

12. Amendments to trade mark applications

9 Correcting an error on the day of filing an application

In limited circumstances the Office may correct an error on the day which an application is filed. In order for such an error to be corrected the request must be both made and processed on the day the application is filed. In situations where requests are not processed on the day of filing the corrections may still be made, but the filing date will need to be changed to the date on which the request is processed.

9.1 Correcting a mark on the day of filing

Upon filing a trade mark application, should the Applicant apply with the incorrect trade mark, the Applicant may request the mark be amended.

The Applicant must request that the mark be amended immediately via an amendment request.

The Applicant must also ensure that the Office is made aware of the amendment to allow its immediate processing.

If the amendment request is not processed on the date of filing the application, the filing date of the application will be amended to the date that the request is processed by the Office.

9.1.1 Correcting a mark after the day of filing

Once the examination of the mark has commenced, applicants may request that the Commissioner correct an error or omission in the trade mark itself. Refer to Requirement 6.1 [hyperlink - <http://www.iponz.govt.nz/cms/trade-marks/practice-guidelines-index/practice-guidelines/amendments-to-trade-mark-applications#6.1>]

9.2 Correction of specification

Upon filing a trade mark application, should the Applicant apply with an incorrect specification or if the specification has omitted some of the goods or services for which protection is sought, the Applicant may request the specification to be amended.

If the amendment falls within the scope of the specification as filed, this amendment can be processed at any time.

If the amendment would broaden the scope of the application, such as adding additional classes to the application, the Applicant must request that the mark be amended on the filing date via an amendment request.

The Applicant must also ensure that the Office is made aware of the amendment to allow its immediate processing.

The request must be made and processed on the filing date in order to retain the original filing date for the application. If the request is made after the filing date, or processed after the filing date, the scope of the application is broadened, and the filing date of the application will be amended to the date that the request is processed by the Office.

9.3 Correction of legal name

If the application is filed in the name of the wrong applicant in error, the ownership of the mark can be corrected.

Where the incorrect name is a legal entity, the correct name can be recorded on the application by filing a change of ownership request. This request will require supporting documentation such as a Statutory Declaration from the person who filed the application, explaining the error and confirming the true owner of the mark.

Where the applicant is not in the name of a legal entity, the correct name can be requested via a change of name request.

9.4 Additional application details

If information pertinent to the scope of the application is listed in the additional application details such as additional trade marks or additional goods and services, the Office will contact the applicant to seek clarification of scope of the application.

If they applicant wishes to proceed with these additional trade marks (in a series application), a different trade mark to the one currently depicted on the application or for a broader specification, the applicant will need to file an amendment request to record these changes.

As the information was present at the time of filing, but was not visible on the public record for the application, the change will broaden the scope of the application. Therefore the Office will allow the correction of the application, however, the filing date of the application will be amended to the date that the amendment correcting the error is processed.

To ensure the timely processing of the amendment, the applicant should advise the Office that the amendment request has been lodged in the system.

The filing date of the application will then be amended to date the amendment is processed.