

ANGUILLA

GUIDE TO REGISTRATION OF TRADEMARKS IN ANGUILLA

1. Introduction

1.1 Paris Convention Not Applicable

Anguilla is not a Convention country and protection of a trademark in Anguilla depends exclusively on registration of that trademark in Anguilla. This is so no matter how well-known the mark is.

The registration of trademarks in Anguilla is governed by the Trademarks Act Revised Statutes of Anguilla Chapter T30 (the “Trademarks Act”).

2. Registration of Trademarks under the Trademarks Act

2.1 General

As a general rule, a trademark may not be registered under the Trademarks Act if:

- (a) It is incapable of distinguishing the goods of one enterprise from another;
- (b) It is contrary to public order or morality;
- (c) It is likely to mislead the public or trade circles as to the geographical origin, nature or characteristics of the goods or services concerned;
- (d) It is sufficiently similar or contains as an element an armorial bearing, flag or other emblem of any state or intergovernmental organization unless such use is authorized;
- (e) it is identical with or confusingly similar to, or is a translation of a trade name which is well known in Anguilla for identical or similar goods or services;
- (f) it is well known and registered in Anguilla for goods and services which are not identical or similar to those in respect of which registration is being applied for but could damage the interests of the owner of the well known trademark; or

- (g) it is likely to deceive or cause confusion.

2.2 Particulars of Trademark

A trademark may consist of any of the following:-

- (a) a name of an individual or firm printed, impressed or woven in some particular or distinctive manner;
- (b) a written signature, or a copy of a written signature, of the individual or firm applying for registration thereof;
- (c) a distinctive device, mark, brand, heading, label or ticket;
- (d) an invented word or invented words; or
- (e) a word or words having no reference to the character or quality of the goods, and not being a geographical name.

An important feature of the Trademarks Act is the accommodation of trade names thus removing the problematic distinction which existed under the former act.

2.3 Applications for Registration of Trademarks

If an applicant's ordinary business or principal place of business is outside Anguilla he must be represented by an agent resident in Anguilla. An application for registration of a trademark must be lodged with the Registrar of Trademarks. The application must include the following:

- (a) the completed Application in the prescribed form containing a copy of the mark, a description of the goods and the name and address of the owner of the mark;
- (b) a power of attorney empowering the agent to act for the purpose of registration of the trademark (this may be filed within 2 months from the filing of the Application); and
- (c) the prescribed fee (currently US\$250.00, for the first class with a US\$50.00 charge for each additional class).

Anguilla has adopted the International Classification of Goods and Services (the Nice Classification) and this has been effective in ensuring uniformity and a measure of certainty for applicants with trademarks registered elsewhere.

2.4 Opposition

After the application for registration of a trademark has been lodged with the Registrar, a notice of the application is advertised in the Official Gazette. The purpose of the advertisement is to invite opposition to the application.

If, after a period of two months from the date of publication of the advertisement, there is no opposition to the application, or if any opposition is resolved in favour of the applicant, the mark is registered.

Registration is valid for ten years and is renewable for further consecutive periods of ten years upon payment of the relevant fee.

3. Registration of United Kingdom Trademarks

The Registration in Anguilla of trademarks that have been already registered in the United Kingdom was specifically provided for in the Trademarks Act. To register such a mark in Anguilla, the following must be submitted to the Anguillian Registrar of Trademarks:

- (a) the completed Application in the prescribed form;
- (b) a certificate of the Comptroller-General of Patents, Designs and Trademarks of the United Kingdom showing the registration of the mark there;
- (b) a power of attorney authorizing the agent in Anguilla to register the mark (this may be filed within 2 months from the filing of the Application); and
- (c) the prescribed fee (currently US\$200.00) and US\$100 for each additional mark .

When a mark has been registered pursuant to the Act, the registration is valid for the remainder of the mark's original registration period in the United Kingdom. Renewals are dependant on the renewal of the mark in the United Kingdom, and payment of a renewal fee in Anguilla.

Provisions have also been made for the registration of European Community marks but these await additional legislative steps.

If you would like further information on the subject matter of this Guide or details of how Harneys can help you with your trademark or patent enquiries please contact Kissock Laing at kissock.laing@harneys.com in our Anguilla office, Jamal Smith at jamal.smith@harneys.com in our British Virgin Islands office or your usual contact at Harneys. Alternatively, you can visit our website at www.harneys.com.

This Guide is general in scope and is not intended to be comprehensive. It is not a substitute for legal advice.

October 2007