



BRAND HEALTHCHECK



INTELLECTUAL PROPERTY

davies.com.au



A business name registration and owning the domain name does not provide you with exclusive rights to that name!

Call us today on **1800 636 588** and find out how we can help. Your initial consultation is free.



WHY PROTECT

A trade mark registration provides legally enforceable rights to a brand. It is one form of intellectual property, and when registered with IP Australia, converts an otherwise intangible business asset into concrete property.

Registering a trade mark is the best way to provide its owner with the exclusive right to use the mark in relation to the goods and services covered by the registration.

It also prevents competitors from being able to register trade marks which might be considered too similar.

You will already be investing a great deal of thought, research, time and money to design, position and market a brand.

While the up front costs to search and register a mark may not seem like your initial priority – remember they are a fraction of the costs involved if you are forced to re-brand, or taken to court, for infringing another brand.



YOUR BRAND = IDENTITY

Every business needs a recognisable identity of some kind, regardless of the industry you work in or the size of your company.

This identity is your brand and the reputation it carries among clients and customers is paramount to continued success.

- Owning the rights to your brand increases your business value.
- It can be easier to attract investment or funding when the business owns registered rights in the trade mark.
- Protects your brand and reputation from competitors and counterfeiters.
- Provides a defence to infringement of other trade mark registrations.
- They can be renewed forever!



STEPS TO SECURING

Make sure your business can own, use and protect any new brands (trade marks) that you intend to use.

A comprehensive search by a professional is the minimum you should consider to ensure you're free to use your chosen brand at the time of launch.

Only a trade mark registration provides you with a statutory exclusive right to the use of that brand for the goods or services for which it is registered.



CONSIDERATIONS

HAVE YOU

- ✓ Created a distinctive trade mark.
- ✓ Conducted full searches across legal registers:
 - Trade Mark Register
 - Company Names
 - Domain Names
- ✓ Applied to register your trade mark.
- ✓ Considered overseas markets and protection.
- ✓ Considered any domain name, company or business name issues or requirements.

MISTAKES TO AVOID

- ✗ Copying a competitor's brand, logo or get-up.
- ✗ Adopting a trade mark without doing a comprehensive search.
- ✗ Don't register domain names containing another party's trade mark.
- ✗ Adopt a purely descriptive mark.
- ✗ Using your trade mark as a generic term.



ONLINE ESSENTIALS

1. Make sure the brand is available to use – search of databases.
2. Register your trade mark.
3. Register your trade mark as a domain name(s) – make sure you're eligible.
4. Register social media usernames for your business.
5. Be aware of what you are agreeing to with social media T&C's.
6. Monitor your social media pages, ensure no misleading or deceptive content.
7. Get legal advice on Google Adwords campaign.
8. Don't use a competitor's trade mark visibly in your Google Ad.
9. Respect the IP rights of others, do not copy content without permission.
10. Monitor the Internet regularly!



USING YOUR BRAND

Once a trade mark is registered it needs to be used, and used correctly, in order for it to retain its role as the bastion of the brand's integrity.

1. If a registered trade mark is unused for three years it can be removed from the register.
2. It should never be used as a generic term, noun or verb – again, you risk losing it.
3. A trade mark is an adjective that describes the source of a product, e.g. an Apple computer.
4. Be proactive in monitoring your brand for misuse by others, seek advice for resolution methods.
5. You are entitled to oppose the registration of another trade mark you think may cause confusion with yours.

TM

CHECKLIST

1 DISTINGUISH THE MARK FROM OTHER TEXT

- UPPERCASE
- DIFFERENT TYPEFACE
- *Italic*
- Colour

2 STATUS OF MARK

- “Registered Trade Mark”
- ®
- “_____ is a registered trade mark of XYZ Pty Ltd
- ™ (pending applications and other unregistered marks)
- “used under licence from xyz” (where appropriate)

3 IDENTIFY TRADE MARKS AS ADJECTIVES

- Band-Aid® adhesive strips
- Rollerblade® in-line skates
- KLEENEX® brand tissues

4 DO NOT USE TRADE MARKS AS:

- Singular or plural nouns – i.e. a new generation i-kon.
- Verbs – i.e. “We’ll STRATABLAST the wall.”
- Generic terms – i.e. “An i-kon would be ideal for this job.”
- Attached to other words, letters or numerals by means of a hyphen.
- With or preceded by the company name.

WEBSITE OWNERSHIP

If a contractor developed your website, have you obtained:

1. Ownership of any copyright material.
2. Warranties against third party copyright infringement allegations.
3. Confidentiality agreement before disclosing confidential business information to the contractor.

If your website includes content owned by a third party, have you obtained:

1. A licence from the third party to use the content.
2. Warranties against liability for third party allegations of copyright infringement.

If your website includes a third party trade mark, and you use the trade mark commercially, have you sought advice on:

- Whether you need to obtain a licence from the third party to use the trade mark in all countries where your website can be accessed?



SERVICES AND CONSULTS

Choosing a professional to assist with your business is a big decision. You need to feel that person understands you, and your business.

Book in for your free initial consultation – and ask the right questions before committing.

Davies Collison Cave offer a full range of IP services. Call us today and find out how we can help.

1800 636 588

OUR TM SERVICES AND ADVICE


- Trade Mark Registration
- Trade Mark Searching
- Trade Mark Portfolio Management & Renewals
- Domain Name Protection & Disputes
- Business Name Protection
- Trade Mark Infringements & Enforcement
- Trade Mark Commercialisation & Licensing
- New Zealand Trade Mark Services
- Singapore Trade Mark Services
- Pacific Island Trade Mark Protection



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This information serves as a guide only and does not detail all events which can occur.
Precise advice should be sought from your attorney at all times.
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