



German Patent  
and Trade Mark Office



# Trade Marks

An information brochure on trade mark protection

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# We protect your trade mark

**The German Patent and Trade Mark Office (DPMA) is the German centre of excellence for all intellectual property rights – for patents, utility models, trade marks and designs. We are your service provider for trade mark protection – from the application to the registration of your trade mark to the administration of your trade mark in our Register.**

This brochure gives you a thorough insight into all issues that may be important to you in connection with the IP right for a trade mark registered at the DPMA and serves as a guide for your trade mark application.



## Trade marks send out strong signals

They influence our purchasing decisions daily: trade marks give fresh impetus, trigger emotions, occupy market positions. Trade marks create distinctive features thus allowing to distinguish branded goods and services of an enterprise from the products offered by competitors. Trade marks provide useful orientation in the endless stream of advertising messages in the form of characteristic words, pictures, sounds, films or three-dimensional configurations.

It is the trade mark that turns an anonymous product into a unique branded article – and sometimes, a logo or few letters even become a legend.

### ***The German trade mark law revision***

*For more than 30 years it has been possible to use a protected sign to market services as well as goods. In the course of the 1995 German trade mark law revision, the term “Marke” (trade mark) was introduced. In its literal meaning a trade mark “marks” a product or a service, thus distinguishing it from the products offered by competitors.*

## Trade marks create trust

Every trade mark carries a promise: of reliability of source and consistency of quality or of certain properties of a product or a service.

Trade marks stand for special properties. They appeal to the needs of consumers, convey values and communicate ideas, thus creating credible identities that build trust and lasting customer relationships. This way they ensure the competitive edge of a company.

A strong trade mark converts every single communication measure into an investment that will generate lasting or even increasing market value. This opens long-term perspectives.

## Trade marks protect ideas

“All signs, particularly words including personal names, designs, letters, numerals, sounds, three-dimensional designs, the shape of goods or of their packaging as well as other wrapping, including colours and colour combinations, may be protected as trade marks if they are capable of distinguishing the goods or services of one enterprise from those of other enterprises” (Sec. 3(1) Trade Mark Act [*Markengesetz*]).

### **Diverse forms of trade marks?**

The most common forms in which trade marks are applied for are words (word marks) or images (figurative marks) – and combinations thereof (word/figurative marks). There are also special forms of trade marks such as three-dimensional marks and colour marks.

Since 14 January 2019, it has also been possible to apply for trade marks which cannot be represented graphically, as long as they are sufficiently clearly defined for third parties to be able to recognise their scope of protection. This means that modern forms of trade marks such as multimedia marks, sound marks and hologram marks can now also be registered in the Register of the DPMA. This broader range of trade mark forms results from the reform of European trade mark law of 2015.

### **Domain names as trade marks**

As a rule, it is also possible to apply for a trade mark for an Internet domain. The DPMA does not register domain names but recommends a trade mark search prior to choosing a domain name. However, some domain names do not meet the requirements for registration as trade marks in the Register of the DPMA. The domain name can only be registered as a trade mark if it satisfies the requirements for protection, in particular, if it is not merely a descriptive term or an advertising statement.

## Trade marks safeguard assets

In modern, ever faster-changing markets, trade marks provide important orientation and decision-making confidence to customers and consumers. They enable identification with the products or services offered by a company. That is precisely why they are of inestimable value for the long-term success of a company. Strong trade marks help to build durable relationships between suppliers and customers.

### **Trade marks are assets**

*Today, the success of a company is closely linked to the prestige and value of its trade mark(s). In this context, important criteria are brand awareness, the trade mark image and market shares. For that reason, trade marks are not only cost factors but also important influencing factors that can increase the total value of a company.*



## Trade marks confer rights

Trade mark protection usually arises from the entry of the sign in the Register kept by the DPMA. Trade mark protection may also arise from the public recognition as a trade mark acquired due to intensive use of a sign in trade or by its general reputation. Upon registration of your trade mark in the Register of the DPMA, you obtain the exclusive right to decide how the trade mark is used for the protected goods and services and to prohibit others from using a sign, as a trade mark, that is identical or confusingly similar to your trade mark.

The registration of your trade mark in the Trade Mark Register makes it easier to enforce your legal claims to the trade mark. Registration certificate and register extract are proof that you are entitled to the registered trade mark. The trade mark registration gives you a means to act against any unauthorised person who infringes your rights.

In case of wilful or negligent infringement of your trade mark rights, you can seek injunctive relief or may be entitled to damages. Unlawfully marked objects may be seized and destroyed by customs authorities when the unlawfully marked goods are imported or exported and even during transit, if appropriate.

In business, you may use the ® symbol (letter R in a circle) with registered trade marks, which indicates to others that the sign is a registered trade mark.

### Certification marks and collective marks

Since 14 January 2019, the **certification mark** has enabled neutral certification companies to obtain trade mark protection for their quality seals or test labels in Germany, for example, the textile logo “*Grüner Knopf*” (green button). Unlike an individual trade mark, it does not focus on the function of the trade mark as an indication of origin, but on the *guarantee function*. In the regulations governing use of the trade mark, which are published in the Register of the DPMA upon registration of a certification mark, the owner of the trade mark must specify the guaranteed product characteristics, the conditions of use and the testing and monitoring measures.

By contrast, a **collective mark** is an indication of the origin of the products which bear the mark from a certain association. Therefore, only associations having legal capacity or legal persons governed by public law may apply for a collective mark.

#### Who can be the owner of a trade mark?

As a rule, any company or any private individual can apply for a trade mark for any type of goods or services. A business establishment is not necessary. However, special provisions apply to certification marks and collective marks.

# The road to trade mark protection

Far more than 800,000 trade marks are registered in the Register of the DPMA – and new trade marks are being added daily. What signs are eligible for protection and what signs are not? What must be considered when filing an application? Our brochure aims at providing a quick overview of what is important with regard to registration and what rights your trade mark gives to you. Please bear in mind that trade mark law and practice are complex issues that require great care. This is true for the trade mark search for competing earlier rights, which you have to carry out before filing an application, as well as the (self-critical) predictions of the protectability of your trade mark to be made by you and also for the examination of the application and the registration performed by our experts.



## No trade mark protection without classification: the list of goods and services

There is no across-the-board registration for trade marks. Rather, you must specify those goods and services for which you seek trade mark protection (list of goods and services). Goods and services are categorised in different classes according to the International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (Nice Classification).

The list of goods and services is an important component of the trade mark application; without such a list the application is incomplete and registration is not possible.

