

Five Tips to Better Brand Selection

Businesses often choose their brands without regard to the legal consequences. Businesses invest heavily in their brands, from the cost of having a designer create the brand itself, to the livery and expensive decals that adorn their fleet of vehicles, not to mention buying internet domain names and conducting (and spending on) marketing campaigns (both, physical and digital).

To legally protect this investment and to ensure that your business can continue to use its brands, (and to ensure that others cannot), a few tips on the choice of brand can go a long way.

If you are choosing a brand, make a shortlist of 5 – 10 brands and then apply the following tips or ‘filters’ to your list to come up with those brands that will have the best chance of being legal protected by trade mark registration.

TIP NO. 1:

Remove any brands that are **descriptive** of the business or product on which the brand is to be used.

TIP NO. 2:

Remove any brands that are **laudatory** or commonly used words in commercial practice, such as International, Holdings, Premier and Essentials, to name a few.

TIP NO. 3:

Remove any brands that comprise of a **common surname** – we can advise if a surname would be viewed as common or not, but in general terms, if it appears more than 750 times on the Australian Database of Surnames it will be viewed as a ‘common’ surname.

TIP NO. 4:

Remove any brands that comprise of the name of a **country major city, or place renowned for the production** or provision of the goods/services on which the brand is to be used.

TIP NO. 5

Remove any brands that are similar to those of your known **competitors**, big or small.

Applying the tips above should have reduced the number of brands on the shortlist and you should now be left with the brands that will operate well to distinguish and denote your products from those of others in the market place.

The next vital step is to have the chosen brand cleared for use to ensure there are no pre-existing third party interests in it and then if there are no conflicting rights you should apply to register it as a trade mark, so as to be able to prevent others from using it.

Marshall Marks can assist you to protect your investment in your brand by conducting such clearances and by seeking registration of your brands as registered trade marks.

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ABOUT US

Marshall Marks is a registered trade mark attorney firm that specialises in the trade marks, design registration and copyright law.

Marshall Marks is part of the **Marshall IP Group**, which provides the services listed below.

Marshall Marks is located in the Illawarra region, about 80 kilometres south of Sydney.

MARSHALL IP GROUP'S SERVICES

Trade Marks - including trade mark applications, trade mark searching ("freedom to use" searches), oppositions, revocations and trade mark portfolio management;

Designs - including design registration applications, design searching ("freedom to use" searches), certification of registrations, oppositions and design registration portfolio management;

IT Agreements - including Software Licence Agreements, Software Development Agreements, Website Agreements;

IP Agreements - including licences of any type of IP, IP Assignments, Development Agreements and Technology Transfer Agreements;

Commercial Agreements - including Manufacturing Agreements, Confidentiality Agreements, Supply Agreements, Distribution Agreements, Website Policies and Agreements, Standard Terms of Business, Standard Terms of Sale;

Privacy Law - advice and assistance in relation to State and Federal Privacy Laws;

IP Enforcement & Defence - pre-litigious and litigious IP/IT matters, including negotiating and drafting Settlement Agreements;

IP/IT Audits & Due Diligence - identification of IP rights, vendor and purchaser IP due diligence services;

IP/IT Management - advising and assisting with the management of IP/IT portfolios;

IP/IT Advice - advising on IP/IT legal matters, generally; and

Corporate IP/IT - advising and assisting with IP/IT aspects of corporate transactions, such as company and asset sales, MBOs, Joint Venture Agreements, Shareholder Agreements, and Security Agreements containing or relating to IP/IT.