

**Intellectual Property Department
Government of the Hong Kong SAR**



Circular No. 2 of 2003

**Sending documents by facsimile transmission and filing of forms
Trade Marks Ordinance (Chapter 559)**

Rule 108 of the Trade Marks Rules (Chapter 559 sub. leg.) provides that any document or other thing required or authorized by the Ordinance or the Rules to be filed with the Registrar must be delivered to the Registrar at the Registry during the normal business hours of the Registry or sent to the Registrar by post.

Documents delivered by hand at the counter of the Trade Marks Registry and documents sent through the post to the Registry are recorded when received. Forms and accompanying documents so received are scanned into and viewed through the computer system. It is in the interest of users that all documents in our system are clear, so as to avoid doubt as to the scope of exclusive right sought by individual applicants. The quality of facsimile transmitted documents varies and there may be particular difficulties with representations of marks in colour or which incorporate photographic or other forms of representation. Facsimile transmission is also not an infallible means of transmission, and interception of data, or misdirection due to operator or technical error is possible.

Rule 109 empowers the Registrar to permit, as an alternative to the filing of a document with the Registrar in a paper or other physical form, the filing of an electronic record of that document or the sending of such record by electronic means to a designated information system. The department is in the process of developing a computer system for accepting electronic filing of documents to a secure designated information system.

This is to make it clear that –

- (i) all trade mark forms under the Trade Marks Ordinance (Cap. 559)¹ and all evidence, certificates and other documents (except correspondence) must be filed either **by hand** at or **by post** to the Registry, until the Registrar specifies the alternative of electronic filing under Rule 109; and

¹ Under the old law, all prescribed forms must be filed by hand or by post (rule 97, Chapter 43 sub. leg.).

- (ii) the Trade Marks Registry will accept **correspondence** sent to the Registry by facsimile transmission, subject to the conditions referred to in the next paragraph.

The conditions are:

- (i) all correspondence transmitted by facsimile must be legible and the responsibility for ensuring legibility rests with the sender;
- (ii) if any part of the correspondence received is illegible, it cannot be treated as filed until it is received in its entirety in a clear and legible form; and
- (iii) correspondence received after the specified hours of business, or on a day which is not a business day, shall be deemed to have been received on the next business day.

Important Note: facsimile transmission is not an infallible means of transmission. Interception of data, or misdirection due to operator or technical error is possible. Sending of anything to the Registrar by facsimile transmission is at the sender's risk. Users are strongly advised against sending correspondence by facsimile transmission when a non-extendible deadline is imminent.

(Stephen Selby)
Registrar of Trade Marks

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