

(III) Trademarks

1. What is a Trademark?

- A trademark is a sign that distinguishes the goods and services of one trader from those of others. Typically a trademark can be words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, sounds, smells, the shape of the goods or their packaging or any combination of these. A sign must be capable of being represented graphically in order for it to be registered as a trademark.

2. Territorial Protection

- The trademark registration system of Hong Kong provides territorial protection. Hence, trademarks registered with the State Administration for Industry and Commerce of the People's Republic of China or trademarks registries of other countries or regions do not automatically receive protection in Hong Kong.

3. How long does Registration Last?

- A trademark when registered is valid for 10 years. It can be renewed indefinitely for successive period of 10 years.

4. Registered and Unregistered Trademark

- Trademarks can be either registered or unregistered.
- Unregistered trademarks may be protected by the common law action of passing off. A trademark owner bringing an action for passing off must prove reputation in the mark and must prove that the other person's use of the mark will cause him damage. Passing off is usually a more difficult action to bring than an action for infringement of a registered trademark. Therefore, we strongly recommend traders to register their marks in the Hong Kong SAR.

5. Owners' Rights

- The owner of a registered trademark has an exclusive right to use the mark on his goods or the services for which the mark was registered. The owner can take legal action to prevent anyone from using his registered mark without his consent.

6. Infringement

- Anyone fraudulently using a trademark, including selling and importing goods bearing a forged trademark, or possessing or using equipment for that purpose also commits a criminal offence under the Trade Descriptions Ordinance (Cap 362).

7. Hong Kong Trademarks Registry

- The Hong Kong Trademarks Registry started operating in 1874, and is one of the world's oldest trademark registries. Hong Kong has been registering marks for services as well as for goods since 1992.