

Representation & Examination of Non-Traditional Trademarks

AGUNG INDRIYANTO
(DGIP, INDONESIA)

Trademark Definition

Mark shall mean any signs capable to be represented graphically in the form of drawing, logo, name, word, letters, numerals, colours arrangement, in 2 (two) and/or 3 (three) dimensional shape, sounds, holograms, or combination of 2 (two) or more of those elements to distinguish goods and/or services produced by person or legal entity in the course of trading goods and/or services.

Trademark Definition (2)

Broader scope of protection for trademark

The Law introduces trademark as:

- (a) Any sign;
- (b) Capable to be represented graphically; and
- (c) Capable of distinguishing the goods or services.

Representation of mark

| Type | Graphical Representation | Description | Additional file |
|------------------------|--------------------------|-------------|-----------------|
| Word mark | Yes | No | No |
| Figurative mark | Yes | No | No |
| Three Dimensional mark | Yes | Optional | No |
| Position mark | Yes | Optional | No |
| Sound mark | Yes | Yes | Yes |
| Hologram mark | Yes | Optional | No |

Examination Process (1)

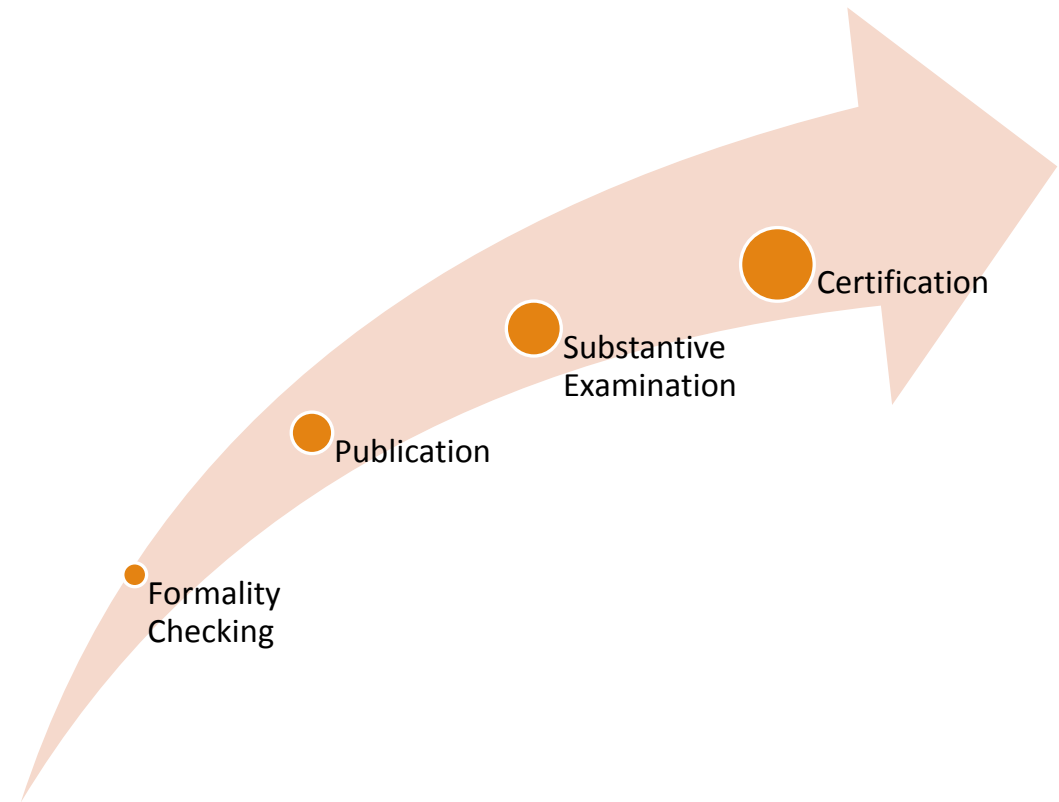
Simplification in the trademark application process whereby the new Trademark Law introduces minimum requirements for filing a trademark application.

A filing date will be assigned as long as the applicant (a) fills in an application form; (b) provides the trademark label; and (c) pays the official fees.

Examination Process (2)

This process is aimed at accelerating the application process as the substantive examination is designed to also examine any possible oppositions that may be filed against a trademark application.

Examination for both absolute and relative grounds



Absolute grounds

A Mark constitutes to be non registrable if:

- in contradiction to the state ideology, laws and regulations, morality, religion, decency, or public order;
- similar to, related to, or merely mention the goods and/or services being applied for registration;
- contain any elements which may deceive the public in respect to its origin, quality, type, size, variety, intended use of goods and/or services being applied for registration or constitute a name of protected plant variety for similar goods and/or services;
- contain description that does not correspond to quality, or efficacy of produced goods and/or services;
- devoid any distinctive character; and/or
- constitute a general name and/or public sign.

Relative grounds

- An application shall be refused if the trademark is similar or identical with:
 - a prior registered trademark of other party or earlier trademark application in respect of similar goods and/or services;
 - Wellknown mark of other party for similar goods and/or services;
 - Wellknown mark of other party for different goods and/or services compelling certain requirements; or
 - A Registered Geographical Indication.
- An application is to be refused if the trademark:
 - constitutes or similar to name or initial of a wellknown individual, photograph, or name of legal entity owned by other person, unless under a written consent from its proprietary;
 - constitute as duplication or similar to name or initial, flag, symbol or State emblem, or both national and international agency, unless under a written consent from the authorities; or
 - constitute as duplication or similar to official signs or seal or stamp used by a country or Government agency, unless under a written consent from the authorities.
- An application shall be refused if it is submitted in bad faith

Evidence of Use

- figures of turnover and sales of the product with the mark;
- figures of investment in advertising the mark;
- consumer and market surveys about the products or services bearing the mark;
- reports from business associations and consumer organizations about the goods or services offered with the mark;
- reports on the type, scope and extent of advertising campaigns regarding those goods or services;
- documents evidencing the advertisements and promotional campaigns in the media that refer to the mark;
- catalogues, price lists and invoices that refer to the goods or services with the mark.