A correct list of goods and services ensures fast processing of your application. The use of non-specific, imprecise terms of goods and services is by far the most frequent cause for longer processing times for trade mark applications. In order to avoid formal objections to such deficiencies and be able to register trade marks quickly, we offer a variety of tools that help customers to draw up lists of goods and services:

The internationally coordinated Harmonised Database (eKDB) is available to you in a shopping cart function when you use our electronic filing services **DPMAdirektPro** and **DPMAdirektWeb**. This allows you to comfortably select accepted terms of goods and services. Since 14 January 2019, it has also been possible to save lists of goods and services which were prepared by means of the electronic filing services and use them for other trade mark applications.

You can also use the eKDB (Harmonised Database) for filing paper-based applications and create a list directly in the database – for example in PDF or TXT format.

We have published the “Guidance on usage” (eKDB – Harmonised Database) for you on our website (available in German).



Guidance on usage (eKDB – Harmonised Database [in German])

[www.dpma.de/english/trade\\_marks/application/required\\_data\\_for\\_filing\\_an\\_application/detailed\\_information\\_regarding\\_the\\_list/index.html](http://www.dpma.de/english/trade_marks/application/required_data_for_filing_an_application/detailed_information_regarding_the_list/index.html)

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[www.dpma.de/english/trade\\_marks/classification/goods\\_and\\_services/nice\\_classification/index.html](http://www.dpma.de/english/trade_marks/classification/goods_and_services/nice_classification/index.html)

**Your options if you do not find terms for goods or services in the eKDB (Harmonised Database):**

- Suggest that we include such missing terms in the database!
- Let us assist you in coordinating a model list of goods/services if your long-term intention is to file many trade mark applications using the same list!

Simply send us a corresponding e-mail to the following address:  
**info@dpma.de**

**What has to be taken into account when preparing lists of goods and services:**

- The subject matter of protection and, consequently, the scope of protection of a trade mark is determined by the goods and/or services for which it is protected.
- After the application has been received by the DPMA, no goods and services can be added to the list, whereas restrictions are possible any time.
- The more classes of goods and services you claim the more probable it becomes that owners of earlier signs will file oppositions to the registration of your trade mark.
- Furthermore, the Trade Mark Act prescribes the “compulsory use” of all goods and services claimed. This means that you must actually put the trade mark to use in trade in connection with all the goods and services claimed in order to be able to fully and permanently maintain your right to the trade mark.

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[www.dpma.de/english/trade\\_marks](http://www.dpma.de/english/trade_marks)

For detailed information see the following pages under the catchwords “application”, “compulsory use” and “opposition proceedings”.

**Nice Classification**

*The International Classification of Goods and Services for the Purposes of the Registration of Marks – or “Nice Classification” for short contains 45 classes (34 for goods and 11 for services). All the goods or services claimed in a trade mark application are classified in exactly one of those classes. The number of classes for which a trade mark is applied for determines the amount of the fee payable.*

**Harmonised Database (eKDB)**

*Many national trade mark offices of the European Union have agreed on a list of approximately 73,000 accepted classification terms for goods and services, which are already classified according to the Nice Classification and are translated into 27 languages and accepted as such in all participating countries.*

**Vienna Classification**

*The international classification of the figurative elements or images of marks is called “Vienna Classification” and is used in order to search for trade marks which do not contain a word element.*

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[www.tmdn.org](http://www.tmdn.org)

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[www.dpma.de/english/trade\\_marks/classification](http://www.dpma.de/english/trade_marks/classification)

## Classes of the Nice Classification

Class	Brief description
1	Chemicals
2	Paints
3	Cleaning preparations
4	Oils, greases, fuels
5	Pharmaceuticals
6	Common metals and simple goods of metal
7	Machines, motors and engines
8	Hand tools
9	Electrical apparatus and instruments
10	Medical apparatus and instruments
11	Apparatus for heating, ventilating and sanitary purposes
12	Vehicles
13	Weapons
14	Jewellery, clocks and watches
15	Musical instruments
16	Office requisites, stationery
17	Insulating materials, semi-finished goods
18	Goods made of leather
19	Building materials (non-metallic)
20	Furniture
21	Small manually operated utensils
22	Ropes, string, sails
23	Yarns und threads
24	Woven textiles and covers
25	Clothing, footwear
26	Haberdashery and trimmings
27	Carpets, rugs, and wall hangings
28	Games, sporting articles
29	Food of animal origin
30	Food of plant origin
31	Agricultural and forestry products
32	Non-alcoholic drinks, also beers
33	Alcoholic drinks
34	Tobacco, smokers' articles
35	Advertising, business management
36	Insurances
37	Building construction, repair services
38	Telecommunications
39	Transport
40	Treatment of materials
41	Education, training, sporting / cultural activities
42	Scientific and technological services
43	Providing food and drink, temporary accommodation
44	Medical services
45	Legal services, security services



## For your search: the Trade Mark Register

We publish all trade marks applied for and registered in Germany online in **DPMAregister**.

For this reason, you as a potential applicant for a new trade mark should first consult the official Trade Mark Register. Here you can check in a first step by conducting a search for earlier register rights whether your intended trade mark infringes earlier national rights. In addition to German national trade marks, **DPMAregister** also contains European Union trade marks (EM) and international registrations of marks (IR) enjoying protection in Germany; however, the DPMA cannot accept any liability for the accuracy and completeness of the data.

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[www.dpma.de/english/search/dpmaregister](http://www.dpma.de/english/search/dpmaregister)

### What should be considered when conducting a search?

Make sure that no trade mark which is similar or identical to your trade mark exists. The DPMA does not examine during the application procedure whether there is a conflict with earlier rights. For further information on the search see pages 28 and 29.

In addition to searching for earlier registered trade marks, you should also check whether earlier identical or similar non-registered signs such as commercial designations exist in your industry. Such signs can also be used as a basis for filing an opposition against the registration of the trade mark and a request for cancelling the trade mark in the DPMA Register.

### Have you completed your trade mark search?

Then you should not wait much longer. An early application may have essential advantages from a legal point of view because trade mark law is governed by the principle of priority. That means that the trade mark with the earlier filing date usually has better chances to prevail in the case of conflict.

#### Trade mark search – not only for applicants

A trade mark search is not only useful before filing an application. Trade mark owners should also conduct post-registration searches for new identical or similar signs at regular intervals to protect their trade mark and, if necessary, to defend it effectively.

## Your application

The first step to use the legal options of trade mark protection is to apply for registration of your trade mark in the Register by filing an early, formally correct application, which is complete with regard to content.

As a rule, the trade mark applicant can be a natural person, a legal person or a partnership with legal capacity.

You must file a separate application for each trade mark.

### Important:

- The application details must be complete and correct; for example, make sure that the details of legal persons provided correspond to those of the entry in the commercial register.
- Your application must contain a representation (illustration) of the trade mark which shows the trade mark exactly as you wish to have it protected in the future; a subsequent change is not possible.
- Indicate the type of trade mark (word mark, figurative mark, sound mark, etc.).
- Indicate exactly the goods and/or services for which you intend to use the trade mark. The number of requested classes determines the fee amount for the application.

