TOOLKIT 1 – TRADEMARK & DIGITAL BRANDING

MALAYSIA

PART C: FREQUENTLY ASKED QUESTIONS (FAQs)

SECTION 1: TRADEMARK REGISTRATION / PROTECTION

1. What's the difference between ™ and ®, and when should I use them?

- ™ = *Trademark claim*. You can use ™ anytime you want to indicate that a word/logo is your brand, even before registration.
- ® = *Registered trademark*. You can only use ® after your mark is officially registered with **MyIPO**.
  ⚠️ Using ® without registration is an offence under Malaysian law.

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2. How do I register my brand name or logo if I sell only online?

Even if you don't have a physical shop, you can file your trademark with **MyIPO**.

- Use your **online store name** (Shopee, Lazada, TikTok Shop) and **social media handles** as evidence of use.
- Your goods/services should be classified under the right **Nice Classification** (e.g., Class 35 for online retail).

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3. What's the cost to register a trademark in Malaysia, and how long does it take?

- **Fees**: Around RM950–RM1,000 per class (official fees, excluding agent costs).
- **Timeframe**: Usually **12–18 months** if no objections or oppositions.
  💡 You can file online via **MyIPO's MyIPOnline** portal.

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4. Can I still register a trademark if someone else is already using a similar name online?

It depends. MyIPO checks for **similarity** including in spelling, sound, and meaning.

- If the other user has no registration and you used the mark first in Malaysia, you might still have a case.
- If they've registered it, you may need to rebrand or challenge their registration.

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5. Do I need to register my business name and my logo separately?

Yes, if you want **maximum protection**:

- Register the **word mark** (business name) to cover all font styles and designs.

- Register the **logo mark** to protect the visual design.
  💡 Many SMEs file both.

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6. What happens if I never register my brand? Can I still stop others from copying me?

Yes, under **common law "passing off"**, but:

- You must prove you have goodwill; the other party misrepresented their brand as yours, and you suffered damage.
- This is harder, slower, and more expensive than suing for **trademark infringement**.

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7. What should I do if someone else grabs my Instagram or Shopee handle before I do?

- For social media: File a **username impersonation complaint** with the platform, showing your brand rights.
- For e-commerce: Use Shopee's or Lazada's IP Protection Portals.
  💡 Always **reserve handles early** on all major platforms, even if you're not active yet.

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8. If I paid a freelancer or agency to design my logo, do I own the rights to it?

Not automatically. In Malaysia:

- The copyright belongs to the **creator**, unless there's a written agreement transferring ownership to you.
  💡 Always sign an **IP Assignment Agreement** before paying.

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9. How do I track all the versions of my brand name, logo, and online store names in one place?

Create a **Brand Asset Log**:

- List all brand names, logos, domains, store handles, and social media accounts.
- Record the date you started using each.
  💡 Keep it in a spreadsheet or IP management tool.

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10. What's the first step if I have no IP team?

- Start with a **brand audit**: Write down everything that identifies your brand (name, logo, domain, slogans).
- Then decide which ones to file first based on **commercial importance**.

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11. How do I track and audit my IP as a small business?

Use a **central tracker** with:

- IP type (trademark, copyright, domain)
- Registration number & expiry date
- Renewal reminders
  💡 Even a simple Excel or Google Sheet works.

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12. Do I need to register my trademark again in other countries where I want to sell? What's the cheapest way to do this?

Yes — trademark rights are territorial.

- For ASEAN countries: File in each country or use the **Madrid Protocol** via MyIPO.
- Cheapest route: Bundle multiple countries in **one Madrid application** (but pick your markets carefully to save cost).

SECTION 2: TRADEMARK ENFORCEMENT

1. **What is trademark infringement?**

Trademark infringement happens when someone uses your brand name, logo, or a similar sign without permission.

- If it's used on similar goods or services, customers may get confused and think it's your brand.
- Example: A shoe brand called "Nikey" with a swoosh logo.

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2. **Is all trademark infringement the same?**

No.

- Civil liability: You may sue to stop the misuse and claim damages.
- Criminal liability: If it's deliberate and serious.
- Administrative action: In some countries, you can file complaints with IP offices or consumer authorities.

