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DESIGNS

TRADE MARKS

CIPO Practice Direction No. 1 of 2024: Time Limits

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Introduction

This Practice Direction is to provide detailed, up-to-date directives as to the practice and procedures to be followed in relation to time limits in **The Trade Marks Act 2016** (“the Act”) and **The Trade Marks Regulations 2017** (“the Regulations”).

These directives are intended for both the staff of the Intellectual Property Office (IPO) for use as desk instructions in the carrying out of their daily duties and as guidance for registered agents as to the computation of time and the treatment of time limits by the IPO. This Practice Direction therefore makes the necessary clarifications in relation to time limits and will be adhered to effective 9 July 2024.

This Practice Direction will be updated as necessary to reflect changes in legislation or practice. If you notice any errors, please email info@ciipo.gov.ky.

Types of Time Limits

1.1 To progress filings through the relevant process, an applicant or proprietor must comply with the various requirements of the Act and the Regulations within given time limits.

1.2 There are two types of time limits: -

- i) Prescribed time limits – there are time limits set out in the Act or the Regulations which means the requirement must be met within that period. The extension of prescribed periods is governed by regulation 95 and may either be at the request of the person or party concerned or at the Registrar’s own initiative. The extension of such time limits requires the filing of a form and the payment of a fee and can be subject to such conditions as the Registrar may direct.

If a prescribed time limit has expired without the requirement being met, the IPO can treat an application as being withdrawn. This means that the applicant either accidentally missed the filing date or has chosen not to continue with the application by not meeting an official requirement.

- ii) Specified time limits – there are time limits where the IPO decides how much time the applicant must respond. Examples include time limits to file a translation or transliteration or a request for an extension of time to reply to the Registrar’s objections. Specified time limits are also extendable under regulation 95. Failure to meet a specified time limit results in discretionary refusal/withdrawal of the application.

Business hours and excluded days

2.1 The business hours of the IPO are Monday to Friday from 9:00 a.m. to 4:00 p.m.

2.2 Excluded days are Sundays and Public Holidays, in accordance with the Interpretation Act.

Time limits and computation of time

3.1 All forms or documents must be received by the IPO within the business hours specified in 2.1. A form or document cannot be deemed to be filed on a day when the IPO is not open for business.

3.2 The date on which any notice, letter or correspondence containing a time limit is sent will be excluded from the computation of time. For the avoidance of doubt, the expiry of a time limit will be calculated beginning on the date following the day on which the notice, letter or correspondence is sent.

3.3 Any filings received after 4:00p.m., on a day not being the last day of a time limit, will be given the following day, not being an excluded day, as its date of receipt.

- 3.4 Any filings received after 4:00p.m., on a day being the last day of a time limit, will be considered late and must be accompanied by a request for an extension of time for the Registrar's consideration, where the time limit is considered as "flexible" under the Regulations. If the time limit is not listed as "flexible", the IPO will treat the form or document as late and the form or document as being withdrawn or refused.
- 3.5 Any form or document which arrives at the IPO on a Sunday or Public Holiday, being excluded days, will be given the next working day as its date of receipt. The form or document will not be treated as filed late if it is filed on the next working day because, in the normal course of events, it would have been filed in time. This includes where the Sunday or Public Holiday is the last day of the time limit. For example, where a form or document is due on Sunday, and the following Monday is a public holiday, the due date will be the Tuesday following.
- 3.6 If the last day of a time limit is a Saturday, the time limit will not include the next following day, and the form or document to be filed must be received on the Friday prior, not being an excluded day, within the business hours specified in 2.1. If the Friday is a Public Holiday, 3.5 above will apply.

Extension of time limits

- 4.1 Regulation 95 sets out the various ways in which the time limits prescribed in the Regulations may be extended. Regulation 95 is governed by Schedule 4 of the Trade Marks Regulations 2017.
- 4.2 All requests for extension of time must be filed on the relevant form and accompanied by the prescribed fee. Requests for extension of time which are not received on the relevant form and/or without the prescribed fee will not be considered.
- 4.3 In dealing with an extension of time request, the applicant must identify the time limit which has been missed and therefore which computation of time rule in section 3 applies. The next step is to identify whether the time limit falls under those listed in Schedule 4, which are only extendable under the criteria outlined in regulation 95(5).
- 4.4 The request for extension of time must be made before the end of the period of sixty (60) days beginning with the date that the relevant time or period expired and must be supported by good reasons.
- 4.5 If more than sixty (60) days has elapsed after the time limit has expired without an extension request being made, the application or matter will be treated as withdrawn.

Non-extendable time limits

- 5.1 Time limits for matters listed in Schedule 4 of the Regulations cannot be extended unless it meets the criteria outlined in regulation 95(5). These include:-
- Regulation 29(1) (filing notice of opposition)
 - Regulation 30(1) (counter-statement in opposition proceedings)

- Regulation 69(4) (opposition to amendment of regulations of collective and certification marks)
- Regulation 41 (renewal of registration)
- Regulation 42(1) (late renewal)
- Regulation 43 (restoration of registration)
- Regulation 49(1) (counter-statement for revocation)
- Regulation 59(1) (counter-statement for invalidity)
- Regulation 73(2)(a) (opposition to removal of matter from Register)
- Regulation 95(4) (period for making a retrospective request to extend a flexible time period)

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