Detailed information on this issue is available in the leaflet “Information for Trade Mark Applicants” and the leaflet “*So tragen Sie zu einer zügigen Bearbeitung Ihrer Markenmeldung bei*”, which is also available online.

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[www.dpma.de/english/trade\\_marks/application](http://www.dpma.de/english/trade_marks/application)

### Our tip

If you draft your list of goods and/or services in accordance with the Nice Classification – sorted by classes and in ascending order – and choose terms of the Harmonised Database (eKDB) you will help to speed up the examination of the application (see also page 9).

Goods and services that are not available in the Harmonised Database (eKDB) may still be claimed with an electronic application with signature (**DPMAdirekt**) and with a paper-based application (see page 15). However, we are able to process your application faster if you select terms from the Harmonised Database (eKDB).

## Ways to apply

### Online

If you choose the online option, you can file your application

- without an electronic signature via our **DPMAdirektWeb** online service with the shopping basket for goods and services. You will be guided through the few steps of the process with numerous helpful tips; no special software is required.
  
- with a qualified electronic signature via our **DPMAdirektPro** service. This requires a qualified signature card with an appropriate card reader in order to clearly identify you as the sender. A list of suppliers of signature cards is available from the *Bundesnetzagentur* (Federal Network Agency). The EPO online services smart card of the European Patent Office is also admissible.

Furthermore, you need the **DPMAdirekt** software to prepare and validate application documents. You can download the software free of charge from our website.

### Paper-based application

If you choose to file a written application, please use the application form provided by the DPMA and file it with our office or a patent information centre authorised to accept trade mark applications. The current version of the application form is available for download from our website.

### Please note:

**It is not possible to apply for a trade mark by sending an e-mail.**

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[www.dpma.de/english/services/efiling/dpmadirektweb](http://www.dpma.de/english/services/efiling/dpmadirektweb)

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[www.dpma.de/english/services/efiling/dpmadirekt/downloads](http://www.dpma.de/english/services/efiling/dpmadirekt/downloads)

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[www.dpma.de/english/trade\\_marks/application](http://www.dpma.de/english/trade_marks/application)



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[www.dpma.de/english/search/dpmaregister](http://www.dpma.de/english/search/dpmaregister)

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[www.dpma.de/english/our\\_office/publications/announcements/2020/10012020/index.html](http://www.dpma.de/english/our_office/publications/announcements/2020/10012020/index.html)

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[www.dpma.de/docs/marken/darstellung\\_marken.pdf](http://www.dpma.de/docs/marken/darstellung_marken.pdf)

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[www.dpma.de/english](http://www.dpma.de/english)

### **What happens after filing?**

You receive a receipt with the official file number. The essential application data are entered into our in-house information system and will appear in the **DPMAregister** online Register, which is available to the public on our website.

### **The filing date – what role does it play?**

According to the principle of priority, the earlier trade mark – that means the trade mark with the earlier filing date – as a rule, has better chances to succeed in case of conflict.

### **Check list for a successful trade mark application:**

- Have you been creative when designing the trade mark? Avoid signs that are descriptive of a product or deceptive, or signs that are often used in advertising.
- Does another trade mark similar or identical to your trade mark already exist? Search for existing rights of third parties before filing an application.
- Make sure you used our official application form and filled it out completely.
- Is the trade mark represented correctly?
- Have you complied with the formal requirements applicable to your trade mark type?
- Does the list of goods and services correspond to the Nice Classification? Use the information on our website to check.

You can find comprehensive information on the DPMA and on the formalities of a trade mark application and the application forms on the Internet.

Our central Customer Care and Services also provides information on the filing routes, procedures and requirements. For contact details see the service section of this brochure on page 38.

## Registration requirements

The DPMA performs an examination as to absolute grounds for refusal of your trade mark application during the application procedure, but it does not examine whether your trade mark conflicts with earlier signs of others.

### What exactly are absolute grounds for refusal?

Your individual trade mark can only be registered if there are no conflicting absolute grounds for refusal. These are, in particular,

- lack of distinctiveness as an indication of origin of a supplier,
- the product-descriptive character of a sign that has to be kept freely available for general use,
- offence against morality or public policy,
- emblem of state included in a trade mark.

Signs are distinctive if they are capable of distinguishing goods and/or services of one enterprise from those of other enterprises. Signs lack distinctiveness if their content is predominantly descriptive of a product or otherwise if they are only understood as such, for example, promotional statements, general advertising slogans and word sequences that have become customary in the current language as fixed expression.

In addition, signs are excluded from protection if they must be kept available for general use, in particular, terms that simply describe the type, quality or other properties and characteristics of the products claimed. For example, the word “Apple” is distinctive for computers but not for apples because as a descriptive indication of goods it must be kept freely available for unrestricted use by competitors.

In exceptional cases, designations incapable of being protected for lack of distinctiveness or for being descriptive indications may be registered if they, as a result of their use, have become established as trade marks in the entire territory of the Federal Republic of Germany for the products claimed. That means that the signs are identified by the targeted trade circles as coming from the applicant. In that case, it must be proved by appropriate documents and also a survey, if required, that the great majority of the trade circles associate the sign with a specific enterprise.

### Examples:

#### ↗ general catchwords:

“flexible” for manpower services  
 “super, extra, brilliant” – for various products

