



## 22 Agents

### Contents

[1. Introduction](#)

[2. Definition and powers of an agent](#)

[2.1 Refusal to recognise an agent](#)

[3. Authorisation of agent](#)

[3.1 Assignment and transmission](#)

[3.2 General authorisation of agent](#)

[3.3 Mergers](#)

[3.4 Renewals](#)

[3.5 Change of name or address](#)

[4. Change of agent](#)

[4.1 Licensees](#)

[5. Alteration of an authority](#)

[6. Revocation of an agent](#)

[7. Filing of documents](#)

[7.1 Filing locations](#)

[Appendix 1: Application for an authorisation, alteration or revocation of an agent](#)

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## 1. Introduction

Section 190(1) of the Trade Marks Act 2002 (“the Act”) provides for the recognition of agents. Section 199(d) of the Act allows for the making of regulations for the purpose of prescribing classes of persons whom the Commissioner may refuse to recognise as agents in respect of proceedings.

Regulation 19 of the Trade Mark Regulations 2003 (“the Regulations”) defines the meaning of “agent”. Regulation 20 of the Regulations allows an agent to act on behalf of a principal for the purposes of the Regulations.

Regulation 21 of the Regulations allows the Commissioner to serve and give notices to agents. Regulation 22 of the Regulations prescribes the requirements for authorising an agent.

Regulations 23 and 24 of the Regulations set out persons the Commissioner may refuse to recognise as agents.

Regulation 25 prescribes the requirements for the revocation or alteration of the authority of an agent.

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## 2. Definition and powers of an agent

Anything that must be done by or to a person under the Act in relation to a trade mark may be done by or to the person’s expressly authorised agent.<sup>1</sup>

An “agent” is defined in the Regulations as a person:<sup>2</sup>

1. who is authorised by the agent’s principal (X) to act for X in any proceeding in accordance with these regulations or to take any step on X’s behalf under these regulations; and
2. for whom recognition has not been refused by the commissioner under regulation 23.

An agent is authorised by the principal to act for them in any proceeding in accordance with the Regulations or to take any step on the principal’s behalf under the Regulations. Therefore, subject to the scope of an agent’s authority the agent may do anything on the principal’s behalf that must be done in relation to a trade mark under the Act or Regulations.<sup>3</sup>

The agent's authority extends to the signing of documents.<sup>4</sup> However the Commissioner may, in any case, require that the principal and not the agent sign a document.<sup>5</sup>

The Commissioner may serve on, give notice to, or correspond with an agent for the purpose of satisfying any requirement under the Regulations.<sup>6</sup> However this does not apply for any matter whereby the agent's authority has been expressly excluded.<sup>7</sup>

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## Footnotes

<sup>1</sup> Section 190 of the Trade Marks Act 2002.

<sup>2</sup> Regulation 19 of the Trade Marks Regulations 2003.

<sup>3</sup> Section 190(1) of the Trade Marks Act 2002 and regulation 20(1) of the Trade Marks Regulations 2003.

<sup>4</sup> Regulation 20(1) of the Trade Marks Regulations 2003.

<sup>5</sup> Regulation 20(2) of the Trade Marks Regulations 2003.

<sup>6</sup> Regulation 21(1) of the Trade Marks Regulations 2003.

<sup>7</sup> Regulation 21(2) of the Trade Marks Regulations 2003.

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## 2.1 Refusal to recognise an agent

The Commissioner may refuse to recognise a prescribed class of person as an agent.<sup>8</sup> The prescribed class of person that the Commissioner may refuse to recognise as an agent includes a person:<sup>9</sup>

- Who is suspended from practice before the Patent Office; or
- Whose name has been removed from the register of patent attorneys under section 102 of the Patents Act 1953, and has not been restored to the register; or
- Whose name has been removed from or struck off the roll of barristers and solicitors under the provisions of the Law Practitioners Act 1982, and has not been restored to the roll; or
- Who is suspended from practice as a barrister or solicitor; or
- Who has been convicted of an offence specified in Part X (except sections 293 to 305) of the Crimes Act 1961 or who has been convicted of an equivalent offence in another country.

Where the Commissioner refuses to recognise a person as an agent, the Commissioner will notify that person and that person's principal in writing.<sup>10</sup>

The notification will explain how the person does not comply with the requirements of the Act, and will invite the person to respond. The notification will give the person a time limit within which to respond.

