














IP ALERT

WHAT IS A TRADEMARK

A trademark is a way of identifying a particular good, service or business. When one talks about a “brand” this is typically a reference to a trademark. Trademarks can consist of:

-  Letters
-  Words
-  Phrases
-  Numbers
-  Symbols
-  Designs
-  Combination of words, phrases, symbols or designs
-  Sounds
-  Scents
-  Distinct shapes
-  Logos
-  Pictures
-  Aspects of packaging

They help to identify and distinguish the goods or services provided by one person from those of another. For example, a “distinctive shape” can be registered as a trademark, such as the “Coca-Cola glass bottle”.

In Australia, trademarks are legislated through the Trade Marks Act 1995 (Cth). In order to properly protect your IP rights in say a brand it is best to register a trademark. You do not have to register a trademark to use it, but registration offers much greater protection. Unregistered trade marks are protected by the common law (such as the law of passing off). However, common law rights can be more difficult to prove and enforce.

Once registered, the owner has a legally enforceable and exclusive right to that trademark. Such rights also enable the trademark owner to licence its use. For example, a Franchisor may licence its Franchisees to use the Franchisor’s trademark in promotion of the business.

A trademark can be registered in different classes. It is advisable to register a trade mark in the classes of goods and services to which they relate.

Trademark registration proceeds along 4 stages: Application/filing stage; Examination stage; Advertisement stage; and finally, the Registration stage. Once registered, the trademark owner can use the ® symbol beside the trademark protected word or logo.

A trademark is usually registered for 10 years. After which the trademark can be re-registered for further periods of 10 years each.

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