



*It's Time to Get Your
Trade Mark Registered*

想您的商標得到更全面的保障？
註冊商標是不二之選



想您的商標得到更全面的保障？ 註冊商標是不二之選

您有沒有想過在香港註冊您的商標？在香港，註冊商標並不是強制性的，而且沒有註冊商標的公司亦很普遍。無論您的商標有否註冊，商標亦被視為個人資產。那麼為什麼仍要考慮註冊商標？因為註冊商標能在香港法例第559章《商標條例》的規定下，讓您的公司獲得更全面的保障。

為什麼需要註冊商標？

若您正在考慮是否註冊您的商標，那麼就要先了解香港法例第559章《商標條例》當中的一項關鍵條例。根據第559章《商標條例》第10條，當中就說明了「註冊商標的擁有人具有本條例所規定的權利，並有權享有本條例所規定的補救」。亦即是說，若果公司沒有註冊其商標，一旦發生爭議，當事人及其公司將不會受到保護，同時也無法享有該條例規定的保障及補救措施。

倘若日後發生任何商標侵權的爭議，未經註冊的商標擁有人亦不能對任何未經授權使用的一方展開任何法律訴訟。相反，註冊商標的擁有人，如遇有關商標的爭議，因有條例的保障，就可以在沒有實質損害的證據下，向另一方提出侵權訴訟。此外，在任何異議及無效程序中，註冊商標亦可能被視為在先商標而可主張若干權利。而未註冊商標就只有在被認定為馳名商標的情況下才可獲得《商標條例》內的若干權利。

怎樣才被視為馳名商標？

您可能會問，未註冊的馳名商標仍可受到條例的保障，為何您仍然要考慮註冊商標？首先最關鍵的要點，就是要知道若要證明是馳名商標，相關公司就要提供許多堅實的舉證，而且該條例規定馳名商標的舉證責任相對較高。所以要證明是馳名商標，一般來說，並不容易。就註冊處處長或法

院的相關資料，以作為該商標在香港是否馳名的考據，其中包括(但不限於)以下內容：

- (a) 有關的公眾界別對該商標的認識或承認程度；
- (b) 使用該商標歷時多久，使用的範圍及地域範圍；
- (c) 推廣該商標歷時多久，推廣的範圍及地域範圍，推廣包括應用該商標的貨品或服務的廣告宣傳或宣傳以及在博覽會或展覽會上介紹該等貨品或服務；
- (d) 該商標註冊或註冊申請歷時多久及註冊的地域範圍(僅限於該段時間及地域範圍以映出該商標的使用或為人承認的程度範圍內)；
- (e) 成功地強制執行該商標的權利的紀錄，特別是關於該商標獲外地主管當局承認為馳名商標的程度；及
- (f) 與該商標有關聯的價值。

如果未註冊商標在呈交以上資料後，仍未符合相關的條件，便不會被評為馳名商標，那麼商標擁有人將不會受到該條例的保障。在這情況下，若遇上商標侵權的爭議，商標擁有人唯有透過普通法的假冒行為，在香港任何商標異議、無效和/或法院訴訟中確立在先商標權。

為了避免不必要的麻煩或任何潛在的商標侵權，註冊商標可以說是為您及您的公司提前作出保障，因此是時候考慮為您的商標註冊吧！[👉](#)



IT'S TIME to Get Your Trade Mark Registered

Have you ever thought about registering your trade mark in Hong Kong? It is not mandatory to register your trade mark in Hong Kong and it is actually quite common that businesses use a trade name or mark without obtaining any registered trade mark right at all. Registered and unregistered trade marks are both being considered as personal properties; but with a registered trade mark, a business can enjoy much better protection under the Cap. 559 Trade Marks Ordinance.

Why register your trade mark?

To name one key protection listed within the Section 10 of the Cap. 559 Trade Marks Ordinance, "the owner of a registered trade mark has the rights and is entitled to the remedies provided by this Ordinance." On the contrary, if a business has not registered their trade mark, the business will not be protected and will not be entitled to all the rights and remedies within the Ordinance.

In case of any future trade mark infringement, the owner of an unregistered trade mark is not allowed to initiate any legal action against any unauthorized use under the Ordinance. In contrast, the owner of the registered trade mark can initiate legal proceedings against another party for trade mark infringement without proof of actual damage. In addition, the registered trademark may possibly treat as earlier trade mark rights in any opposition and invalidity proceedings. There is only one circumstance where the unregistered trade mark is entitled to the protection listed within Section 63 (1) under the Cap. 559 Trade Marks Ordinance as a well-known trade mark.

What constitutes a well-known trade mark & Concerns on unregistered trade mark

You may think an unregistered well-known trade mark is protected under the Ordinance, why would you still need to consider registering your trade mark. The crucial consideration is the burden of proof for a well-known trade mark is relatively high under the Ordinance. It has listed out information to be submitted to the Registrar or the court to determine whether the trade mark is well-known in Hong Kong that includes the following:

- (a) the degree of knowledge or recognition of the trade mark in the relevant sectors of the public;
- (b) the duration, extent and geographical area of any use of the trade mark;
- (c) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods or services to which the trade mark applies;
- (d) the duration and geographical area of any registrations, or any applications for registration, of the trade mark, to the extent that they reflect use or recognition of the trade mark;
- (e) the record of successful enforcement of rights in the trade mark, in particular, the extent to which the trade mark has been recognized as a well-known trade mark by competent authorities in foreign jurisdictions; and
- (f) the value associated with the trade mark.

If an unregistered trade mark is not being regarded as a well-known trade mark after providing the above mentioned information, the owner will not be protected by the Ordinance. The owner will also have to recourse to the law of passing off at common law to establish his earlier trade mark rights in any trade mark opposition, invalidity and/or court proceedings in Hong Kong.

To save the hassles and to avoid potential trade mark infringement, it is really the time to consider having your trade mark registered. 