#### ↗ morally offensive terms:

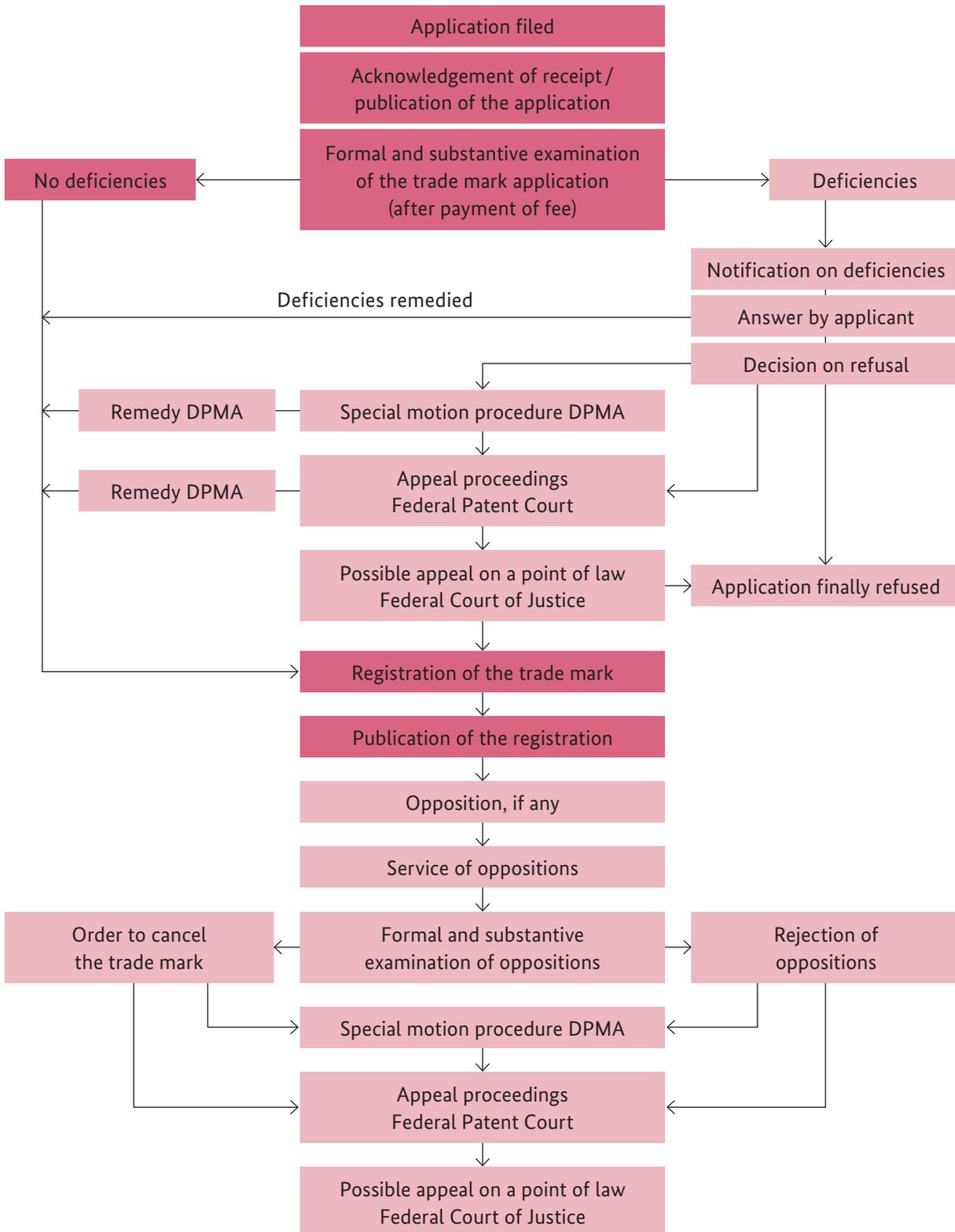
“*Urbi et Orbi*” for goods and/or services

#### ↗ national emblems:

national flags, symbol of Europe (circle of stars)

# Registration process and costs

Examination procedure (schematic)



### The registration procedure

After receiving the fees within three months after filing the application, the DPMA examines whether the application meets the formal requirements and whether there are any absolute grounds for refusal of registration of the trade mark. If the fees are not paid in due time, the application is deemed withdrawn. Important: Payment must be **received** within three months of filing the application at the latest!

#### Overview of fees for application with registration

<b>Application fee</b> (including class fee for up to three classes)	<b>300 euros</b>
<b>Application fee for online filing</b> (including class fee for up to three classes)	<b>290 euros</b>
<b>Application fee for collective mark or certification mark</b> (Sections 97 and 106a Trade Mark Act)	<b>900 euros</b>
<b>Class fee upon filing the application</b> (for each additional class from the fourth class)	<b>100 euros</b>
<b>Class fee upon filing application for collective mark or certification mark</b> (for each additional class from the fourth class)	<b>150 euros</b>
<b>Accelerated examination of the application</b>	<b>200 euros</b>

If all requirements are met, the trade mark is registered and you receive a certificate of registration and the corresponding extract from the Register. The registration of the trade mark is published in the official electronic Trade Mark Journal (*Markenblatt*)

[www.dpma.de/english/trade\\_marks/examination\\_registration\\_and\\_renewal](http://www.dpma.de/english/trade_marks/examination_registration_and_renewal)

At special request and subject to payment of an additional fee, processing of the application is accelerated.

#### **Trade mark without registration?**

*Under particular conditions, trade mark protection may also accrue without registration – by long-term, intensive use in trade or if the trade mark has a very extraordinary reputation (what is called a “well-known mark”).*

If grounds for refusal are identified during the examination of your application, you will be notified in writing about the deficiencies. If your comments do not dispel the doubts, the trade mark application (or possibly, part of the application) will be refused by a decision. You have the opportunity to have this decision reviewed during special motion (*Erinnerung*) or appeal proceedings, for which a fee is charged.

#### **Our tip**

If there is a change of name or address, a transfer of the seat of your company or a change of representative, arrange for an update of your entry in the Trade Mark Register.

## Effect of protection and duration of protection

You obtain trade mark protection in the whole territory of the Federal Republic of Germany by registration of your trade mark in the German Trade Mark Register.

### Ten years of protection – indefinite renewal

The duration of protection starts on the filing date and, as a rule, ends after ten years upon expiry of the day corresponding in number to the filing date of the application.



For an overall renewal of your trade mark it is sufficient to pay the renewal fee. If the trade mark is to be renewed only for some of the registered goods and services, please use the form “*Antrag auf Verlängerung einer Marke*” (Request for the renewal of a trade mark).

[www.dpma.de/english/services/forms/trade\\_marks](http://www.dpma.de/english/services/forms/trade_marks)

If the trade mark was registered before 14 January 2019, the ten-year duration of protection ends after the expiry of the month in which the filing date falls (e.g. application of 5 July 2017 – end of protection on 31 July 2027).

In contrast to other IP rights, trade mark protection can be renewed for further periods of ten years, indefinitely, subject to the payment of the appropriate fees. You may renew the trade mark only in relation to some of the goods and services, and if you decide to abandon those classes which you no longer need, you might save on renewal fees.

#### Overview of renewal fees

##### Renewal fee

(including class fee for up to three classes)

**750 euros**

**Class fee upon renewal** (for each additional class from the fourth class)

**260 euros**

**Renewal fee collective mark or certification mark**

**1,800 euros**

If the duration of protection of the trade mark is not renewed in due time or the renewal fees are not paid or not paid in full, the trade mark right will lapse.

## Compulsory use and defence

Even after your trade mark has been registered, you have to take into account some legal aspects to maintain lasting protection for your trade mark.

### Registered trade marks must be put to use

The Trade Mark Act prescribes what is known as “compulsory use” of the trade mark for all claimed goods and services. This means that you must use your trade mark in trade for all claimed goods and services to maintain the right to the trade mark. If the trade mark is not used within a continuous period of more than five years, there is a danger of cancellation of the trade mark upon request by a third party or the owner’s own trade mark rights cannot be enforced because use of the trade mark is disputed, e.g. in opposition proceedings/court proceedings. More information is available on page 27.