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3. **What is counterfeiting?**

Counterfeiting is a more serious form of infringement. It means deliberately producing fake goods that are identical to yours and trying to sell them as if they were genuine.

- Example**:** Fake luxury handbags, fake electronics, or fake medicines sold with your exact brand and packaging.

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4. **Why does the difference matter?**

- Infringement = misuse of your brand (which can be similar, not identical).
- Counterfeiting = deliberate copying (identical fakes).
- Both hurt your business, but counterfeiting is usually a criminal offence and taken more seriously by authorities.

5. **What can I do if someone copies my product on an e-commerce platform?**

- Gather **evidence** (screenshots, URLs, seller details).
- File a **takedown complaint** through the platform's IP Protection Portal.
- If that fails, consider sending a **legal letter** or contacting **MyIPO Enforcement**.

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2. Who do I contact for a takedown?

- **Shopee** → Shopee Intellectual Property Portal (IPP)
- **Lazada** → Lazada Rights Owner Protection (ROP)
- **Facebook/Instagram** → Meta IP Reporting Form
- **TikTok Shop** → TikTok Intellectual Property Policy & Complaint Form

💡 Many platforms have a dedicated **rights owner portal** for faster processing.

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3. How do I file a takedown on platforms like Lazada, Shopee, or Facebook?

1. Create a **rights owner account** on the platform.
2. Submit your **trademark details** and proof of ownership.
3. Provide **links & screenshots** of the infringing listing.
4. Wait for platform review — most respond in 3–7 working days.

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4. Do all platforms follow the same takedown process?

Not exactly — each platform has its own system and form for IP complaints.

Here's a quick guide (for details please see Resource Guide/Interactive Tool) :

- **Shopee** → Use the Intellectual Property Portal (IPP) – upload your trademark certificate, seller links, and product screenshots.
- **Lazada** → File through the Rights Owner Portal (ROP) – submit proof of ownership and details of the infringing listings.
- **Facebook / Instagram** → Go to Meta's IP Reporting Form – enter your brand details, attach the registration, and add the links to the fake listings or pages.
- **TikTok Shop** → Use the IP Policy Complaint Form – provide brand registration proof and seller/store URLs.

💡 ***Tip:*** *Keep a folder of your trademark certificates, screenshots, and a short explanation of your brand — you can reuse these for all platforms to save time.*

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5. What documents do I need to prove that the brand is mine?

- **Trademark registration certificate** (if registered)
- **Proof of use** — invoices, product packaging, website screenshots
- **Business registration** (if no trademark registration yet)
  💡 For unregistered marks, show **evidence of continuous use**.

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6. What if I haven't registered my trademark — can I still stop someone?

Yes, but it's harder.

- Use **passing off** claims if you can show you used the brand first and built goodwill.
- Many platforms will accept proof of use, even without registration — but decisions are **at the platform's discretion**.

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7. Do I need a lawyer to report a fake seller, or can I do it myself?

- You can do it yourself on most platforms — they have self-service portals.
- A lawyer or IP consultant can help if you need faster action or **multiple jurisdictions**.

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8. How can I track if my brand is being misused by others online?

- Do monthly searches for your brand on Google, Shopee, Lazada, TikTok Shop.
- Use **Google Alerts** for keyword monitoring.
- Consider paid tools like **BrandShield** or **Red Points** for automated scans.

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9. What screenshots or evidence should I collect before filing a complaint?

