



At a glance: trademark registration and use in Mexico

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Registration and use

Ownership of marks

Who may apply for registration?

Any Mexican individual or entity, as well as any foreign individual or entity, may apply.

Scope of trademark

What may and may not be protected and registered as a trademark?

What may be protected and registered

Any sign that can be perceived by the senses; which is capable of being represented in a way that allows the precise object of the protection to be determined, and which distinguishes products or services from others of the same kind or class in the market. This includes traditional visible marks - namely, words, figurative elements, combined design word marks, slogans and colour combinations, as well as holographic signs, three-dimensional shapes, trade names and corporate names.

Non-traditional marks may also be registered: those perceived through other senses, such as sounds, scents, multimedia motion marks, position marks and trade dress marks which are understood as the plurality of operative or image elements, including, among others, size, design, colour, shape arrangement, label, packaging, decoration or any other that, when combined, distinguish goods or services in the market.

Certification marks are marks that certify the quality, origin, conditions or components characteristics of goods or services distinguished.

What may not be protected and registered

Flavour marks are not accepted for registration because the Mexican Trademark Office has determined that they are not listed in the law as distinctive signs that can be the subject of protection. However it has not considered that these marks are indeed noticeable through the sense of taste, and that it is possible to represent them in a manner that allows the owner of the mark to determine the object of protection - for example, with a description of the flavour or a formula for obtaining the same. Consequently, the range of possible non-traditional trademarks that can be protected in Mexico should be broader than the list included in the law, which should serve as a guide and not as a limiting catalogue.

A list of prohibitions and the only legal source for rejecting a trademark application is established in article 173 of the Federal Law for the Protection of Industrial Property (FLPIP). These prohibitions include:

- marks that could deceive the public about the nature, quality or commercial origin of the goods or services are not eligible for protection;
- words, phrases, denominations or figurative elements that have become commonplace or generic;
- three-dimensional shapes and holograms that are in the public domain;
- denominations of origin, geographical indications and denominations or signs of places characterised by the manufacture of certain products or services;
- names and denominations that are identical or confusingly similar to the titles of literary or artistic works, as well as the reproduction or imitation of the elements of such works;
- identical or similar signs that result in a likelihood of confusion with a well-known trademark in Mexico in consideration of the Mexican Institute of Industrial Property;
- signs identical or confusingly similar to a trademark in process of registration filed previously or to a registered and in-force trademark applied to the same or similar products or services. However, consents and coexistence agreements are recognised as valid means to overcome relative grounds objections; and
- descriptive and generic marks, although acquired distinctiveness is a valid means to overcome absolute grounds objections.

Unregistered trademarks

Can trademark rights be established without registration?

Although the most efficient way to protect a trademark under Mexican law is by registration, a trademark can be somewhat protected by factual law principles if, for example, said trademark has gained some level of recognition by being used for a significant amount of time or is distinctive enough. Also, well-known trademarks are protected even if they are not properly registered.

Famous foreign trademarks

Is a famous foreign trademark afforded protection even if not used domestically? If so, must the foreign trademark be famous domestically? What proof is required? What protection is provided?

In Mexico, a famous foreign trademark can be protected even if it is not used domestically; what must be proven is the how well known it is in Mexico.

A trademark is considered famous in Mexico if it is widely known by the majority of public consumers or recognised in global commerce.

Well-known marks are those that are known by a certain sector of public consumers or in commercial circles as a consequence of the commercial activities developed and the promotion or advertising of the same in Mexico or abroad.

There are two ways to recognise well-known or famous marks:

- litigation: through a legal action (cancellation or infringement) before the Mexican Institute of Industrial Property (IMPI); and
- administrative declaration: IMPI can issue an administrative declaration stating that the mark is famous or well known.

Proof is required of the mark's reputation, such as market surveys, sales data, advertising and media coverage, as well as the specific public sector or commercial knowledge, commercialisation channels, licences or franchises granted in relation to the mark.

Once obtained, the declaration can be renewed every five years, as long as the conditions still apply.

The benefits of registration

What are the benefits of registration?

The benefits of achieving registration for a trademark are the protection granted to the owner of said registration, which implies the exclusive rights to use the trademark, the ability to act against a third party using the trademark without authorisation, public notice and validity of the trademark, and protection against imitation, among others.

Filing procedure and documentation

What documentation is needed to file a trademark application? What rules govern the representation of the mark in the application? Is electronic filing available? Are trademark searches available or required before filing? If so, what procedures and fees apply?

