



Is your business IP protected?

If you've been in business for a while it's likely that one of your most valuable assets is your Business Intellectual Property or "IP". If you're just starting up business the IP that you have now and which you develop in the future will similarly form part of the value of your business. But in either case have you taken the necessary steps to protect your IP from being used by others?

What is business IP?

IP represents creations of the mind or intellect that can be legally owned and almost every business has some form of IP that they need to protect via Patents, Trade Marks and Designs. Australia's IP laws allow for the protection of ideas and unique creations and in most instances, you must formally register your IP to gain the protection that these laws can provide. Some rights such as Copyright don't need formal registration as they are automatically assigned to you when you create them. Business Names, Company Names and Website Domain Names are not IP but they are still important for a business to protect as they form part of its identity, reputation and brand.

Trade marks

A Trade Mark is a way of identifying your goods or services the most common form of which is a logo. Trade Marks confer "ownership" rights and once registered give a Trade Mark owner:

- an exclusive right to use their Trade Mark as a brand name for the goods and services specified in the Trade Mark registration.
- an exclusive right to authorise other people to use the Trade Mark and;
- a right to sell or transfer their Trade Mark to another person.

The exclusive Trade Mark rights granted on registration also enables the Trade Mark owner to take action to prevent other parties using the name in relation to the sale of their goods and or services. Registering a Trade Mark requires the lodgment of an application with IP Australia and it usually takes 6 to 9 months for a Trade Mark application to be examined and registered. Once registered Trade Marks can remain in force indefinitely provided renewal fees are paid when required.

Patents and designs

A Patent provides a monopoly right for a limited period to prevent others from using, selling, making or otherwise exploiting something that you've invented. A Design registration safeguards the shape, configuration or pattern of an object and is used extensively in industries that develop products such as fashion, furniture, homewares and machinery design.



Generally, the Design registration is used to protect the appearance of the product and the Patent registration is used to protect its functionality. As both aspects usually contribute to the commercial success of a product it's sensible to seek both Patent and Design registration of a product at the same time in order to protect your sole rights to market it. Applications for the registration of both Design and Patents are also made through IP Australia. Standard Patents last for 20 years while Design registrations protect the design for 5 years initially and are renewable for up to 10 years.

Copyright and moral rights

Copyright is a collection of exclusive rights that vest in certain types of creative work such as literature and other written works, art, music, film and broadcasts. The owner of the Copyright is usually the person who created the material unless they transfer their interest in it to another party. In Australia you don't have to apply to register Copyright as protection is automatic under the Copyright Act. Copyright does not however protect ideas, information, styles or techniques nor does it protect names, titles or slogans.

Moral Rights are the right of attribution of authorship of material and are generally granted to the creator of material in which Copyright exists. Unlike Copyright, Moral Rights are not transferable and will always vest in the creator. So, a creator can still hold the Moral Right to be called the author of material created by them even if they've transferred the Copyright in the material to another party.

Business names

A Business Name is a name under which a person, a partnership or a company trades and must be registered with the Australian Securities & Investments Commission (ASIC). Registration of a Business Name does not give you any "ownership" rights in the name and accordingly it does not;

- give you exclusive rights to use all or part of the business name or;
- prevent another person from registering a similar business or;
- stop somebody who has already registered the name as a Trade Mark from using it as a business name.

Despite some of the "ownership" limitations that follow from registering a Business Name it's still an important first step that business owners should take if their trading name has not already been registered.

Company names

Whenever a company is incorporated with ASIC it must be given a name which can be a specific name requested by the owners of the company at the time of incorporation or if an "off the shelf" company is acquired the name of that company. ASIC will not generally permit the registration of a Company Name that is too similar to a currently registered company's name or a registered business name. As with Business Names, the registration of a Company Name does not prevent the owner of a currently registered Trade Mark with the same name as the company from exercising their legal rights against the company for infringing on their IP rights.

Domain names

A Domain Name is your website address on the internet and the registration of a Domain Name constitutes a contract made between you and the domain name registrar of the particular domain be it ".com" or ".com.au" etc. There are generally no restraints on who may register a Domain Name however like Business Names, registering a Domain Name will not give you exclusive rights to use of all or part of the Domain Name. An important point to also note is that most Domain Name registrars place an obligation on you to indemnify them for any loss they suffer as a result of your



Domain Name breaching the intellectual property rights of other parties such as the holder of an existing Trade Mark that already utilises the same name as your Domain Name.

Strategy for protecting your business IP

Protecting your business IP can help distinguish you from your competitors. It can also ensure that you are obtaining the most commercial benefit possible from your business and ultimately increase its value. From a self-assessment perspective, you can easily develop a strategy to protect your existing Business IP or potential future IP by adopting the following approach;

1. Identify the type of IP used in your business.
2. Assess the value of that IP to your business both presently and in the future.
3. Decide which of your IP you will protect and how you will protect it.
4. Act! – contact one of our Commercial Lawyers and talk to them about your business IP needs and,
5. Most importantly BE FIRST – don't wait for your competitors to beat you to it.

If you want to know more about protecting your Business IP or would like assistance with any business matter, please call [John Bateman](tel:0247315899) or [Michael Battersby](tel:0247315899) on 02 4731 5899 or email commercial@batemanbattersby.com.au