



TAIWAN EXAMINATION PRINCIPLES ON TRADEMARK APPLICATION INCLUDING CROSS DEVICE

Taiwan Intellectual Property Office (TIPO) announced and implemented “Examination Principles for Trademarks which include the Cross Device” on July 30, 2019. Since a trademark with cross-like element or device may imply different meanings and cause misunderstandings among consumers, TIPO now provides examination principles for examiners and applicants with examples for the future applications. In addition, TIPO iterates that a trademark application will be examined on a case-by-case basis and shall not be bound by decisions from precedents (stare decisis).

Scope of Applicability

The cross device in a trademark is defined as a cross constituting by vertical and horizontal lines of equal or equal-like length, without special design of its outer edge, and is applicable to regular trademarks, collective trademarks, certification marks and collective membership marks.

Distinctiveness

Basically, a trademark shall refer to any sign with distinctiveness, and distinctiveness refers to the character of a sign capable of being recognized by consumers as an indication of the source of goods or services (Article 18 of Trademark Act). The descriptive part of a trademark will be deemed lacking in distinctiveness, and if it could cause doubts as to the scope of the trademark rights, then a disclaimer on said part should be made (Article 29 of Trademark Act). However, for a cross device of trademark which designates medical-related goods or services, a disclaimer may not be necessary because a cross device is a common pattern or logo in the medical industry, despite of the descriptive part shown by said cross device.

Item 5, Paragraph 1, Article 30 of Trademark Act

A trademark shall not be registered if it is identical with or similar to the armorial bearings, flags, other emblems, abbreviations or names of international/intergovernmental organizations or well-known domestic/foreign institutions. In order to protect institutions of public interest and avoid misleading the public, the cross device contained in a trademark must not be identical or similar to the typical logo bearing a red cross in white ground of Red-Cross International Society.

Item 8, Paragraph 1, Article 30 of Trademark Act

A trademark shall not be registered if it is likely to mislead the public as to the nature, quality or place of origin of the goods or services. For a cross-device contained trademark which designates foods, healthy products, cosmetics, or their related goods/services, its trademark specimen shall not be simultaneously constituted by words or pattern indicating possible medical effects. According to the relevant regulations for foods or cosmetics, the wording of medical effects is prohibited for use in goods, so that the consumers would not be misled and suffered damage or loss.

Albeit not mentioned in the said Examination Principles, if a trademark contains a white cross with red background, it may be rejected by identity/similarity with Swiss national flag/emblem per Item 2, Paragraph 1, Article 30 of Trademark Act.

Therefore if a trademark application contains a cross device and is deemed as not meeting the above requirements, the applicant may file an amendment with TIPO to make necessary deletion or revision without substantial changes, in order to conquer the objection/rejection.