

Trademarks

- A trade mark can be a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these.
- It is used to distinguish goods and services of one trade from those of another. This means one cannot register a trade mark that directly describes your goods (e.g. radios) and services (e.g. electrician).
- A registered trade mark gives the owner the exclusive legal right to use, license or sell it within Australia for the goods and services for which it is registered. It does not confer any statutory rights in any other jurisdiction (unless legislation provides otherwise)
- While it is difficult to register a geographic name or surname, someone who has used one extensively in the marketplace for a considerable period of time may be able to achieve registration.
- One does not have to register a trade mark to use it. However, registration is advisable because it can be an expensive and time consuming exercise to take action under common law.
- Always search existing trade marks before using a mark or applying for registration. You may find yourself the subject of legal action if the mark you propose to use is already registered or in use by someone else.
- Initial registration of a trade mark lasts for 10 years. After that time you can continue to renew your registration for successive periods of 10 years on payment of the appropriate fee.
- A trade mark can therefore have an infinite life representing significant business value. You must, however, use your mark in a bona fide way to avoid it becoming vulnerable to removal on the grounds of non-use.
- Applications for trade marks should be filed with the Trade Marks Office of IP Australia. They will examine the application to see if it meets legislative requirements.

Lawyers at DLS can:

- draft and negotiate confidentiality and non-compete agreements;
- arrange for IP searches through specialist patent attorneys;
- arrange for the registration of trade marks through specialist patent attorneys;
- draft and negotiate agreements for the licensing, sale or acquisition of IP rights; and
- act in relation to IP disputes.

For further information, contact:

Simon Singer

Phone (02) 9212 1099

Email ssinger@dls-lawyers.com



Ground Floor,
86-90 Bay Street
Broadway NSW 2007
Australia
Phone +61 02 9212 1099
Fax +61 02 9281 1005

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