### What trade mark owners should consider:

Applications for new trade marks received at the DPMA amount to approximately 75,000 each year. Consequently, the probability increases that newly registered trade marks will violate your IP right. Therefore, many trade mark owners actively monitor their trade marks and permanently observe the relevant trade mark registers with regard to possible conflicting trade marks. If necessary, seek the help of a lawyer or a patent attorney who is an expert in this field to defend your trade mark.

As owner of an earlier trade mark you may file a notice of opposition against the registration of a later trade mark.

### ***If trade marks become generic terms***

*Over the years, successful trade marks may become generic terms – under certain conditions, trade marks, such as, for example, “Tesa” (adhesive tape), “Fön” (hairdryer), “Tempo” (paper tissues) and “Walkman” run the risk of becoming synonyms for the products. In those cases, the trade mark is in danger of being cancelled because it is used as a descriptive synonym and loses distinctiveness. For this reason, the owners of successful trade marks make the effort to indicate in the relevant publications (dictionaries, et cetera) that the relevant word constitutes a registered trade mark.*



## Opposition proceedings

Your registered trade mark can be cancelled in certain cases, for example, in opposition proceedings.

If your newly registered trade mark is identical or similar to other earlier applications or trade marks, the owners of those signs may lodge a notice of opposition against your trade mark. This also applies in the reverse case, of course: if your trade mark right is infringed by a newly registered trade mark, you can file a notice of opposition against it. If the opposition is successful, the trade mark will be cancelled in full or for some of the goods and/or services.

### Opposition

Please take into consideration that a trade mark right does not only derive from registration (see page 19). Owners of unregistered trade marks or commercial designations can also lodge a notice of opposition against the registration of a trade mark. Details are available on our website at [www.dpma.de/docs/marken/widerspruchsgruende.pdf](http://www.dpma.de/docs/marken/widerspruchsgruende.pdf). Furthermore, it is possible to invoke rights arising from the enlarged protection of trade marks which are well known in Germany (Sec. 42(2) Trade Mark Act). Furthermore, the opposition may also be based on a protected geographical indication and a protected designation of origin, provided that the application for the trade mark in respect of which the opposition has been lodged was filed on or after 14 January 2019.

### Simple and cost-effective – opposition proceedings

A written notice of opposition must be filed within three months after the publication of the registration. Within this period of time, which cannot be extended, the opposition fee of 250 euros must be paid. This includes an opposition with respect to one opposing sign. If an opposition is based on several earlier opposing signs of the same owner, an additional fee of 50 euros must be paid for each additional opposing sign. If the owners are not identical, this means that there are several oppositions, and 250 euros must be paid for each. A decision on the opposition is taken during opposition proceedings.

During opposition proceedings, it is examined whether there is a likelihood of confusion between the signs or whether they are even identical. This assessment does not only take into account the similarity of the signs but also clarifies whether conflicting products

and/or services are similar and the level of distinctiveness of the opposing trade mark. In order to decide as quickly as possible whether a challenged trade mark will be cancelled (in full or in part), the DPMA works towards *speedy opposition proceedings*.

*In certain cases, the trade mark registration can still be cancelled after the conclusion of opposition proceedings (see page 27).*

*Keep an eye on the market.*

*It is important to keep informed on a regular basis about published applications and newly registered trade marks and to immediately act against detected copies or against misuse by later trade marks.*

Our trade mark examiners decide on oppositions (by decision). It is possible to have this decision reviewed. In case there is a likelihood of confusion, the registration of the later trade mark will be cancelled (possibly, in part).

#### **When the parties reach an agreement**

Part of opposition proceedings can be settled if the parties themselves reach an agreement. As owner of the later trade mark, for example, you can limit your list of goods and services or undertake to use your trade mark only for certain products or only in a certain form, while the owners of the earlier trade marks, in return, withdraw their opposition.

In order to facilitate negotiations between the parties to the proceedings, a period of at least two months will be granted, at their joint request, to enable them to reach an amicable settlement (“cooling-off”), provided the opposition was lodged on or after 14 January 2019. This period may be extended by a joint request. Time extensions may also be granted in the case of oppositions lodged before the above-mentioned date, if the parties are in the course of negotiations to reach a settlement and agreed to request such extension.

During opposition proceedings, under certain conditions, you can contest that the earlier trade mark was actually put to use by the opponent. Then, the owner of the conflicting trade mark must provide proof that they have actually put the trade mark to genuine use during the last five years. If they cannot provide sufficient proof, the opposition will be rejected on that basis alone.

## Transfer, licensing and giving as security



### Trade marks can be bought and sold

During the entire duration of protection you can transfer your trade mark rights in full or in part to another person. The new trade mark owner will be recorded in the Register if you or the acquirer file a request for recording a transfer of ownership in the Register at the DPMA. In order to prove that the trade mark right has been transferred, it is sufficient that both, you and the acquirer, sign the request for recording the transfer of ownership.

You can also let others use your trade mark by granting a licence. You may have an entry included in the Register about your willingness to licence as well as about your willingness to sell/transfer your trade mark by making a declaration vis-à-vis the DPMA. You may withdraw this “willingness” any time.

Licences will be entered in the Register upon request, although such entry is not necessary for the validity of the licence, but only has a declaratory effect. The entry includes information on the licensee, the type of licence and restrictions, if any. A fee is charged for the entry, amendment and cancellation of a licence in the Register. Since 8 August 2019, it has been possible to effectively enter trade mark licences also for the German part of the extension of protection in the international Register. The owner of exclusive licences may bring an action before the ordinary courts for infringement of a trade mark if, following a formal invitation to do so, the trade mark owners themselves do not bring an action within a reasonable time.

The right conferred by the trade mark registration may be given as security. Upon a corresponding request, which may be filed by you or by the recipient of the security, such a right of lien will lead to the entry of a restraint on disposal in the Register.

## Trade mark protection abroad

There are several options to extend trade mark protection to other countries: to countries of your choice, the whole of the European Union (EU) or worldwide.

### Trade mark protection in countries of your choice

You can directly file your trade mark application in the countries where you seek protection and claim the priority of a previous German application. It is by all means recommended that you consult a lawyer or a patent attorney qualified to practise in the respective country.

### Trade mark protection in the European Union

If you intend to uniformly mark your products or services in the whole of the EU, you can request registration of a “European Union trade mark”, valid across the entire EU, by using a single registration procedure available at the European Union Intellectual Property Office (EUIPO) in Alicante, Spain.

Please note that not only any owner of an earlier European Union trade mark but also any owner of a national trade mark from those countries or of an international trade mark enjoying protection in those countries has the right to file a notice of opposition. If the opponent is successful, registration of your trade mark will be refused for the whole of the EU. Applications for European Union trade marks may be filed directly at the EUIPO.

#### ***EUIPO – the organisation for European trade mark protection***

*The European Union Intellectual Property Office is located in Alicante, Spain. EUIPO is an agency of the EU in charge of the registration of trade marks and designs, valid in all countries of the EU.*

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<https://euipo.europa.eu/ohimportal/en>

### International trade mark protection

If you want to extend trade mark protection even further, you can register your national trade mark at the World Intellectual Property Organization (WIPO) which is in charge of this international registration procedure.

