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INTELLECTUAL PROPERTY

South Africa: trade marks as valuable assets to raise funding

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The registration of trade marks has numerous advantages one of which is that as registered trade marks are assets they can be used as collateral to raise funding. The Trade Marks Act makes specific provision for the hypothecation of the marks which must however be registered before they could be hypothecated in this way.

This is a further reason to keep in mind when considering whether to file trade mark applications.

In light of the fact that trade mark applications take between 2 – 3 years to proceed to registration in South Africa, it is a good idea to file trade mark applications as soon as possible in order to ensure that these rights can be relied upon if this may be necessary for purposes of raising funding during different phases of a company's history.

It must also be kept in mind that trade marks can be registered in one or more of 45 classes. If a mark is used or going to be used for different products and services it is important to file trade marks in the relevant classes. Each registration in the different classes is a separate and distinct trade mark registration which could be taken into account by the funders when raising the funding.

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