

WHAT IS IN A BRAND?

This is the distinctive indicia for your product or services. This is the repository of customer loyalty, trust, your vision and mission as owner of your business. It can take years for a brand to take shape in customers' awareness and much longer to stand out amongst the many many other similar businesses in your industry.

Your brand is a very important asset which carries goodwill and has great value.



HOW DO YOU CHOOSE YOUR BRAND?

Firstly you need to make sure that there are no similar names or visual images to the one that you have in mind that are already on the market. Search not just within your industry but generally to see if you have chosen a name that is used for other services.

When there are similarities between your chosen mark and a registered or pending trade mark even if you believe you can effectively distinguish your trade mark from the others, assess this from the perspective of the consumers. You do not want to spend money and effort to build a brand only to have similar one joining you for the ride.

HOW DO YOU PROTECT YOUR BRAND?

If you intend to use the trade mark in Australia, you need to register your trade mark with IP Australia. Aspirations to protect the use of the same

mark in other countries will require registration in those countries as well. You can choose to make an application under the Madrid Protocol when applying for the Australian registration for countries that are signatories to the Madrid Agreement. Alternatively, you can register in each of your desired country separately.

Making the local and international applications at the same time is obviously easier but the drawback here is that the international application rises and falls with the Australian application. For instance, where a particular trade mark is not available in Australia, its international application will also fail. Usually different trade marks are used in different countries, with the exception of global brands, it is always advisable to search your desired country's IP register before deciding whether to register in that country and if so, should a joint application be lodged here in Australia.

WHAT IF YOU DON'T REGISTER YOUR TRADE MARK?

Unregistered trade marks can still be protected if the user or owner can establish a reputation exists in the marks and that the proposed use of same marks by a third party is misleading or deceptive. Usually this means the trade mark must have been used on a large scale, for a relatively long period of time and let's not forget that proving a reputation is not only costly but also an uncertain process. Rights to such unregistered trade marks are generally limited to the geographical area in which they are used and applied to the designated goods and services.

We provide advice on trade mark registration, infringements, design registration, copyright protection and all other matters pertaining to Intellectual Property Rights.

Contact us for a Consultation.