- **Full page screenshot** showing infringing product, price, and seller name
- **URL link** to the product listing
- **Date & time stamp** of when you captured it
- **Side-by-side comparison** with your real product (if possible)

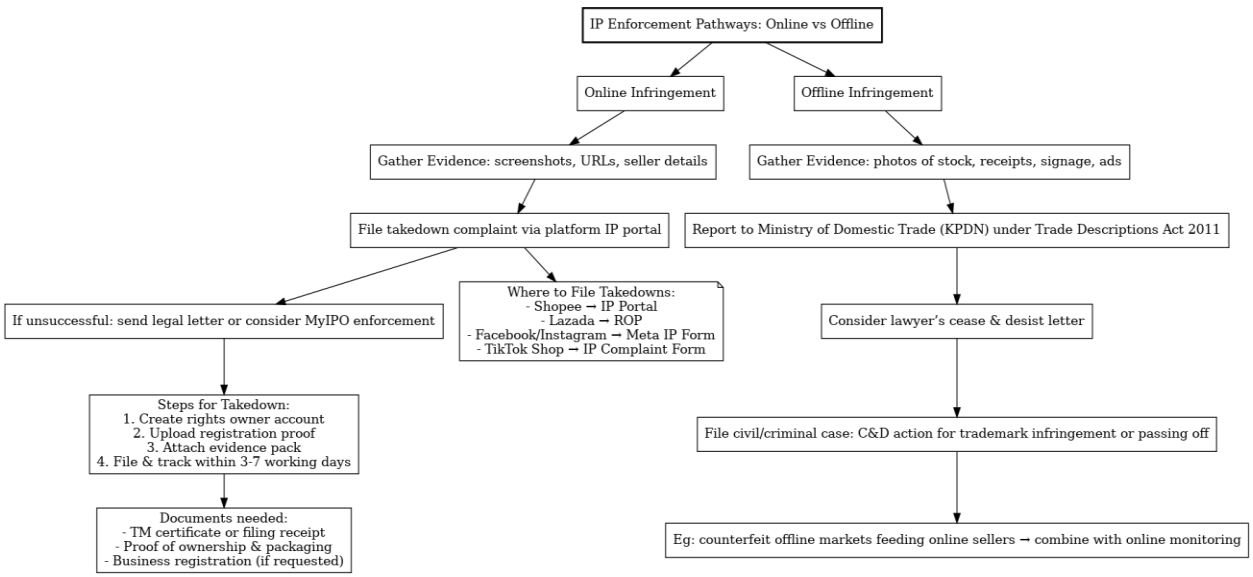
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10. What if someone misuses my brand offline (e.g. in a shop or printed materials)?

Offline brand misuse is just as damaging as online infringement. If you find your trademark being copied in physical stores, signage, packaging, or printed ads:

- Gather **evidence**: photos of infringing goods, receipts, shop signage, or advertisements, if possible.
- Report it to the **Ministry of Domestic Trade and Cost of Living (KPDN)** for enforcement action under the **Trade Descriptions Act 2011**.
- Consider a **cease-and-desist letter** through your lawyer.
- For serious or repeat cases, consider **civil action** for trademark infringement or passing off. But this is usually quite complex and highly technical, so consult an IP lawyer

Tip: Combining **offline monitoring** (e.g. distributors reporting counterfeits in markets) with online monitoring gives full protection of your brand.



SECTION 3: TRAKDEMARK COMMERCIALISATION

1. What is a trademark licence, and how is it different from a franchise?

- **Trademark licence** = You give permission for someone to use your brand for certain products/services under agreed terms. You earn royalties, but you don't give them your business system.
- **Franchise** = You give them your **entire business model**, including branding, operations manual, training, and ongoing support. This requires registration under the **Malaysian Franchise Act 1998**.

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2. Can I let another seller use my brand online? What agreement do I need?

Yes — but always have a **Trademark Licence Agreement**.
It should state:

- **What they can use** (logo, name, product images)
- **Where they can sell** (e.g., Lazada, Shopee)
- **Quality control rules** to protect your brand reputation
- **Royalty or commission terms**

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3. If an influencer uses my brand in a promotion, should I put that in a contract?

Yes. Use an **Influencer Agreement** to:

- Define the **scope of use** of your brand
- State **how your brand should appear**
- Set **content approval rights** before posting
- Include clauses on **no brand damage or misleading claims**

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4. How do I know if my brand is strong enough to license or collaborate with others?

Ask yourself:

- Is my brand **registered or at least filed** for trademark protection?
- Is it **recognised and trusted** by customers?
- Is it **distinctive** (not generic or descriptive)?
- Do I have a **clear brand identity** and consistent use across platforms?

