

Authorisation to Register a State Emblem as a Trade Mark; Dealing with Misuse of Trade Marks Indicative of Irish Origin

Part I - Background Information

Description

Any person who wishes to obtain registration of a trade mark containing a State emblem (harp, shamrock) or to use a State emblem in connection with any business must first obtain consent from the Minister. The Minister is also empowered to take lawful steps against any person outside the State in the event of misuse of trade marks that would falsely indicate that the goods on which the trade mark is used were of Irish origin.

Legislation

The relevant provisions in the Trade Marks Act, 1996 are sections 9, 97 and 98. Article 3 (1)(g) of Council Directive 89/104/EEC and Article 7(1)(g) of the Council Regulation (EC) No. 40/94 also apply.

Eligibility

Any person or company applying to the Controller of Patents, Designs and Trade Marks, Patents Office, Government Buildings, Hebron Road, Kilkenny for a trade mark incorporating a State emblem - or to the relevant authorities of any country that is a contracting party to the Paris Convention - is eligible to seek the Minister's consent in this regard.

The harp is confined to Government Departments and Government agencies. Authorisation to use the shamrock is restricted to goods or services of Irish origin.

Any person is eligible to make a complaint to the Minister where he or she suspects the unauthorised use of a State emblem or the misuse of a trade mark indicative of Irish origin.

Application

Application may be made in writing, by telephone or by e-mail to the Intellectual Property Unit (see contact points). There is no formal application form.

Part II - Processing the application

Where a person applies to the Minister for consent to register a trade mark incorporating a shamrock, or to use a shamrock in connection with a business, that person must show to the Minister's satisfaction that the goods on which the emblem is used are of Irish origin. Authorisation to use the harp is generally restricted to State agencies. Decisions on all these matters are taken at Higher Executive Officer or Assistant Principal level. Consultation, if necessary, may be undertaken with the Section's Principal Officer. The Department notifies the person concerned as soon as the application has been decided.

Part III - Procedure in place following decision

Unauthorised use of State Emblem

A person who has been notified that he or she is not authorised to use a State emblem and continues to use it shall be liable on summary conviction to a fine not exceeding €1,269.74 (€1,000) and, in the case of a continuing offence, to a further fine not exceeding €126.97 (€100) for every day the offence continues. Appeals against these convictions lie with the courts.

Misuse of Trade Mark

Where it comes to the Minister's attention that a trade mark in another country would falsely give the impression that the goods on which the trade mark is used were of Irish origin, the Department may take appropriate legal steps to prevent any further use of that trade mark.

A comprehensive list of Irish, EU and international Intellectual Property Legislation is available from the Intellectual Property Unit.

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