

Intellectual Property and Trade Mark Protection in Bermuda

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Preface

This publication has been prepared for the assistance of those who are seeking information on the protection and enforcement of intellectual property rights in Bermuda, and deals in broad terms with the statutory regime and procedure for the registration of trade marks, patents, copyrights and designs. It is not intended to be exhaustive, but provides brief details and information which we hope will be of use to our clients.

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TABLE OF CONTENTS

1. INTELLECTUAL PROPERTY PROTECTION IN BERMUDA	4
2. THE REGISTRATION OF TRADE MARKS IN BERMUDA	5

1. INTELLECTUAL PROPERTY PROTECTION IN BERMUDA

Bermuda has comprehensive legislation protecting all aspects of intellectual property (“IP”). Bermudian IP laws largely derive from their UK equivalents. The legal system is common law, and continues to evolve to meet the needs of technological developments and trends. Bermuda is not yet a signatory to the Paris Convention, the Madrid Protocol, or the Patent Cooperation Treaty, nor is it party to the GATT Trips agreement.

Relief available for IP infringement includes emergency and permanent injunctions, Anton Piller orders, delivery up and/or destruction of infringing articles, discovery upon oath, damages, an enquiry as to damages, or an account of profits. Costs will usually be awarded to the winning party.

1.1. Copyright Protection in Bermuda

Copyright is protected in Bermuda under the Copyright and Designs Act 2004 (the “**2004 Act**”). Under the 2004 Act, copyrights subsist in original qualifying literary, dramatic, musical and artistic works, sound recordings, films, broadcasts, cable programmes, typographical arrangements, and databases.

The author of the work is usually the first owner of copyright. Protection takes effect from the time the work was created without the need for further formality. Registration of copyright is neither required nor even possible in Bermuda.

1.2. Design Protection in Bermuda

Qualifying designs can be protected in three ways in Bermuda.

- (1) Under the 2004 Act, copyrights in a design are protected for up to 15 years without the need for further formality.
- (2) A Bermuda Design registration is available under the Patents and Designs Act 1930 (the “**1930 Act**”) in relation to specific goods. During the period of registration, the proprietor has exclusive rights to manufacture and publish the design.
- (3) Under the 1930 Act, the rights and privileges attaching to a UK design registration automatically extend to Bermuda without the need for further formality.

1.3. Patent Registration in Bermuda

Patent protection is available in Bermuda under the 1930 Act. Local applications can be filed which confer protection for an extendable period of 16 years. Currently, search and examination of local patents is subcontracted to the UK, so most rights owners consider it more expedient to file directly in the UK as the UK patent can then be extended to Bermuda through a re-registration process within three years of grant.

The privileges and rights attaching to the UK patent are then extended to Bermuda, and endure for as long as the UK patent remains valid on the UK Register.

1.4. Trade Mark Registration in Bermuda

Trade and Service Marks are registrable under the Trade Marks Act 2023 (the “**2023 Act**”), which came into force on 1 August 2025. Registration gives the owner exclusive rights to use the mark on the goods/services listed in the specification for an extendable period of 10 years.

An unregistered trade mark may still be protected at common law under the tort of passing off.

Enforcement proceedings in relation to trade mark infringement tend to be more straight forward and substantially cheaper where a mark is registered and protected by statute.

2. THE REGISTRATION OF TRADE MARKS IN BERMUDA

2.1. Statutory Regime

The 2023 Act is largely derived from the UK Trade Marks Act 1994. Currently, Bermuda is not party to any international convention or treaty on the protection of trade marks and priority cannot be claimed based on an earlier filing in another jurisdiction. However, the new legislation has been drafted to reflect membership of both the Paris Convention and the Madrid Protocol, so it is anticipated that convention priority and International filings will be available soon.

Bermuda operates an independent Register and it is not possible to simply “extend” a UK registration. The 2023 Act provides for the filing of multi class applications using the WIPO international classification of goods and services (currently the 10th edition of the Nice Classification).

Usually the Registry will accept full class headings as specifications. Registration of up to 6 trade marks in series with minor differences not substantially affecting the identity of the mark is permissible. Certification and collective marks are registrable.

It is not necessary to establish use of a trade mark in Bermuda to secure registration. However, a registration may become vulnerable to cancellation by an aggrieved third party following five years continuous non-use.

A registration is valid for an initial ten year period and may be renewed for further ten year periods on payment of a fee.

2.2. Procedure

Each application requires the full name, address, and country of incorporation of the applicant. A local applicant must also provide its company registration number. An uploadable version of the mark must also be provided unless it is a simple word mark, together with a comprehensive list of the goods/services to be covered. An Authorization of Agent (Form TM-13) simply signed on behalf of the applicant must accompany the application. This document serves a dual purpose – it appoints an agent and provides a local address for service.

