

Is your name, logo or brand important to you? Have you taken ANY steps to protect them?

Your brand and logo are what sets you apart from your competitors. The average business spends tens of thousands of dollars a year on their brand – through brochures, websites, yellow pages, and other advertising – yet often fail to protect this important and expensive investment.

Contrary to popular belief, a business or company name registration will not provide you with proprietary rights and protections – but a trademark registration can. Put quite simply, if you do not have a trademark registration, your business name and brand, and every single marketing dollar, is at risk.

With the unprecedented growth in trade mark applications (in 2010 there were close to 60,000 trade mark applications lodged in Australia) leaving your brand unprotected can put your business at risk of someone getting in first.

More trademark information:

What is a trademark?

A trademark is essentially a mark that identifies your brand and sets your goods or services apart from the competition. A trademark can be a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging, or any combination of these. Trademarks can powerfully communicate ideas and information and help build loyalty and value for a business.

A trademark **registration**, on the other hand, is a **protection** for this mark (your brand). In fact it is the **only** way you can truly protect your brand.

So now that you have a lovely new brand or logo, what are you going to do with it?

You've called in the experts and a graphic designer has created for you a catchy and original brand or logo. If you spent time and money building a brand new house, you wouldn't live in it without a front door. Running your business without a trademark is a bit like living in a house with no door – you leave yourself open to anybody walking right in and taking away your most valuable asset – your brand, goodwill, and all the time and money you've spent in building that up in the marketplace. Having a trademark registration provides you with legal protection for your brand, like a good door on your house, so that if a dispute ever arises over your name you have the ability to defend your right to use that name.

Whose job is it to protect my brand name or logo?

Some people believe that engaging the services of graphic designer means that everything about their brand and logo is being taken care of, including the legal protection of it. Nothing could be further from the truth!

To use the analogy of the house again, your graphic designer is the creative person who has thought about how your house should look from the outside. To protect your house from intruders, you need to engage somebody else to come and install that door with a padlock.

The kind of padlock or protection that your brand name or logo needs is legal, so you need to seek the assistance of lawyers to protect your brand.

And in fact, before you begin, you also need to check that you have legal title, or the right to build on that land. That is, you are responsible for the legal searches to check that the brand or logo that your designer is creating isn't infringing anybody else's intellectual property.

This is why it is so important that lawyers and designers work closely in this area to create a final product for you that is not only legally protectable from day one, but actually protected or padlocked before you begin pouring your blood, sweat and tears into building up your business.

This area of law is called intellectual property, and it is **your** responsibility as the business owner to be proactive in registering it, protecting it and defending it for the life of your business.

We call it insurance for your marketing spend.

The Myths

1. I have a registered business name – I'm protected already

FALSE!

Contrary to popular belief, neither business names, company names nor domain names offer any proprietary rights to the registered owners, and do not give exclusive rights to the marketing and advertising of those names.

Trademark registrations are the way to get ownership of a mark!

2. I don't need a lawyer – I can do it myself

False!

Yes, you are able to prepare your trademark application without any professional assistance or advice, if reducing cost at the expense of everything else is your aim, just as you would be able to conduct the conveyance for your house purchase yourself if you wanted to. However, what you risk losing is the opinion of an expert in interpreting search results, in structuring the ownership of your intellectual property, and in securing the best possible protection with carefully tailored specifications. We have seen countless examples of trademark registrations done without expert help that have not provided the protection the owners thought it did. When people buy a house, they would never dream of leaving their asset exposed by doing the conveyancing themselves, and they shouldn't be treating their businesses any different. What is the use of having a trademark protection if it won't actually protect you when you need it?

3. It's too expensive

False!

Trademark registration is extremely inexpensive in contrast to the protection it provides. Registration costs start from less than you might be paying now for your annual car insurance. And you only need pay these costs once (plus a small renewal fee every 10 years) to get potentially everlasting protection.

While inherently there are costs involved in the registration of a trademark, these costs are dwarfed in comparison to the potential costs that could flow from the failure to register your trademark.

| Exposure | Cost |
|--|------------------------|
| Infringement action against your business | \$10,000 - \$100,000 |
| Loss of monopoly | Priceless |
| Rebranding: new logo/new stationery/ new brochure/ new website | \$10,000 - \$30,000 |
| Lost investment in advertising and marketing | \$50,000 - \$1,000,000 |
| Lost goodwill | priceless |

It quickly becomes clear that most businesses can't afford not to register their trademark.

What will it cost me if I don't get a trademark registration?

Failing to register your ownership rights could cost you your business name...indeed your business!