Under certain conditions you may claim the priority of your national basic mark. You can obtain trade mark protection in almost 120 countries including not only the European countries but also countries of the Americas, Asia and Africa. In the countries designated by you the international registration of a mark will be treated just like a national trade mark application.

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[www.dpma.de/english/trade\\_marks/trade\\_mark\\_protection\\_abroad/international\\_application/](http://www.dpma.de/english/trade_marks/trade_mark_protection_abroad/international_application/)

Your request for international registration may be filed at the DPMA electronically without requiring a signature via our website or on paper.

#### **WIPO – the organisation for international trade mark protection**

*The World Intellectual Property Organization is located in Geneva, Switzerland. WIPO is a specialised agency of the United Nations (UN) responsible for the administration of international patent, trade mark and design applications.*

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[www.wipo.int](http://www.wipo.int)



## Revocation or invalidity proceedings

As owner of a trade mark you can any time surrender your trade mark or have the registration cancelled in the Register. However, your trade mark can also be revoked or declared invalid ex officio or upon request by third parties.

If cancellation proceedings are initiated in which your trade mark is challenged, the DPMA will notify you accordingly. If you oppose the request for revocation or invalidity in due time, the cancellation request will be examined. If you fail to oppose the request in time, your trade mark will be cancelled without substantive examination.

### → Cancellation at your own request

As trade mark owner you can any time surrender your trade mark or individual goods and services, for example, because you do no longer wish to use the trade mark or want to avoid that your trade mark conflicts with earlier trade marks.

### → Cancellation ex officio

A trade mark is cancelled ex officio if the required renewal fees have not been paid in time or if there are certain grounds for refusal (for example, violation of emblems of state, deception).

### → Cancellation upon request by a third party

Others may also file a request for the cancellation of your trade mark and can base this request on grounds for refusal (lack of distinctiveness, misleading or descriptive indications, bad faith, et cetera) or on non-use of the trade mark (cancellation on grounds for revocation).

### → Cancellation on grounds for revocation

A trade mark registration may be cancelled on grounds for revocation upon request by a third party if the trade mark has not been put to use during an uninterrupted period of five years. Also from 1 May 2020, revocation proceedings, in particular due to non-use, can be completely conducted by the DPMA upon request. Currently, it is possible to initiate revocation proceedings before the DPMA. However, these proceedings must be continued before the civil courts in the event of an opposition by the trade mark owner. In future, the person filing the request may choose between these legal options.

From 1 May 2020, it will be possible to initiate invalidity proceedings before the DPMA due to the existence of earlier rights. Earlier rights may include rights to a name, the right to one's own image, copyright or indications of geographical origin. Previously, such invalidity proceedings had to be conducted exclusively before the civil courts. In future, the parties may alternatively opt for proceedings before the DPMA with further appeal option to the Federal Patent Court.

# Service

## DPMAregister

Here you will find German national trade marks that were applied for, registered, cancelled, withdrawn or refused.

In DPMAregister, you can also search European Union trade marks (EM) and international registrations of marks (IR) enjoying protection in Germany. However: the DPMA does not accept responsibility for the accuracy and completeness of these data. For conducting a full search on trade marks enjoying protection in Germany and on current legal status information, please use the databases of the European Union Intellectual Property Office (EUIPO) and of the World Intellectual Property Organization (WIPO).

[www.dpma.de/english/search/dpmaregister](http://www.dpma.de/english/search/dpmaregister)

## eSearch plus

In eSearch you will find European Union trade marks applied for, registered, deleted, withdrawn or refused, which are relevant for the EU and consequently also for Germany.

<https://euipo.europa.eu/eSearch/>

## TMVIEW

<https://www.tmdn.org/tmview/welcome>

## Trade mark search

A thorough advance trade mark search will create the best conditions for a successful trade mark. The DPMA will help you right from the start. We give you important information and valuable advice on your trade mark search and provide best possible access to the official Trade Mark Journal. All important trade mark terms are explained in detail in the glossary (page 30). Should you have any questions, our staff will be pleased to help you.

## Tips for the trade mark search

It is your own responsibility to carry out a similarity and identity search. This will significantly raise your chances of obtaining a registered trade mark right that will last. Because the DPMA does not examine whether there are any identical or similar trade marks before registering your trade mark.

We recommend that you conduct searches not only in the databases of German national trade marks but also of European Union trade marks and international registrations of marks. The three databases indicated here are particularly useful for this purpose. Independently of each other, each register contains trade marks which are protected in Germany. Furthermore, names and logos, used in trade, may infringe other trade mark rights even if they were not entered in a Trade Mark Register.

For this reason, you should also look for identical or similar names in Internet search engines, telephone directories, commercial registers, publications on titles of works and/or business directories or other product directories.

Figurative elements of trade marks and pure figurative marks are also searchable. The international classification of the figurative elements of marks, the "Vienna Classification", constitutes a hierarchical system that proceeds from the general to the particular, dividing all figurative elements into categories, divisions and sections.

More detailed search information is available in our information leaflet “Trade Mark Searches – Online”. You can order a free paper copy directly from the DPMA or download it from our website.

Searches are also offered by various commercial search service providers and patent search agents, which you can find via all major Internet search engines.

More information on trade mark searches is available on our website.

### Telephone enquiries

You can contact the central customer care and services of the DPMA to gain detailed information on the filing routes, procedures and application requirements. We are also pleased to send you forms and information brochures. The central customer care and services can be contacted via the phone number +49 89 2195-1000.

The central customer care and services is not authorised to give legal advice. Under the Act on Legal Counselling (*Rechtsdienstleistungsgesetz*), only patent attorneys and lawyers may provide legal advice.

### Assistance with trade mark searches

Searches for identical trade marks and complex similarity searches are also offered by patent attorneys, lawyers specialising in trade mark law, specialist IP lawyers, search agents and the patent information centres. They can also provide access to commercial trade mark databases to you.

Patent attorneys, lawyers specialising in trade mark law and specialist IP lawyers will help you to interpret the search results and answer your questions about likelihood of confusion.

For address directories and links please contact our central Customer Care and Services or go to our website.

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[www.dpma.de/english/services/efiling/](http://www.dpma.de/english/services/efiling/)

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[www.dpma.de/english/trade\\_marks/trade\\_mark\\_search](http://www.dpma.de/english/trade_marks/trade_mark_search)

### Madrid Monitor

In Madrid Monitor you will find international applications and international registrations of marks.