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## Footnotes

<sup>8</sup> Section 190(2) of the Trade Marks Act 2002.

<sup>9</sup> Regulation 23 of the Trade Marks Regulations 2003.

<sup>10</sup> Regulation 24 of the Trade Marks Regulations 2003.

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## 3. Authorisation of agent

<sup>11</sup>Where an agent makes an application for the registration of a trade mark, a written authorisation of agent is not required from the agent's principal, unless the Commissioner asks for written authorisation in a particular case.<sup>12</sup> The fact that the agent files the application is sufficient evidence of the agent's authority to do so.

Where an agent replies to a Compliance Report and the trade mark applicant did not list an agent at the time the trade mark application was filed, a written authorisation of agent is not required from the agent's principal unless the Commissioner asks for written authorisation in a particular case.<sup>13</sup> The fact that the agent files the reply is sufficient evidence of the agent's authority to do so.

The agent replying to the Compliance Report will be entered as the agent for the trade mark.

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#### Footnotes

<sup>11</sup>Practice Guideline Amendment 2007/04, Intellectual Property Office Newsletter, 1 August 2007.

<sup>12</sup>Regulation 22(1) of the Trade Marks Regulations 2003.

<sup>13</sup>Regulation 22(1) of the Trade Marks Regulations 2003

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### 3.1 Assignment and transmission

Where an agent makes an application for the assignment or transmission of a trade mark on behalf of an assignee, a written authorisation of agent is not required from the assignee, unless the Commissioner asks for written authorisation in a particular case.<sup>14</sup> The fact that the agent files the application for assignment or transmission is sufficient evidence of the agent's authority to do so.

The agent requesting the recordal of the assignment or transmission will be entered as the new agent for the trade mark. Where the agent is only authorised to execute the recordal of the assignment and not to be entered as the agent for the trade mark, then this should be made clear on the application for assignment or transmission.

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#### Footnotes

<sup>14</sup>Regulation 22(1) of the Trade Marks Regulations 2003.

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### 3.2 General authorisation of agent

An agent may file a general authorisation of agent. A general authorisation of agent covers all intellectual property files relating to a particular proprietor.

When an agent submits a general authorisation, the authorisation is assigned a reference number. This file is kept at IPONZ and allows staff to ascertain whether organisations submitting legal documentation on behalf of others, are authorised to do so.

A general authorisation does not alter the address for service of any of the files it relates to.

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### 3.3 Mergers

Where a different agent to the one listed on the trade mark application or registration makes an application for the merger of two or more trade mark applications or registrations on behalf of an applicant, a written authorisation of agent is not required, unless the Commissioner asks for written authorisation in a particular case. <sup>16</sup> The fact that the agent files the application for merger is sufficient evidence of the agent's authority to do so.

The agent requesting the merger will not be entered as the new agent for the trade mark unless the agent files a specific authorisation of agent.

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#### Footnote

<sup>16</sup> Regulation 22(1) of the Trade Marks Regulations 2003

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### 3.4 Renewals

Where a different agent to the one listed on the trade mark application or registration makes an application for renewal or a trade mark registration on behalf of an applicant, a written authorisation of agent is not required, unless the Commissioner asks for written authorisation in a particular case.<sup>17</sup> The fact that the agent files the application for renewal is sufficient evidence of the agent's authority to do so.

The agent requesting the renewal will be entered as the renewal interest for the trade mark unless the Commissioner is advised otherwise.

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#### Footnote

<sup>17</sup> Regulation 22(1) of the Trade Marks Regulations 2003.

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### 3.5 Change of name or address

<sup>18</sup>Where a different agent to the one listed on the trade mark application or registration makes an application for a change of name or address on behalf of an applicant or the owner of a trade mark, a written authorisation of agent is not required, unless the Commissioner asks for written authorisation in a particular case.<sup>19</sup> The fact that the agent files the application for a change of name or address is sufficient evidence of the agent's authority to do so.

The agent requesting the change of name or address will **not** be entered as the new agent for the trade mark unless the agent files a general or specific authorisation of agent.

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#### Footnotes

<sup>18</sup>Practice Guideline Amendment 2008/04, Intellectual Property Office Newsletter, April 2008.

