

## > IP ALERT

## **PASSING OFF**

The common law tort of passing off is a legal action/remedy designed to address the situation where there is a wrongful use by person "A" of person "B's" brand, reputation, goods or services for the purpose of benefitting person A at the expense of person B.

It involves issues of misrepresentation, misleading and deceptive conduct.

Apart from the common law remedies, the Competition and Consumer Act 2010 (CCA) creates a statutory tort that can be used in addition to, or in substitution for, the common law tort of passing off. For example, section 18 of the Australian Consumer Law (which is contained in the CCA) prohibits a person, in trade or commerce, from engaging in conduct, which is misleading or deceptive or is likely to mislead or deceive.

Generally, conduct will be misleading or deceptive if it induces error, or is capable of inducing error, in an ordinary reasonable person.

Types of passing off, such as a misrepresentation that one person's goods are those of another could amount to a breach of the CCA. Where a person is found to have breached the CCA, the affected party may be entitled to remedies including injunctions and/or damages.

Any general enquiries about passing off or intellectual property can be directed to Raymond Duffy, Associate on 07 3233 9909 or email: raymondd@mdl.com.au

Our litigation team are experienced in dealing with disputes of this nature and can provide you with necessary guidance and advice. If the matter is litigious in nature, please contact our litigation director, Ian Neil on 07 3370 5100 or email: <a href="mailto:iann@mdl.com.au">iann@mdl.com.au</a>

