



## Intellectual Property in Bermuda

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Bermuda is a large Intellectual Property (**IP**) centre as its developed economy and business focus and infrastructure have created an allure and need for IP rights. Many multinational and blue chip companies have benefitted from utilising Bermuda by selling or licensing their IP rights to their company in the jurisdiction to capitalise on advantageous tax benefits. The Bermuda based company collects fees and other revenue associated with the intellectual property they hold and are able to repatriate funds in accordance with favourable tax considerations. Bermuda offers comprehensive IP registration through developed IP legislation; being a common law jurisdiction, it continues to evolve and develop in accordance with industry changes. Many well-known brands and companies are represented and conduct business in Bermuda.

The prevalence of a global economy has made IP protection essential in this generation. The continued growth, use and development of internet goods and services, has led to the erosion of traditional geographical borders. As a result, it can be difficult to determine the origin of such goods and services and easier for fraudsters to pass off their goods and/or services.

Intellectual Property protection in Bermuda is available for trademarks, patents, copyright, and designs. The available relief for infringement are injunctions (permanent or emergency), Anton Piller orders, discovery upon oath, damages, delivery up of infringing article and/or destruction, and enquiry as to damages or an account of profits.

### **Trademarks**

Trademarks are registerable under the Trade Mark Act 1974 (as amended). Successful registration gives the proprietor exclusive rights to use, assign, or license the mark on the goods and /or services accepted by the application. It is possible for an unregistered trademark to be protected at common law if the proprietor can establish long and extensive use. Bermuda is a single class jurisdiction and use of a trademark is not required on application. However, if the trademark is not used for a continuous period of five (5) years, it may be vulnerable to cancellation.

Trademark law in Bermuda is largely based on the UK Trade Marks Act 1938, however Bermuda operates an independent trademark Register at the Government of Bermuda Intellectual Property Office. The International Nice Classification system is used for class of goods and service. Initial registration lasts for seven (7) years after which it can be renewed for further periods of fourteen (14) years. Bermuda is not a signatory to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (**PCT**), or the GATT TRIPS agreement.

### **Copyright**

Copyright in Bermuda is protected by the Copyright and Designs Act 2004 (**2004 Act**), which is based on the copyright provisions under the UK Copyright, Designs and Patents Act 1988. The 2004 Act provides that copyrights subsist in original literary, dramatic, musical and artistic works, sound recordings, films, broadcasts, typographical arrangements and databases. Each potential copyright must satisfy the requirements under the 2004 Act. As in other common law jurisdictions, protection becomes effective at the time the work is created with

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the first owner being the author, unless another arrangement such as an assignment exists, and no registration is required (nor possible).

Designs can also be protected by the 2004 Act where a copyright subsists in a design document or model where it is not artwork. Where copyright exists in a design, the protection lasts for a maximum of fifteen (15) years. The author/owner of a design can register it under the Patents and Designs Act 1930 (**1930 Act**) if the design relates to specific goods. Unlike trademark registration above, the 1930 Act allows for a registered UK design to extend to Bermuda, without any further formability. Copyrights in a design are protected for a maximum of fifteen (15) years (made up of three (3), five (5) year terms).

### **Patents**

The 1930 Act provides patent protection in Bermuda. The Bermuda Intellectual Property Office currently requires that a national patent application be sent to the UK for search and examination. The 1930 Act allows for a confirmatory patent process which is a less expensive means of securing protection in Bermuda. Any UK patent or European patent designating the UK can be reregistered in Bermuda within three (3) years of the original grant. Recently, the Government of Bermuda has published a draft new Patent Act (**Draft Patent Act**) modelled on the Guernsey statute. The new law (in its current form) would allow for local broader reregistration of patents which would include PCT countries.

The Draft Patent Act provides a more definitive set of requirements, in order for an invention to be registered as a patent. The Draft Patent Act is based on Guernsey legislation, which allows for patents to be registered in Bermuda based on patents that are registered overseas. A list of the patent jurisdictions this applies to will be included in the new patent act. The Draft Patent Act also allows for inventions that are new, inventive (or involve an inventive step) and capable of industrial application to be registered, provided the invention is not contrary to public policy or morality.

### **Importance of IP Protection**

Protecting IP rights is just as important as protecting any other company asset or trade secret. Without offering adequate protection, innovation would taper off, research and development would appear far more risky, as there would be no guarantee that findings and or developments would be protected. Without such protection the benefit of such creations as the "good will" attached to a trademark, the industrial applicability of a patent, or success of a piece of literature may be taken advantage of by an individual or corporation in bad faith. The statutes referenced in this article are designed to allow a registered proprietor, or copyright owner to benefit from their creation and deal with them as they wish.

Intellectual property rights and their protection in Bermuda have continued to grow with the trends of other common law jurisdictions. Bermuda's recent push toward drafting a new legislation involving patent registration and protection in Bermuda ensure Bermuda remains up to market standards and compatible with the registration systems of other jurisdictions. As the global economy continues to expand and businesses realise the importance and benefit of IP protection Bermuda will continue to strive to be at the forefront of IP rights and protection.



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