<sup>19</sup> Regulation 22(1) of the Trade Marks Regulations 2003

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## 4. Change of agent

A new authority to act as an agent is required whenever there is a change of agent. Where a new agent is appointed, the trade mark

applicant or registration owner (“the principal”) must file a written authorisation of agent as soon as practicable after the new agent is appointed.<sup>20</sup> The authorisation of agent must be signed by the principal and contain the following information:<sup>21</sup>

- The principal’s name and address for service;
- The agent’s name;
- The number(s) of the trade mark(s) for which the agent is authorised to act on behalf of the principal; and
- A statement of any limitation on the authority of the agent to act for the principal.

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#### Footnotes

<sup>20</sup> Regulation 22(1)(b) of the Trade Marks Regulations 2003.

<sup>21</sup> Regulations 22(2) and 22(3) of the Trade Marks Regulations 2003.

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## 4.1 Licensees

Where a new agent is appointed for a licensee, the licensee must file a written authorisation of agent as soon as practicable after the new agent is appointed.<sup>22</sup> The authorisation must be signed by the licensee and contain the following information:<sup>23</sup>

- The name of the proposed licensee and their address for service;
- The agent’s name and address for service;
- The number of the trade mark(s) for which the agent is authorised to act on behalf of the licensee; and
- A statement of any limitation on the authority of the agent to act for the licensee.

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#### Footnotes

<sup>22</sup> Regulation 22(1)(b) of the Trade Marks Regulations 2003.

<sup>23</sup> Regulation 22 of the Trade Marks Regulations 2003.

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## 5. Alteration of an authority

A principal must, as soon as practicable, give written notice to the Commissioner of the alteration of the authority of their agent.<sup>24</sup>

The notice must be signed by the principal and contain the following information:<sup>25</sup>

- The principal’s name and address for service;
- The agent’s name;
- The number of the trade mark for which the agent is authorised to act on behalf of the principal;
- A statement setting out the alteration in authority; and
- A statement setting out the matters for which the agent continues to have authority.

A valid notice of the alteration of the authority of an agent is effective from the date the Commissioner receives it.<sup>26</sup>

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#### Footnotes

<sup>24</sup> Regulation 25(1) of the Trade Marks Regulations 2003.

<sup>25</sup> Regulations 25(2) and 25(3) of the Trade Mark Regulations 2003.

## 6. Revocation of an agent

A principal must, as soon as practicable, give written notice to the Commissioner of the revocation of the authority of their agent.<sup>27</sup>

The notice must be signed by the principal and contain the following information:<sup>28</sup>

- The principal's name and address for service;
- The agent's name;
- The number of the trade mark for which the agent is authorised to act on behalf of the principal; and
- A statement that the agent's authority is revoked.

A valid notice of the revocation of the authority of an agent is effective from the date the Commissioner receives it.<sup>29</sup>

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### Footnotes

<sup>27</sup> Regulation 25(1) of the Trade Marks Regulations 2003.

<sup>28</sup> Regulations 25(2) and 25(3) of the Trade Mark Regulations 2003.

<sup>29</sup> Regulation 25(4) of the Trade Marks Regulations 2003.

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## 7. Filing of documents

An application for the authorisation, alteration or revocation of an agent must be made in writing. The Commissioner will accept any manner of written communication that contains all the requirements for filing the documents under the Act.

IPONZ has provided an example form for authorisation, alteration or revocation of an agent.<sup>30</sup> This form simply illustrates one format and is not the only format that will be acceptable.

There is no fee for filing an application for the authorisation, alteration or revocation of an agent.

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### Footnotes

<sup>30</sup> See Appendix 1.

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### 7.1 Filing locations

<sup>31</sup> An application may be made through our [online correspondence facility](#), which is available everyday, 24 hours a day.

Alternatively, a paper application may be filed between 8.30 am and 5 pm, Monday to Friday (not including public holidays). For our postal details please see [contact us](#).

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**Footnote**

<sup>31</sup> IPONZ Newsletter February 2007. Please note, the "Late Filing Box" facility (where clients could deposit correspondence after business hours in Lower Hutt) was discontinued on 15 February 2007.

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## **Appendix 1: Application for an authorisation, alteration or revocation of an agent**

[Appendix 1: Application for an authorisation, alteration or revocation of an agent \[66 kB PDF\]](#)