

Brand Protection + Intellectual Property Fact Sheet

Protecting your Brand: Do you actually own your own brand?

Many business owners assume that by securing a business, company or domain name they have also obtained exclusive ownership rights over that name. This is not the case. Registration of a business or company name gives you the right to trade, not necessarily the right to trade with that name.

The best way to secure the right to use your brand name is to register that name as a trade mark. Trade mark registration provides you with proprietary and exclusive rights to use your brand, as well as the right to take action against someone who uses a substantially identical or deceptively similar trade mark, in relation to similar goods or services.

However, Australia is a “first to file” country. This means that the first person to register a trade mark has the first right to use that trade mark. So if you are at all complacent about protecting your brand, you may actually find yourself fighting to keep it.

At Hemming+Hart Lawyers, we are increasingly seeing clients who have not registered their brand name as a trade mark being ordered by someone who has registered the same or a similar name to surrender ownership of that name. This usually results in a long and costly legal battle over rights to the name which could have easily been avoided by registering the name as a trade mark first.

Registering your trade mark not only adds value to your business by providing you with security against infringement, but also serves as a tangible registered asset that can be sold, licensed or assigned to other parties. Therefore you should consider registering any distinctive mark or name used in your business. Obvious examples are business names and logos. You should also consider registering product names and logos associated with those products. You can also register unique slogans, aspects of packaging, shapes, colours, sounds and scents.

If you have any intention of trading in or exporting to any foreign countries with your brand, you should also not hesitate to secure registration of your brand as a trade mark in each relevant jurisdiction. In many countries the penalties for infringement are significant and failure to protect your trade marks in these jurisdictions could result in a complete loss of rights.

While registering your brand as a trade mark is an important step in brand protection, it should be part of a total intellectual property strategy adopted for your business. You should ensure that all of your important written materials and documents, logos, brands, designs and technology materials have the

appropriate copyright, trade mark, patent and design protection in the jurisdictions in which they are used (both in Australia and internationally).

For example, your website is an important aspect of your overall brand. While the internet is a fantastic marketing tool, competitors, unhappy clients or disgruntled employees may also use it against you. If your business has not obtained licences to the .com, .com.au, .co, .net and the .net.au and other available domains you could be susceptible to cyber squatters. Cyber squatters often put damaging content on sites using alternative domains which can seriously harm your business's reputation.

This type of brand theft can also occur in many popular social media tools, such as Twitter and Facebook. These tools allow businesses to communicate and engage with consumers via personalised URLs (eg www.facebook.com/cocacola and www.twitter.com/cocacola). As such, it is also important to either acquire these URLs or at least monitor unauthorised use of your brand on social media websites. If an unauthorised party has acquired these URLs or is otherwise misusing your brand on social media websites, there are several legal avenues that you can pursue to reclaim your brand or otherwise put a stop to any harmful use.

Also, whenever a contract contains terms about your trade mark or other intellectual property, it is very important that you understand precisely what the contract is providing. A misunderstanding of an intellectual property provision and its interplay with the other terms of a contract could have disastrous results. You may unwittingly be authorising others to use your brand and hard earned reputation in any way they choose.

Hemming+Hart Lawyers can assist you in protecting your brand and implementing a total intellectual property strategy for your business.

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