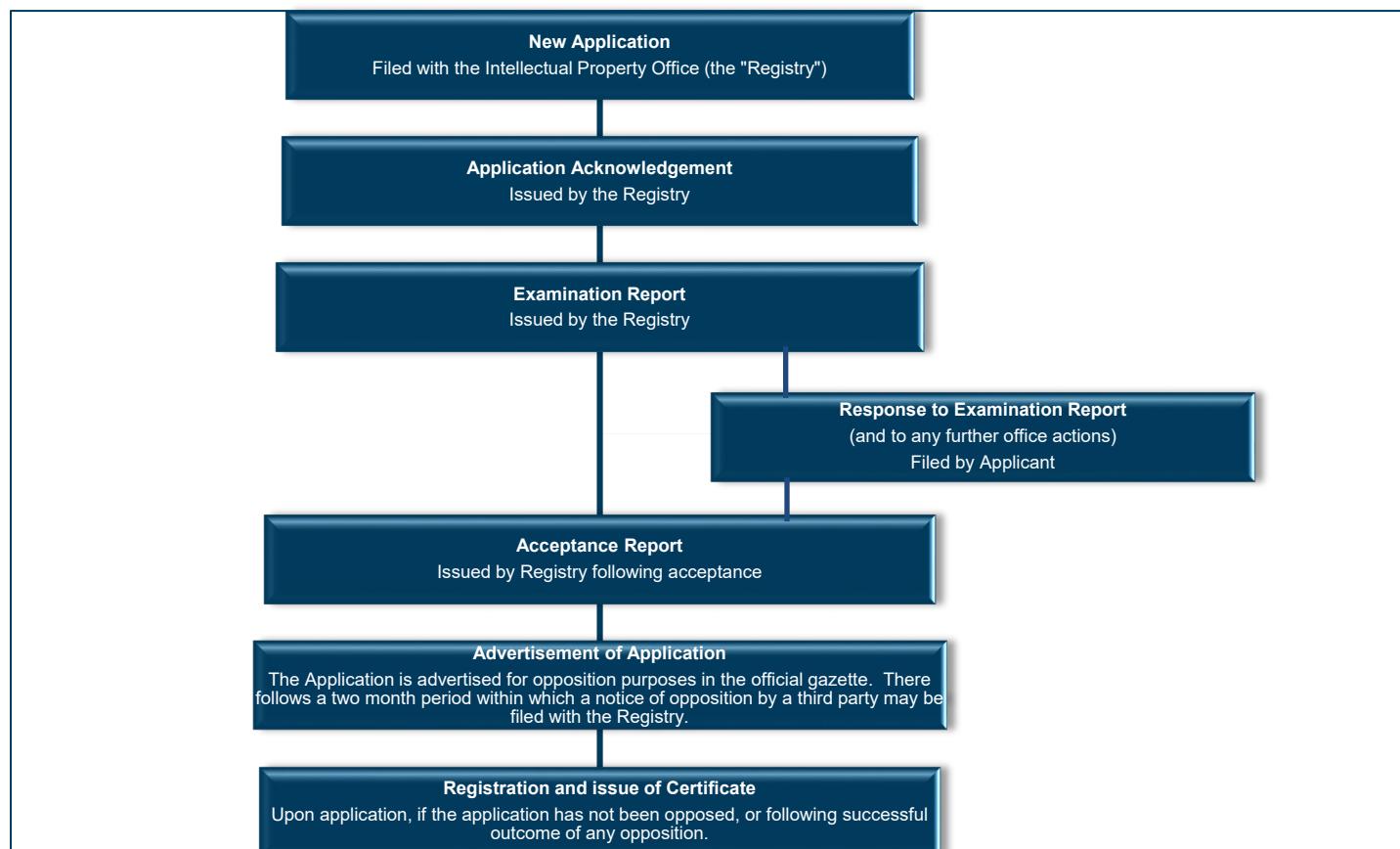
Following receipt of the application, the Registry will issue an Application Acknowledgement (an official filing receipt) confirming the filing particulars and allocating an application number. The application number will eventually mature into the registration number.

The application is assessed on absolute and relative grounds, following which an examination report will issue, usually within four months of filing. The application will either be accepted unconditionally, given a conditional acceptance or rejected. Applicants are given six months to respond. Time extensions are available in two month blocks.

Following acceptance, a mark is advertised for opposition purposes. If no third party opposition is filed within the statutory two month period, application must be made for entry of the mark on the Register and issue of the registration certificate. Application for entry must be filed within three months of advertisement.

In a straight-forward case, we would expect the registration certificate to issue within 18 months of filing the application.

The application procedure is summarised in chart form below.



This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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