[www.wipo.int/madrid/monitor/en/index.jsp](http://www.wipo.int/madrid/monitor/en/index.jsp)

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[www.dpma.de/english/services/customer\\_care\\_services](http://www.dpma.de/english/services/customer_care_services)

## Glossary

<b>Appeal on a point of law before the Federal Court of Justice</b>	Under certain conditions, an appeal on a point of law from a decision of the Federal Patent Court ( <i>Bundespatentgericht</i> ) can be brought to the Federal Court of Justice ( <i>Bundesgerichtshof</i> ).
<b>Appeal proceedings before the Federal Patent Court</b>	If an examiner of the DPMA refuses registration of a trade mark by a decision, the applicant can appeal against the decision to the Federal Patent Court within one month after service of the decision on refusal (see also “Special motion proceedings”).
<b>Applicant</b>	The applicant is the person who applies for trade mark protection (the future trade mark owner). An applicant may be any natural or legal person or, under certain circumstances, a partnership.
<b>Application date</b>	The date on which the DPMA receives the complete request for trade mark protection (trade mark application) is called “filing date” or “application date”. Normally, this filing date determines the priority of the application, that means it is essential for determining whether a conflicting trade mark has been filed earlier or later (see “Priority principle”).
<b>Bar to registration</b>	see “Grounds for refusal”
<b>Combined word/figurative mark</b>	Combined word/figurative marks consist of a combination of word elements and graphical elements, or of words in lettering styles.
<b>Decision on refusal</b>	If a sign is not capable of being protected, registration of the trade mark is refused by a decision (see “Grounds for refusal”).
<b>Decision to reject application</b>	see “Decision on refusal”

State emblems are flags, banners, armorial bearings, badges and official seals symbolising sovereignty (for example, the federal eagle, the German flag, the police star badge). A sign cannot be protected if it includes, copies or misuses a state emblem.

#### **Emblem of state**

The European Union Intellectual Property Office (EUIPO) is an official agency of the EU in charge of the registration of trade marks and designs that are valid in all countries of the EU. The EUIPO is located in Alicante, Spain.

#### **European Union Intellectual Property Office (EUIPO)**

By registering a trade mark at the European Union Intellectual Property Office (EUIPO), located in Alicante, Spain, the “European trade mark office”, the trade mark owner obtains protection in all countries of the European Union.

#### **European Union trade mark**

Figurative marks are pictures, graphical elements or images (without words or word elements).

#### **Figurative mark**

see “Application date”

#### **Filing date**

Successful trade marks run the risk of becoming synonyms for a whole category of products or services, for example “Tempo” for paper tissues or “Fön” for hairdryers.

#### **Generic term**

The DPMA is the German centre of excellence for all intellectual property rights – for patents, utility models, trade marks and designs. The staff of the office grant patents, register and manage utility models, trade marks and designs. They also provide information on industrial property rights to the public.

#### **German Patent and Trade Mark Office (DPMA)**

A trade mark is only eligible for protection if no absolute or relative grounds for refusal apply. While absolute grounds for refusal (non-protectability as a trade mark, lack of distinctiveness, the need to keep a term freely available for use by others, public interest) are examined by the DPMA before entering the trade mark in the Register, relative grounds objections (prior IP rights of others, non-use) can only be raised in opposition proceedings.

#### **Grounds for refusal**

<b>Harmonised Database</b>	<p>(“See Nice Classification”)</p> <p>Many national trade mark offices of the European Union have agreed on a list of about 70,000 classification terms, which have been translated in 27 languages and are accepted by the participating countries. This database (TMclass) is more comprehensive than the list of the Nice Classification, but uses the same systematic structure. For an online trade mark application, it is also available to you in a shopping basket function.</p>
<b>Indications of geographical origin</b>	<p>Indications of geographical origin of agricultural products and food stuffs are product names that invoke a direct association with a geographical location (for example, <i>Nürnberger Bratwürste</i>) or are closely linked to a geographical region (for example, <i>Spreewälder Gurken</i>).</p>
<b>International registrations of marks</b>	<p>Trade marks registered by the World Intellectual Property Organization (see “World Intellectual Property Organization [WIPO]”).</p>
<b>Licence/licensing</b>	<p>see “Trade mark licence”</p>
<b>Likelihood of confusion</b>	<p>There is a likelihood of confusion for trade marks if the public is under the impression that the goods or services bearing the later trade mark come from the company of the owner of the earlier trade mark.</p>
<b>List of goods and services</b>	<p>Trade marks identify products and services. Therefore, when applying for trade mark registration, the goods and services should be exactly indicated in a list of goods and services so that they can be clearly attributed to the appropriate classes of goods and services. This will help to clearly delimit the scope of protection of a trade mark in case of a later dispute.</p>
<b>Nice Classification</b>	<p>Nice Classification is short for “International Classification of Goods and Services for the Purposes of the Registration of Marks”. The name derives from the agreement concluded at the diplomatic conference of Nice on 15 June 1957, stipulating the establishment of the classification. Its 45 classes (34 for goods and 11 for services) contain all standardised and admissible terms necessary for the list of goods and services of an application.</p>

The classes of goods are roughly divided into product groups and material groups; the classes of services are divided into branches of activities (see “Harmonised Database”).

If the trade mark is not put to actual use within a period of five years from the date of registration in the Register, it may be cancelled. This compulsory use means that the trade mark must be put to genuine use in Germany by the trade mark owners for identifying their goods and services in trade.

If the application contains formal deficiencies, the applicant will be notified in detail about the deficiencies identified and invited to remedy them. If the trade mark is not regarded as being capable of protection, the applicant will be sent a notification on deficiencies explaining the grounds for refusal before the trade mark is refused registration.

The applicant may file a special motion against the decision to refuse registration of the trade mark. A second examiner (special motion examiner) will review the decision (see also “Appeal proceedings”).

All new trade mark registrations and changes regarding existing trade mark registrations are published electronically in the Trade Mark Journal (*Markenblatt*). Individual issues of the Trade Mark Journal are available from the [www.dpma.de/english/search/dpmaregister](http://www.dpma.de/english/search/dpmaregister) online service at [www.dpma.de/english](http://www.dpma.de/english) for download.

Within a period of three months after the day of publication of the trade mark registration, for example, the owner of an earlier trade mark right or of a commercial designation may give notice of opposition to the registration of the trade mark, if they think that their rights are being infringed.

During opposition proceedings the DPMA examines whether two conflicting signs are likely to be confused with regard to their names and the respective goods and services protected. The distinctiveness of the sign cited in the opposition must also be taken into consideration in this process. If there is a likelihood of confusion, the new trade mark registration can be fully or partly cancelled from the Trade Mark Register.