The application should include:

- the applicant's full name and complete address;
- a description of the goods or services;
- a sample of the mark in JPEG or GIF format (if it includes any designs) to represent the mark clearly and precisely in the application;
- use in commerce in Mexico. Non-use basis applications are allowed under Mexican law, as use in commerce is not a requirement for obtaining registration. However, if the trademark is already in use in Mexico, it is recommended to provide the full date (day, month and year); and
- convention priority: if convention priority is to be claimed, it is necessary to provide the country of origin, application number, date of filing and the exact description of the goods and services.

Electronic filing is available for convenience.

While not mandatory, conducting a trademark search is advisable. It helps to identify potential conflicts and assess the availability and registrability of a mark.

The fees for searches may vary (approximately US\$358). The costs involved in filling trademark applications are the following:

- professional filing fees: US\$600 per mark and per class; and
- government fees: US\$209, per mark and per class.

Registration time frame and cost

How long does it typically take, and how much does it typically cost, to obtain a trademark registration? When does registration formally come into effect? What circumstances would increase the estimated time and cost of filing a trademark application and receiving a registration?

IMPI takes between eight and 10 months to issue the Certificates of Registration unless objections are raised, which can double the time frame. Registration will formally come into effect on the date the Certificate of Registration is issued.

The approximate costs of filing an application are:

- professional fees: around US\$600; and
- legal fees: US\$210.

If an opposition is filed against an application by a third party, or official actions are issued by the examiner concerning classification issues, or there are objections on absolute (inherent registrability) or relative grounds of refusal (availability), the costs will increase significantly, from US\$360 to US\$850 for reporting and filing a response or an opposition, depending on the complexity of the case.

Classification system

What classification system is followed, and how does this system differ from the International Classification System as to the goods and services that can be claimed? Are multi-class applications available and what are the estimated cost savings?

Mexico follows a single-class system for trademark applications based on the Nice International Classification System, as IP law does not allow multi-class applications. This approach ensures clarity and specificity. As for cost savings, it simplifies the process and avoids unnecessary fees associated with additional classes.

Examination procedure

What procedure does the trademark office follow when determining whether to grant a registration? Are applications examined for potential conflicts with other trademarks? Are letters of consent accepted to overcome an objection based on a third-party mark? May applicants respond to rejections by the trademark office?

The examiners will make a full study of the trademark to determine if this can achieve registration. These examinations will take into account the classification of the goods and services sought to be covered, the inherent registrability of the trademark (based on descriptiveness or lack of distinctiveness) and availability to

avoid potential conflicts with other registered trademarks.

If the examiner issues an objection based on the above grounds, these can be responded to and overcome.

As of 5 November 2020, letters of consent are expressly allowed to overcome an objection based on a third party's similar, confusingly similar or identical trademark.

Use of a trademark and registration

Does use of a trademark or service mark have to be claimed before registration is granted or issued? Does proof of use have to be submitted? Are foreign registrations granted any rights of priority? If registration is granted without use, is there a time by which use must begin either to maintain the registration or to defeat a third-party challenge on grounds of non-use?

In Mexico, trademark use is not required to secure a mark's registration. The right of exclusivity can only be obtained only through the grant of a trademark registration.

To maintain the validity of a registration, a declaration of use (DOU) must be filed for all trademark registrations within three months of the third anniversary of the registration date. This rule applies to registrations granted after 10 August 2018. If the trademark owner does not submit a DOU within the aforesaid time frame, the owner will lose registration rights. Note that the DOU is filed under oath without the need to submit evidence of use.

Foreign registrations do not automatically grant rights of priority in Mexico.

Markings

What words or symbols can be used to indicate trademark use or registration? Is marking mandatory? What are the benefits of using and the risks of not using such words or symbols?

The symbols used to indicate that a trademark is registered are ® and ™. These marks are not mandatory, but it is recommended, as they help to make the general public aware of the status of the trademark.

Appealing a denied application

Is there an appeal process if the application is denied?

In Mexico, if a trademark application is denied, there are several appeal options available:

- Review recourse: a review by IMPI can be requested within 15 working days of the notification of the refusal. This review is handled by a superior administrative officer at IMPI. This is advisable only if the

denial was due to a clear mistake. If the denial is based on absolute or relative grounds as per article 173 of the FLPIP, review recourse is not recommended, as the superior court is likely to uphold the refusal.

