

Trade Marks 101.

Trade Mark refer to the system of trade mark applications and registrations and the rights that are conferred by trademark registration. This is governed by the *Trade Marks Act 1995* (Cth) and is the only way that you can get formal rights in your business's names and brands. Applications to register a name or brand as a trademark are made at the Trade Marks Office located at IP Australia in Canberra.

Not all names, brands or logos are capable of being registered as trade marks under the *Trade Marks Act 1995* (Cth). Names, brands and logos that describe the goods or services in relation to which they are used or are generally laudatory (such as words like "Premier", "Perfection", "Essentials") will not be accepted by the Trade Marks Office as trade marks.

Also, the Trade Marks Office will not permit you to register your brand if another person has already registered the same or similar brand for the same or similar goods or services. If the Trade Marks Office raises an earlier registration or application for a similar trade mark as an objection to the registration of your trade mark, it may be that your trademark is infringing that earlier trade mark. This may expose your business to infringement action by the owner of that earlier right, which could result in court action, damages and costs being awarded against your business. It is therefore important to conduct some research before you commence use of a new brand.

The cost of registering your trade mark through Marshall Marks begins at \$1,710. On average, though, it usually costs in the region of \$2,000 to \$3,000 per trade mark and takes around 7 to 10 months to complete assuming there are no substantial objections raised by the Trade Marks Office or any third parties.

The purpose of registering your brand or names as trade marks is to be in the best position possible to prevent others using the same or similar trade mark in relation to the same or similar goods and/or services. You may be able to obtain financial compensation if your business suffers loss or damage as a result of such infringing use of your trade mark.

We can attend to all of your trade mark needs, including:

- advising on the registrability of your brand or names as trade marks;
- seeking registration of your brand or names as trade marks;
- conducting brand and name searches to advise on whether your proposed or actual use of your brand or names will infringe anyone else's rights (freedom to operate searches);
- commercial agreements relating to trade marks – licence agreements, transfer agreements (assignments), co-branding agreements;
- trade mark litigation and naming disputes, including domain name disputes;
- trade mark portfolio management.

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Businesses that are likely to need trade mark law advice include:

- brand owners, which is virtually every business;
- brand focused businesses, being any business that seeks to differentiate itself in the business world through the use of its brand and the values inherent in their brand;
- consumer focused and facing businesses; and/or
- importers of branded goods.

Contact us today about TRADE MARKS

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