

Do you have a name or an image that you use for your business that's important to you?

WHY SHOULD YOU CARE ABOUT TRADE MARKS?

Trade Marks and the associated goodwill are quite commonly the largest single asset of a business, particularly in businesses engaging and providing services. Having a good Trade Mark which is appropriately registered can only help to quantify and increase the value of your business in the long term.

WHAT IS A TRADE MARK?

Simply, it is a sign (which can be words, images, colours, smells, or combinations of them) which is used to distinguish your goods or services from the good or service from other businesses.

The main benefit in Trade Marks is to protect your customers so that they know who is providing the goods and services they require. For example, The Coca Cola words in fancy script and/or the shape of a glass bottle can easily be recognised as relating to Coca Cola.



WON'T MY COMPANY NAME OR BUSINESS NAME BE ENOUGH TO KEEP ME PROTECTED?

While having a Company or Business Name can afford you a certain level of protection, the highest level of protection for your name or image is to have a registered Trade Mark. This will afford you a higher-ranking of priority than a Business Name, Company Name, a URL or another style of registered or partially registered identity.

WHAT CAN BE REGISTERED?

The *Trade Marks Act 1995* defines a Trade Mark as a "sign used, or intended to be used, to distinguish goods

or services dealt with or provided during trade by a person from goods or services so dealt with or provided by any other person". A 'sign' in this context includes:

- A name
- A word or sentence
- A logo or image
- A slogan
- A scent or smell
- A certain colour or colours
- The aspect of a packaging, such as shape
- A sound
- Or a combination of any of the above.

WHAT KINDS OF THINGS ARE NORMALLY REGISTERED?

The most common signs that are registered are names, logos, or slogans. Registering a Trade Mark will provide you with greater brand protection by establishing a monopoly over the sign, simplifying the enforcement process and lowers the chance of inadvertent infringements.

CAN TWO OR MORE PEOPLE HAVE THE SAME TRADE MARK?

Yes. Provided their respective uses are not likely to deceive or confuse consumers two similar Marks can be registered in different classes. For example, "Pulsar" is registered by Nissan for Motor vehicles and used in watches by Seiko.

THIS IS BECAUSE THEY ARE USED IN DIFFERENT MARKETS OR CLASSES

HOW WIDE IS MY PROTECTION?

The next step registering a Trade Mark is to identify what "Class" or, in other words, market to register you Trade Mark within. The monopoly over the Trade Mark that you are given does not extend further than the market your Trade Mark is registered under. For example, Dove chocolate and Dove soap are sold by different companies but both own the Trade Mark "Dove". Mars Australia Pty Ltd owns the Trade Mark within class 30 (the confectionary food market), and



Unilever Plc owns the Trade Mark within class 3 (the cleaning products market). It is important to consider your business activities and the goods or services you intend to provide over the next few years to ensure that your brand is protected in all the relevant markets. **You can register in more than 1 class at a time if it relates to your business.**

A FEW DO'S AND DON'TS

Finally, a Trade Mark application will not be successful if it is generic and does not distinguish your business. IP Australia will not provide you a monopoly over words they feel all traders within that market should be allowed to use.

For example;

A fruit juice supplier will not succeed in trade marking the slogan "tastiest fruit juice". IP Australia will not provide you with a monopoly on words that would be commonly used by other traders in your industry. However, if the fruit juice supplier changed their slogan to "the most scrumdiddlyumptious fruit juice", the application is more likely to succeed as the adjective "scrumdiddlyumptious" is not a common adjective in describing fruit juice. As a general rule, if your Trade mark becomes so commonly used that it goes from being used as an Adjective to being used as a Noun such as "Escalator" then your Trade mark is also at risk at being lost as the Mark itself will then become part of the public domain. Similar examples include the word "Refrigerator".

HOW LONG WILL MY TRADE MARK LAST?

Registration of your Trade Mark will last for a period of 10 years from the filing date. The Trade Mark will continue indefinitely provided you regularly renew it **and** continue to use it in business.

WHAT ABOUT OVERSEAS?

Please remember that each country has its own rules relating to Trade Marks and that registration of your Trade Mark in Australia will certainly give you rights here but does not necessarily give you any rights outside of Australia.

WHERE TO NEXT?

If you would like to increase the protection for your business and register a Trade Mark, please contact us today. We can provide advice on what classes to register your Trade Mark under and how to increase your chances of a successful application.

If you are unsure your rights under these laws please contact Adam Robinson, Georgina Vlahos or Guy Lawton.

The Gap Professional Centre 6/23 Glenaffric Street The Gap QLD 4061 Tel: 07 3123 5700 Fax: 3300 4657	Samford Central Shopping Centre Mount Glorious Road Samford QLD 4520 Tel: 07 3123 5750 Fax: 3289 2568
--	---

liability limited by scheme approved under Professional Standards Legislation