

香港特別行政區政府
知識產權署



通告第 2 / 2003 號

提交表格及以傳真方式送交文件
《商標條例》(第 559 章)

根據商標規則(第 559 章附屬法例)第 108 條，商標條例或商標規則規定或授權向處長提交的任何文件或其他東西，必須在正常註冊處辦公時間內於註冊處向處長交付或以郵遞方式向處長送交。

商標註冊處於收到由專人交付註冊處櫃檯及以郵遞方式送交註冊處的文件後將予以記錄。如此方式收到的表格及相關文件經掃描後在電腦系統中顯示。確保本處系統內的文件清晰，以避免對個別申請者所要求的專有權的範圍產生疑問，乃符合使用者的利益。以傳真傳送的文件，其質量參差，若傳真之文件包括有顏色的商標圖示或含相片或其他形式的圖示則尤其困難。傳真亦並非一絕對可靠的發送方式；資料被攔截，或因操作員或技術上錯誤而誤送他方實屬可能。

根據商標規則第 109 條，處長可准許提交文件的電子記錄或採用電子方法向處長送交該等電子記錄至指定的資訊系統，作為以紙張或其他實物形式提交文件以外的選擇。本處現正發展一套電腦系統以至能夠接受電子提交文件到可靠的指定資訊系統中。

謹此陳明以下事項：

- (i) 直至處長根據商標規則第 109 條指定電子交付作為另外的選擇前，所有根據商標條例(第 559 章)¹提交的表格，所有證據、證書及其他文件（信件除外），均需由專人或藉郵遞提交至本註冊處；及

¹ 根據舊有法律，所有訂明表格必須由專人或藉郵遞提交(第 43 章附屬法例第 97 條)。

(ii) 在符合下段所述各條件的前題下，商標註冊處將接受以傳真方式送交註冊處之信件。

上述條件為：

- (i) 所有以傳真方式傳遞的信件字跡必須清楚；確保此等信件清晰的責任歸送交者；
- (ii) 倘若信件的任何部份並不清晰，直至整份清晰及字跡清楚的信件獲接收前，該信件將不能被視為已經提交；及
- (iii) 於註冊處指定辦公時間外，或在非辦公日接獲之信件，將視為在下一辦公日收訖。

重要註明：傳真並非一絕對可靠的發送方式。資料被攔截，或因操作員或技術上錯誤而誤送他方，實屬可能。送交者須承受以傳真方式向註冊處長送交文件的潛在風險。若有不能延展的期限將至，本處鄭重勸喻使用者不要採用傳真方式送交信件。

商標註冊處處長謝肅方

謝肅方（知識產權署署長）

檔號：165/TMR/97

日期：二零零三年八月二十九日

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)² 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
- (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;

² Under the old law, all prescribed forms must be filed by hand or by post (rule 97, Chapter 43 sub. leg.).

- (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

[Stephen Selby] (DIP)
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