## **Non-use**

## **Notification on deficiencies**

## **Special motion proceedings (*Erinnerung*) DPMA**

## **Official (online) Trade Mark Journal**

## **Opposition**

## **Opposition proceedings**

<b>Priority principle</b>	In case of conflicting trade mark rights, the earlier trade mark takes priority. This means that the trade mark owner who was the first to obtain protection for that trade mark may exclude others from claiming or using the same or a similar sign.
<b>Publication</b>	All new trade mark registrations and changes regarding registered trade marks are published online in the Trade Mark Journal.
<b>Register</b>	see “Trade Mark Register”
<b>Registration</b>	After the examiner has examined the trade mark application and has not found any formal deficiencies or grounds for refusal, the trade mark will be registered in the national Trade Mark Register. The registration date is not identical with the filing date nor with the publication date of the trade mark.
<b>Registration certificate</b>	The DPMA will send the owner of the trade mark a certificate of the registration of the trade mark in the Trade Mark Register.
<b>Renewal</b>	After expiry of the ten-year duration of protection, the trade mark can be renewed every ten years for a further ten years by payment of a renewal fee (750 euros for three classes, 260 euros for every additional class).
<b>Revocation and invalidity</b>	Trade marks may be cancelled on grounds for revocation or invalidity – or because the trade mark owner has surrendered the trade mark.
<b>Right of use</b>	The trade mark owner has an exclusive right to the trade mark. A licensing contract may permit the use of the sign by a third party.

There are several options to challenge a decision or unfavourable legal status in order to have it changed or set aside. The following options are available in trade mark application procedures and opposition proceedings: special motion proceedings at the DPMA, appeal proceedings before the Federal Patent Court and, under certain conditions, proceedings with respect to appeals on points of law before the Federal Court of Justice.

### **Right to appeal**

The scope of protection of a trade mark is made up of

### **Scope of protection**

- a) the territorial scope of protection (the territory of the Federal Republic of Germany for a national trade mark registered in the Register kept at the DPMA),
- b) the distinctiveness, that means the trade mark's level of recognition by consumers (a trade mark having a high degree of distinctiveness usually has an average to above-average scope of protection),
- c) the number of goods and/or services for which the trade mark is registered.

see "Trade mark search"

### **Search**

Sound marks are acoustic, audible marks, that means sounds, jingles, melodies or other tunes or noises.

### **Sound mark**

Trade marks are signs that distinguish goods and services of an enterprise from those of other enterprises. Words, pictures, sounds, three-dimensional shapes, colours or other signs can be registered as trade marks in the Register of the DPMA. German trade marks last for ten years and can be renewed indefinitely thereafter.

### **Trade mark**

The trade mark application is a request for protection of a sign by registering the trade mark in the Trade Mark Register of the DPMA. The application contains information on the applicant, a representation (illustration) of the trade mark and the goods or services for which registration is requested. A trade mark application costs 300 euros including three classes. Each further class costs an extra 100 euros.

### **Trade mark application**

<b>Trade mark certificate</b>	see “Registration certificate”
<b>Trade mark journal</b>	see Official (online) Trade Mark Journal
<b>Trade mark licence</b>	By granting a trade mark licence, the trade mark owner can permit another person or company to use the trade mark – usually there is a licence charge.
<b>Trade mark office</b>	see “German Patent and Trade Mark Office (DPMA)” and “European Union Intellectual Property Office (EUIPO)”
<b>Trade Mark Register</b>	The Trade Mark Register is a register kept at the DPMA, which is publicly accessible at <a href="http://www.dpma.de/english/search/dpmaregister">www.dpma.de/english/search/dpmaregister</a> . It contains the following data: filing date and beginning of the duration of protection of a trade mark, representation (illustration) of the trade mark, the goods and services for which the respective trade mark is registered, trade mark number, applicant and owner of the trade mark, representative of the trade mark owner, whether the trade mark was registered because of its level of market recognition by trade circles and information as to whether the trade mark is subject of on-going opposition or cancellation proceedings.
<b>Trade mark search</b>	The DPMA does not check if there is another trade mark that is identical or similar to your sign. By performing a search for identical or similar trade marks before filing a trade mark application, the applicant should make sure that the trade mark chosen does not infringe third-party rights. The search should include national trade marks, European Union trade marks and international registrations of marks.
<b>Transfer</b>	Just like other rights, a registered trade mark or, as a rule, also a trade mark applied for can be transferred, in full or in part, to a new owner (natural or legal person).

Trade marks are classified according to the Vienna Classification to provide a means to search for figurative elements of trade marks and purely figurative marks, for example, in order to find conflicting earlier trade marks. The “Vienna Classification – International Classification of Figurative Elements of Marks” was adopted in Vienna in 1973. It constitutes a hierarchical system that proceeds from the general to the particular, dividing all figurative elements into categories, divisions and sections.

### **Vienna Classification**

Word marks are trade marks that consist of words, letters, numbers or other characters that are part of the standard set of characters used by the DPMA.

### **Word mark**

The World Intellectual Property Organization (WIPO) was established in 1967 to promote the protection of intellectual property throughout the world. Its headquarters are in Geneva. An application for international registration requesting trade mark protection in several countries in the world can be sent to WIPO through the DPMA. However, the precondition is a “German basic mark”, that means a trade mark application or trade mark registration recorded in the German Trade Mark Register.

### **World Intellectual Property Organization (WIPO)**

**Do you have any questions?**

We will be pleased to answer your questions and provide detailed information on the steps of a trade mark application. Visit us in Munich, Jena or Berlin. You are also welcome to contact us by phone, fax or e-mail.

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[www.dpma.de/english/services](http://www.dpma.de/english/services)

More information and all the required application forms are available on our website.

**Addresses and important telephone numbers:****German Patent and Trade Mark Office****Central Customer Care and Services**

Phone +49 89 2195-1000  
E-mail [info@dpma.de](mailto:info@dpma.de)

**Database hotline search support**

Phone +49 89 2195-3435  
E-mail [datenbanken@dpma.de](mailto:datenbanken@dpma.de)

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[www.dpma.de/english/services/  
public\\_relations](http://www.dpma.de/english/services/public_relations)

**Press and public relations**

Phone +49 89 2195-3222  
E-mail [presse@dpma.de](mailto:presse@dpma.de)

**Munich**

Zweibrückenstraße 12, 80331 München, Germany  
Fax +49 89 2195-2221  
Public search room +49 89 2195-3435

**Jena**

Goethestraße 1, 07743 Jena, Germany  
Fax +49 3641 40-5690

**Berlin**

DPMA Information and Service Centre  
(*DPMA Informations- und Dienstleistungszentrum Berlin*)  
Gitschiner Straße 97, 10969 Berlin, Germany  
Fax +49 30 25992-404  
Public search room +49 30 25992-230 or -231

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**Patent Information Centres**

E-mail [info@piznet.de](mailto:info@piznet.de)

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This information brochure aims at providing a first insight into the field of trade mark law. For this reason, it also contains simplified and generalised information. It does not attempt to provide a complete guide to or binding information on this complex matter. More detailed information is available on the website of the German Patent and Trade Mark Office ([www.dpma.de/english](http://www.dpma.de/english)).