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5. What are some common mistakes SMEs make when licensing their brand?

- Not **registering the trademark** *before* licensing
- No **written agreement** — relying on verbal deals
- Allowing poor-quality products/services under their brand
- Not **monitoring the licensee's usage** *regularly*
- Setting royalty terms that are too low or unclear

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6. How do I make sure my brand stays protected when someone else uses it?

- Include **quality control clauses** in the licence agreement
- Require **samples or approval** before they release products
- Monitor online listings and marketing materials regularly
- Set the right to **terminate the licence** if they misuse the brand

7. At what stage in their business development should Micro, Small, and Medium Enterprises register a trademark for their brand or logo?

<u>Brand Development Stage (Ideation & Clearance)</u>

- When: Once you've chosen and cleared your name/logo.

<u>Pre-Launch / Pilot Phase</u>

- When: Before public marketing, packaging, or website launch.

<u>Growth & Expansion Points</u>

- When: Before entering new product lines, channels, or export markets.

<u>Prior to Licensing or Franchising</u>

- When: Before granting partners the right to use your brand.

The Best Stage: Pre-Launch / Pilot Phase

- Right after you've chosen and cleared your brand name/logo, but *before* you launch publicly (website, packaging, marketing).
- Why:
    - You lock in legal rights before competitors or squatters see your brand.
    - It avoids costly rebranding after you've already invested in packaging, ads, and promotion.
    - You can use ™ immediately and ® once granted—strengthening trust from day one.
    - Provides a solid legal base as you expand, license, or franchise later.

Other stages (like growth, franchising, or expansion) are still important checkpoints, but the pre-launch stage is the most cost-effective and strategic time to register.

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7. How can I make money from my brand without selling products myself?

- **Licensing** your brand to manufacturers or online sellers
- **Franchising** your business model
- **Co-branding** with another brand for joint products
- **Digital collaborations** (e.g., branded content, affiliate deals)
- Selling **merchandise** with your brand name/logo

📊 **Comparison Chart – Licensing vs Franchising vs Collaboration**

Feature	**Licensing**	**Franchising**	**Collaboration / Co-Branding**
What you give	Right to use your trademark for certain products/services	Full business model + trademark + operations	Joint use of brands for a project or product
Control	Medium – limited to trademark use rules	High – you control the entire business operation	Low – mainly for branding alignment
Registration Needed	Trademark registration recommended	Franchise registration under Franchise Act 1998 + trademark registration	Trademark registration recommended
Earning Model	Royalties or flat fees	Franchise fees + royalties	Shared revenue or cost-sharing
Setup Cost (for SME)	Low to moderate	High	Low
Best For	SMEs wanting to monetise their brand without running the business	Businesses ready to replicate their proven model	Short-term campaigns, joint marketing, limited-edition products
Duration	Flexible (1–5 years common)	Usually long-term (5–10 years)	Short-term to medium-term
Example	Local bakery licensing its name to a frozen cake manufacturer	Tealive franchising its outlets	Fashion brand collab with a local artist for a limited-edition design

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📝 Brand Monetisation Readiness Checklist

Ask yourself:

1. **Legal Protection**
    - ✓ My trademark is registered (or at least filed) in Malaysia.
    - ✓ My logo/word mark is protected in key markets I plan to expand to.
2. **Brand Strength**
    - ✓ Customers recognise and trust my brand.
    - ✓ My brand is distinctive and not generic.
3. **Consistency**
    - ✓ I use my brand consistently across all platforms.
    - ✓ I have a brand asset log with updated versions of my logo, fonts, and colour codes.
4. **Market Demand**
    - ✓ I've had interest from other businesses or influencers to work with my brand.
    - ✓ My brand fits into potential partners' products or services.
5. **Operational Readiness**
    - ✓ I can monitor quality control if someone else uses my brand.
    - ✓ I have (or can draft) a clear licensing or collaboration agreement.

Scoring Guide:

- ✅ 10–12 ticks → Ready for monetisation
- ✅ 7–9 ticks → Strengthen brand consistency & market presence first
- ✅ 0–6 ticks → Focus on brand building & protection before licensing