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Changes to Canada's Trademark Law

2019 marked a major change for trademark law in Canada which has impacted businesses seeking trademark protection. The registration processes for trademarks within Canada have recently changed in order to align with international trademark laws.

The updated trademark law is now aligned with international standards, including the Madrid protocol, Singapore Treaty, and Nice Agreement. In practice this means that Canadian trademarks are now more internationally recognized and allows an applicant to file in Canada and have trademark protection in over a hundred countries. These changes have had a wide-spreading impact on businesses seeking to file and protect their trademarks. Business owners must ensure that they are aware of the changes particularly regarding the renewal period and government fees associated with trademarks. Important changes are listed below.

Classification of goods in alignment with the Nice Agreement

- Applicants are required to classify their goods or services in alignment with the Nice Agreement. This refers to a classification system where goods are divided into 34 classes and services are divided into 11 classes of services.

Changes to the filing system:

- A significant change impacting business is the change from the “first to use” system to the “first to file” system. This means that businesses do not have to test out the subject of the trademark prior to filing the trademark application.

Eligibility of goods and services:

- Trademarks have been expanded in their definition to include elements such as scent, taste and texture. These elements will be examined to determine if they are distinct as an indicator of source.

Fees:

- Online application: \$491.06 for the first class of goods or services, plus \$149.04 for each additional class.
- Application submitted by any other means: \$640.10 for the first class, plus \$149.04 for each additional class.
- Online renewal: \$595.06 for the first class, plus \$185.49 for each additional class.
- Renewal submitted by any other means: \$744.10 for the first class, plus \$185.49 for each additional class.

Canadian Intellectual Property Office (CIPO) adjusts certain fees annually. Confirm the current amount on the official fee page before filing or publishing a future version of this guide.

**Terms:**

- The term for trademarks has decreased from 15 years to 10 years. Thus, if a trademark holder is seeking a renewal of a trademark, they will have to file a renewal every 10 years instead of every 15 years. Trademark holders may only pay renewal fees 6 months before expiry and may not file any earlier.

Need requirement:

- Applicants are no longer required to specify the “need” element of the trademark application. This has further eliminated the requirement for the applicant to assert that they will be intending on selling, trading or using the product in a public domain. There is also no requirement to provide a date of use. This is a distinct departure from the first to use system which previously existed in Canada as the “use” element is no longer applicable to the trademark application.

Amending and editing applications

- Greater flexibility has been provided to correct errors made in applications. There is also the ability to divide applications and merge them.

Practical steps for businesses

- Search the Canadian Trademarks Database before choosing or investing in a brand.
- Define the goods and services carefully and check the Nice classes before filing.
- Consider a registered trademark agent where the mark, ownership, goods and services, or international strategy is complex.
- Budget for class-based fees and ten-year renewals.
- Do not assume that a business-name registration, domain name or social-media handle creates trademark rights.

Official sources

[CIPO - Trademarks](#)

[CIPO - Fees for trademarks](#)

[CIPO - File a new or amended trademark application](#)

[CIPO - Registration and renewal of trademarks](#)

[CIPO - How a trademark application is processed](#)

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