

Singapore Treaty on the Law of Trade Marks

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The Singapore Treaty on the Law of Trade Marks (“the Singapore Treaty”) was adopted by member states of the WIPO in 2006 and stems from the Trade Mark Law Treaty of 1994 (“TLT 1994”).

The Singapore Treaty introduces important changes to the TLT 1994, thereby internationally harmonizing the administrative rules and procedures for trade mark registration. Having received its 10th ratification by Australia, the Singapore Treaty enters into force on 16 March 2009. The Singapore Treaty is separate from the Trademark Law Treaty 1994 and, as of 18 May 2009, has 11 contracting members, namely :

1. Australia
2. Bulgaria
3. Denmark
4. Kyrgyzstan
5. Latvia
6. Republic of Moldova
7. Romania
8. Singapore
9. Spain
10. Switzerland
11. United States of America

The Singapore Treaty, which may be adhered to independently by the contracting members, introduces some crucial revisions to the TLT 1994. These include:

1. Creation of an Assembly

The original idea of the TLT was to allow an Assembly of the Contracting Parties to be able to amend the Regulations to the TLT 1994. Unfortunately, the TLT 1994 was adopted without the creation of an Assembly, thus making it impossible to amend the Regulations. The Singapore Treaty now allows for the creation of an Assembly of Contracting Parties who will have the power to amend the Regulations and thereby keep

up with new technological developments that may have a crucial impact on trade mark administration issues.

2. Mode of Communication

At the time the TLT 1994 was adopted, communications with trade mark offices were primarily made via post and/or fax machines. However, soon after, the form of communication and means of transmittal extended to electronic communications. In addition to allowing electronic modes of communication, the Singapore Treaty also gives Contracting Parties (i.e. their trade mark offices) the flexibility to choose the mode of communication and the means of transmittal they prefer, be it paper or electronic communication or transmittal via post or email, for instance. There is no mandatory requirement for Contracting Parties to choose electronic communication.

3. Recordal of Licences

The TLT 1994 has no provisions with regard to the recordal of trade mark licensing. The Singapore Treaty has incorporated much-needed provisions concerning the recordal of trade mark licenses, including the amendment or cancellation of recorded licenses. In addition and importantly, the validity of a trade mark shall not be affected if a trade mark licence is not recorded.

4. Missed time limits

The Singapore Treaty introduces appropriate relief measures for missed time limits. These include an extension of time limit or continued processing which can be applied for within two months from the expiry of the time limit. Another relief is the reinstatement of rights which can be implemented by filing a request within a reasonable time limit or within six months from the expiry of the time limit. This is provided that the time limits are missed notwithstanding that due care was taken or the failure was unintentional.

5. Non-conventional marks

Finally, the Singapore Treaty allows for the registration of non-conventional marks such as holograms, scent marks, sound marks, motion marks and three-dimensional ("3D") marks. The TLT 1994 had only provided for conventional marks such as word marks in its Regulations. As the development of types of trade marks has progressed rapidly, trade marks are no longer restricted to mere word marks or two-dimensional signs.

Singapore has adopted some of the changes described in the Singapore Treaty. On 1 December 2008, the Intellectual Property Office of Singapore launched a Pilot Scheme Phase of e-Communications Portal (i.e. electronic filing) and changes have been made to the Trade Marks Rules to include electronic communications as a mode of communications and means of transmittal. The registration of non-conventional marks such as 3D marks, motion marks and sound marks have also made inroads into the local trade marks industry and some of these marks have been successfully registered.

The Singapore Treaty represents an important and beneficial evolution of the intellectual property system to trade mark owners, who will be able to file new and different types of marks in a more efficient and cost-effective manner. They will not only enjoy the ease of electronic filing and communication but also obtain trade mark protection at a lower cost, due to the flexibility in the registration procedure and relief measures. Overall, the Singapore Treaty is a significant development in the field of trade marks.