- **Appeal/nullity trial:** an appeal may be made to the Federal Court of Administrative Affairs (FCAA) within 30 working days of the notification of the refusal or the review decision. This appeal is reviewed by an administrative body (not a court of law) to determine if IMPI correctly applied the Industrial Property Law (IPL). The appeal is resolved by three administrative magistrates in public hearings, where arguments are submitted in writing. The appellant must prove that IMPI's refusal did not comply with the IPL. The losing party can further appeal to a federal circuit court within 10 working days of the FCAA's decision. The resolution of the circuit court is final. If IMPI loses the appeal, it must comply with the resolution within a short period.
- **Amparo suit:** on constitutional grounds, an *amparo* before the federal district court can be filed. Recent Supreme Court rulings have made *amparo* suits a viable option for appealing denied applications. These suits must be filed within 15 working days of the notification of the refusal. *Amparo* suits are highly technical procedural actions. One benefit is that they are resolved quickly, typically within two to five months, with stays reviewed within two days of filing. Another advantage is the high level of expertise among officers and judges in intellectual property matters.

Third-party opposition

Are applications published for opposition? May a third party oppose an application prior to registration, or seek cancellation of a trademark or service mark after registration? What are the primary bases of such challenges, and what are the procedures? May a brand owner oppose a bad-faith application for its mark in a jurisdiction in which it does not have protection? What is the typical range of costs associated with a third-party opposition or cancellation proceeding?

Once an application is filed before IMPI, it is published for opposition in the Industrial Property Gazette within the following 10 working days, granting any interested party a one-month term as of the publication date to oppose the registration.

The most relevant basis of said oppositions is the similarity to existing registered trademarks or prior rights of the opposing party. Other bases may include lack of distinctiveness, false or misleading information, descriptiveness or trademarks that are applied in bad faith, among others.

The procedure for opposition is as follows:

- A new application is published for opposition purposes within 10 working days of the filing date.
- Any interested party may submit a brief of opposition, within a non-extendable one-month term.
- The opposition brief shall be accompanied by all documentation supporting the opposition.
- Once the one-month term for opposition expires, IMPI will publish all oppositions filed within 10 working days.
- Owners of opposed applications will be served with an official action issued by IMPI containing the results of the official search examination and informing them of the filed oppositions, granting a two-month term that can be automatically extended for a further two months to raise arguments against the eventual objections/citations as well as the alleged grounds of opposition.
- IMPI will grant the parties a common five-day term to file closing arguments, which will begin from the day following the notification of the official action opening said term.
- It is important to note that an opposition will not suspend the processing of applications, as IMPI will continue to conduct its official examination of trademark applications on both absolute and relative grounds, in parallel with the opposition proceeding.
- IMPI will then issue a formal decision.

A mark owner can oppose an application based on bad faith, even if their mark is not registered in Mexico.

The average cost for filing an opposition amounts to US\$1,500, which includes the legal fees as well as the government fees.

Duration and maintenance of registration

How long does a registration remain in effect and what is required to maintain a registration? Is use of the trademark required for its maintenance? If so, what proof of use is required?

In Mexico, a trademark registration remains in effect for 10 years from the date of grant and can be renewed indefinitely for additional 10-year periods.

To maintain a trademark registration, it is necessary to file a declaration of actual use at two stages, namely:

- a declaration of actual and effective use of the registered mark to be submitted along with each renewal application (every 10 years); and
- a one-time declaration of actual and effective use, which must be submitted within three months after the third anniversary of the date of grant of the registration in Mexico.

There is no need to submit evidence of use for maintenance purposes.

Surrender

What is the procedure for surrendering a trademark registration?

If a trademark owner wishes to surrender (voluntarily cancel) a registration that is in full force, a writ must be filed with IMPI along with a special power of attorney for cancellation purposes.

Related IP rights

Can trademarks be protected under other IP rights?

Yes, in Mexico, trademarks can be protected under other intellectual property (IP) rights.

- copyright: certain elements of a trademark, such as logos or designs, can also be protected under copyright law;
- industrial designs: if a trademark includes a unique product design or configuration, it can be protected as an industrial design; and
- trade dress trademarks: the overall look and feel of a product or its packaging, known as trade dress, can also be protected if it is distinctive and non-functional.

These additional protections can provide broader coverage and help prevent unauthorised use of a trademark in various forms.

Trademarks online and domain names

What regime governs the protection of trademarks online and domain names?

The regime that governs the protection of trademarks online is the Industrial Property Law. Domain names are regulated by the Mexican Domain Name Registry (NIC Mexico).