

IAM: more than patents, beyond trade marks, way past IP. Fresh thinking from Watermark.

Protecting a trade mark in Australia.

A trade mark may be a word, phrase, letter, number, sound, smell, shape, logo, picture or aspect of packaging used to distinguish your goods or services from those of other traders.

A trade mark registered with IP Australia provides the exclusive legal right to use or license it within Australia for the goods and services for which it is registered. The copying of the trade mark without your permission may then entitle you to damages or an injunction against infringing activities.

Anyone who claims to be the owner of a trade mark can apply for registration of that trade mark. You must however use, or intend to use, the trade mark in relation to the goods or services included in the application.

When choosing a trade mark, it is advisable to avoid a mark that:

- describes the kind, quality, intended purpose or value of your goods or services;
- misleads the public about the nature of your goods or services;
- is a geographic name or a common surname.

A trade mark of the above description may however be registrable if there has been extensive use of it for a considerable period of time prior to filing an application.

It is also advisable not to choose a trade mark that is similar to an existing mark used for similar goods or services. Accordingly it is prudent to search for any existing trade mark applications or registrations before applying for or using a new trade mark. Goods and services are divided into a number of classes and it may be necessary to search several of these to ensure that all other similar trade marks are uncovered. It is also advisable to search the business names register and to check whether you can also use your proposed trade mark as a domain name.

About 5 months after filing, the Trade Marks Office will examine your application. Any issues that need to be addressed will be provided in a report from the Office. From the date of this

report, 15 months (plus 6 months extension) is allowed to get the application in order for acceptance.

Once the trade mark is accepted for registration, the details will be advertised in the Official Journal. For 3 months after the advertisement date, anyone may oppose its registration. If no opposition is filed against your application, or if opposition is unsuccessful, your trade mark will be registered once the fee is paid. If granted, trade mark rights accrue from the date you originally filed the application.

Initial registration is for 10 years from the filing date and may be renewed every 10 years indefinitely. It is important to use your trade mark otherwise it may be vulnerable to removal on the grounds of non-use.

Trade mark protection is not compulsory but allows maintenance of goodwill held by valuable trade marks and avoids the more expensive route of common law court action against an infringer.

Melbourne

T +613 9819 1664
F +613 9819 6010

Sydney

T +612 9888 6600
F +612 9888 7600

Perth

T +618 9325 1900
F +618 9325 4463

E mail@watermark.com.au
www.watermark.com.au

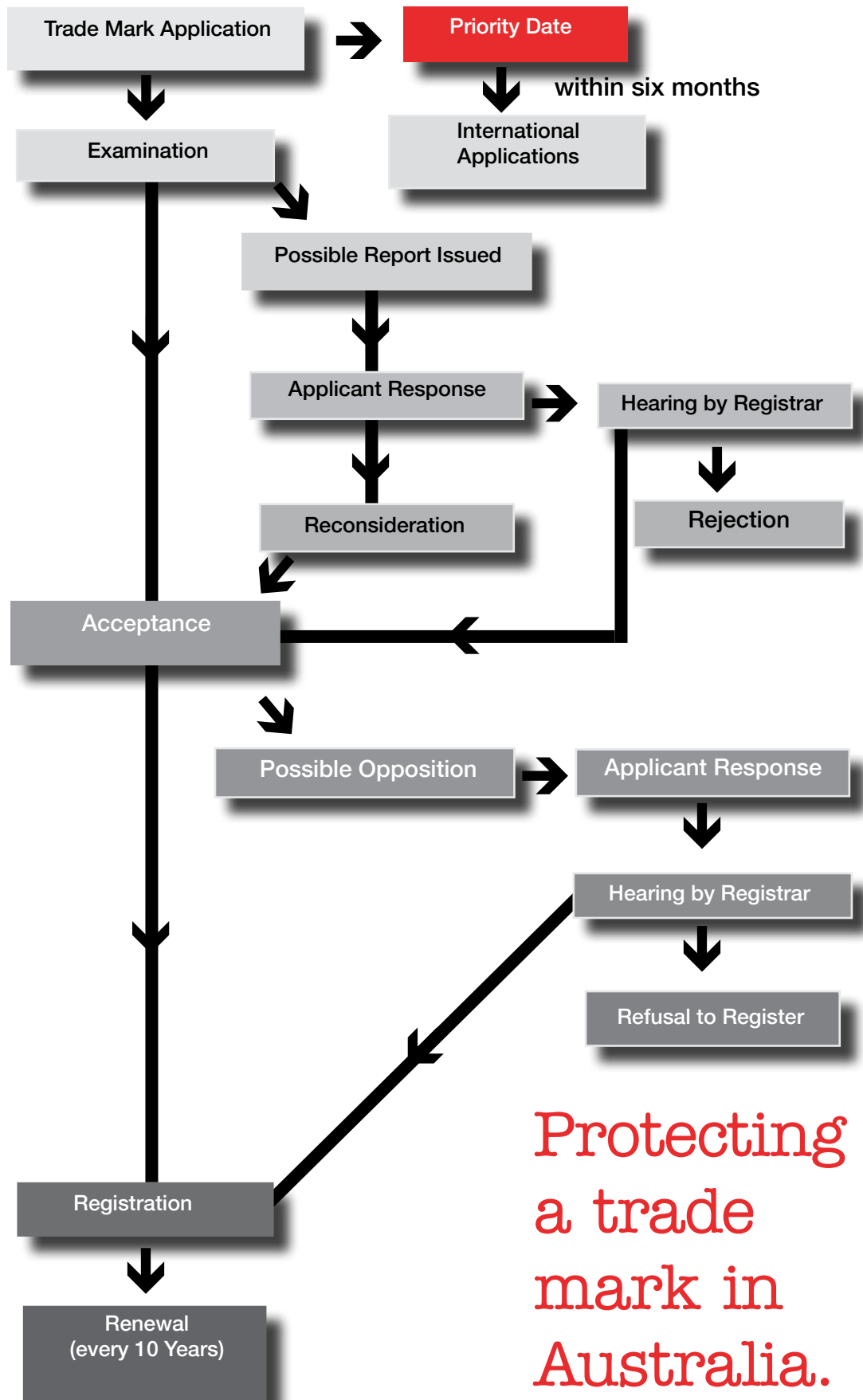
Trade
Marks

The diagram overleaf shows in a simplified form, a process for obtaining trade mark protection.

For more information on Watermark's comprehensive range of intellectual property services contact mail@watermark.com.au



IAM: more than patents, beyond trade marks, way past IP. Fresh thinking from Watermark.



Protecting
a trade
mark in
Australia.