

Protecting[®]

WHAT'S SPECIAL



You may have the most unique business in the world but if you don't protect your distinctiveness someone else can copy what you have worked so hard to create. SHARON GIVONI explains the importance of protecting your business with that little ®.

You have worked hard to create a point of difference for your business in the market place, but what action have you taken in regard to legally protecting the distinctive elements of your business. The special elements of your business that are most likely to need protecting include your brand name, the visual graphics that you use or the way you describe your business through written materials.

Protecting what you have built is not always top-of-mind when you are busy addressing the day-to-day running of your business however, it is really important. It's called 'intellectual property' which is in essence the content that you can't see or touch - in legal terms - the intangible assets that a business owns.

Copyright, trade marks and designs are what we are referring to, and given that often so much thought goes into it, it is really important to give your work legal protection.

Copyright covers graphics and written works, as well as photographs and software etc. There are all sorts of rules surrounding copyright law, some of which might surprise people.

Firstly, unlike in the US, in Australia you cannot register copyright - it simply arises automatically when the work is created. However, the issue that often occurs (sometimes when it's too late) is who owns what. For

example, often business people fall into the trap of thinking that just because they paid a designer or copywriter to write something for them they own it. This is wrong. The default position under the law is that the contractor owns it unless he or she is an employee (acting in the scope of employment) or the copyright has been transferred to the business in writing (with a copyright assignment).

Another misconception that often arises is that just because something is on the internet it is in the public domain and therefore anyone can use it. Again this is wrong - the last thing you want to do is end up getting a cease and desist letter. Thus if you are not sure about what you are using it is best to assess it from a legal stand point.

Your brand name and logo can be extremely valuable - whether it's your very own name or a made up name such as KODAK. Your brand name forms an important part of the personality and image of your business and the more you use it the more you build up goodwill and reputation in it. Taglines also count - for example, the phrases 'glass and a half,' 'oh what a feeling' and 'moments like these' speak for themselves without any reference to the brand to which they relate. Taglines can also be protected as trade marks.

Trade mark protection is by far the best sort of protection that you can get in your name.

Subject to some minor exceptions, it gives you exclusive rights to use the brand in Australia. Domain name, company name and business name registration are merely administrative and do not give you any ownership rights over the names. Don't get fooled into thinking otherwise. The other beauty of owning a registered trade mark is that you can then display the ® symbol next to it to show everyone that the mark is registered. This serves as a warning, or to put it more bluntly - a 'back off' symbol to ward off unscrupulous copycats. ■

CASE STUDY

Lynette Palmen has registered her suite of brand names and now owns monopoly rights for them.

These include:

- The Women's Network Australia logo;
- The magazine title WORKING WOMEN; and
- The brand name NETWALKING.

Trade marking these gives her the comfort that she can continue to invest in her business assets and grow the goodwill and reputation in her company and products, knowing that she has rights to prevent others from copying, if that should occur (even if the person who has copied has done it innocently as this is no defence to trade mark infringement).

CONSIDERATIONS:

- Have you protected your Intellectual Property assets?
- Do you know what they are?
- Is this something that you should turn your mind to?
- Do not overlook this important side of your business.

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