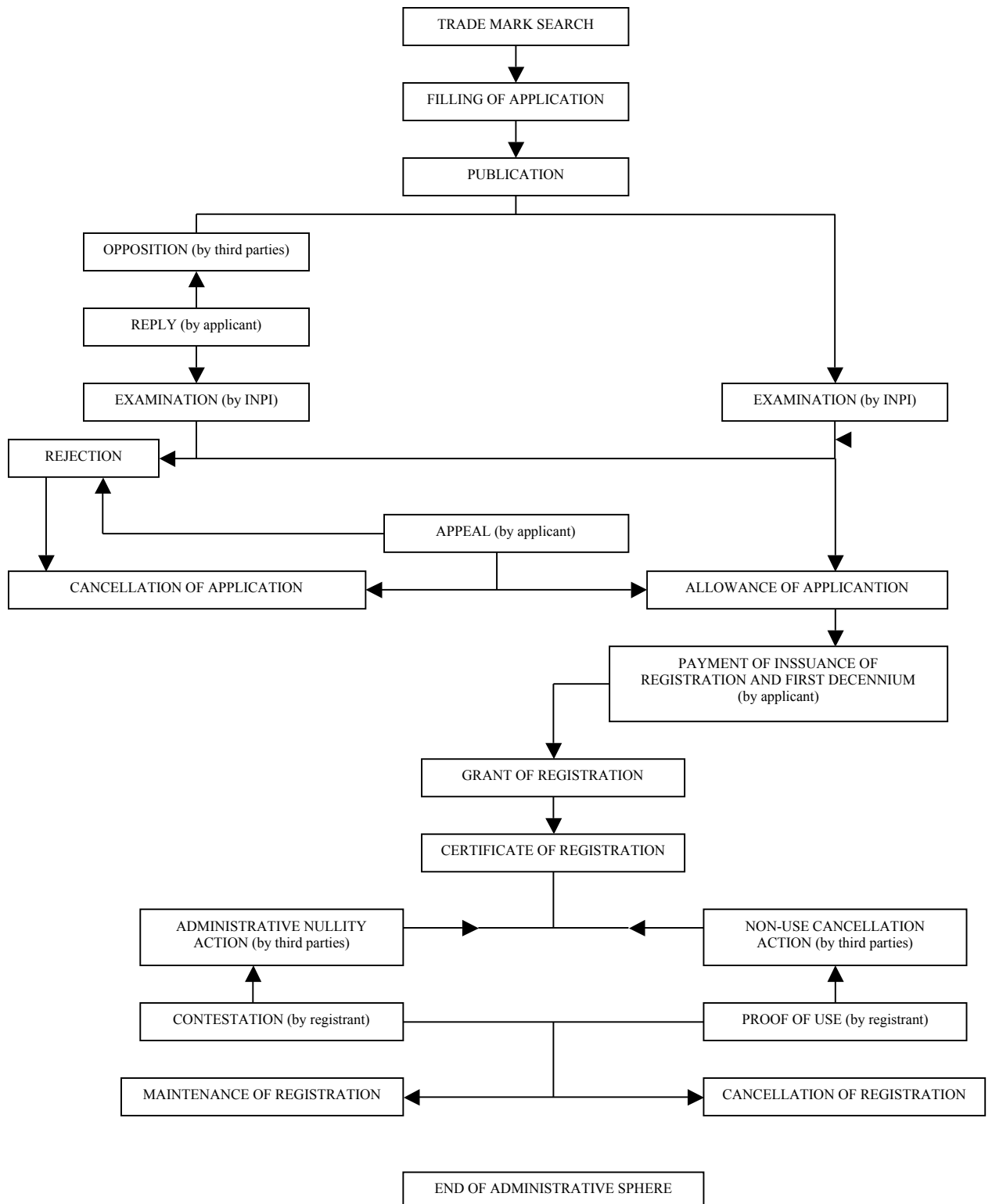
The proper application and the paid registration fee (which cost is currently R\$260.00 – US\$ 119 approximated) should be presented to INPI and must class the products or services for which trade mark protection is sought, because, in principle, the protection is limited to the registered class (principle of speciality) and there are 41 classes in total (35 concerning products and 6 concerning services). The exception is for reputed mark (*marca de alto renome*) which protection is extended for all kinds of activities.

Also there is the well-know mark (*marca notoriamente conhecida*) - art. 6 bis Paris Convention -, which all the participating countries members should refuse a mark who is considered reproduction, imitation or translation of a well-know mark already registered in one of that countries, that could make confusion. But this exception is only for marks which distinguish products or services from the same class of activity.

After verify the legal requests, the INPI publishes the requirement and if no third party offers an opposition in the next sixty days, it issues the Certificate of Registration. The importance of this is because the referred Brazilian Law adopts the constitutive right of registration.

The trade mark is awarded for a period of ten years starting from the concession of the registration and can be renewed indefinitely for successive ten-years period, since the holder use the trade mark, request a renewal and pay the corresponding fees.

Above there is a graphic which provides an easy comprehension about the steps of a registration of trade marks in Brazil.



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