Trademark registrations are awarded on a first-in, first-served basis. If you don't act first to protect your business or brand name, your competitors could beat you to it. Defending your name retrospectively can be extremely difficult and expensive and can result in loss of market share and cause damage to your reputation and goodwill. Timing is everything in trademark registration – and the longer you leave it, the more it is likely to cost (both in business exposure, time and money).

What's involved in the process?

The minimum time from lodgement to registration is 7.5 months. There are strategies that can be explored for pre-lodgement examination and for obtaining early acceptance for advertising, at additional cost and with additional fees, but that does not reduce the potential minimum time below 7.5 months.

The Process

Step 1

- Trademark search conducted on your chosen mark

- Advice on the prospects of successfully registering your trade mark
- This step alone greatly reduces your chances of infringing someone else's mark

Step 2

- Lodge trademark application
- Formal examination of application by the Trade Marks Office

Step 3

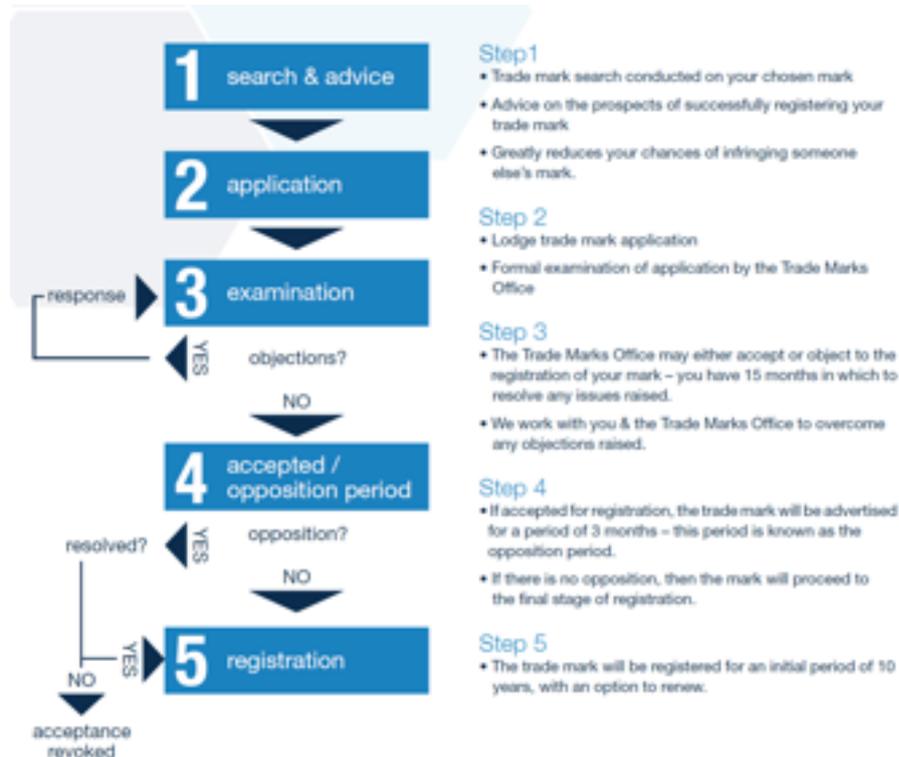
- The Trade Marks Office may either accept or object to the registration of your mark – you have 15 months in which to resolve any issues raised
- We work with you & the Trade Marks Office to overcome any objections raised

Step 4

- If accepted for registration, the trademark will be advertised for a period of 3 months – this period is known as the opposition period
- If there is no opposition, then the mark will proceed to the final stage of registration

Step 5

- The trade mark will be registered for an initial period of 10 years, with an option to renew



What is the cost?

You might be pleasantly surprised to know that getting a trademark registration is not expensive considering the potential value it has for a business. The cost for one mark registered in one class is \$1380 + GST which includes our professional fees, all government filing fees and the government fees **for your first 10 years worth of protection**. This is the total figure, assuming that the application successfully passes through each stage, but our fees are structured according to each stage and only payable as the application progresses through the 7 month application process.

We can provide you with a full costs outline that is specific to your needs, just contact us and we'll be more than to discuss this with you.

About Aspect Legal

Aspect Legal is a commercial legal firm catering to businesses ranging from small enterprises through to large corporates. We offer a wide range of services in relation to protecting and building businesses and can guide you through the trademark maze.

We are proud of our extensive experience in protecting, managing and enforcing the brands of a range of national and international companies, and are dedicated to helping our clients safeguard their brands well into the future.

You can be assured that when we act for you, we are:

- **Fast and efficient** – we can file trademarks within 24 hours of your first instructions to us.
- **Cost effective** – we always strive to provide you with fair and practical pricing on our quality services.
- **Highly experienced** – we specialise in trademark registration.
- **Honest and transparent** – we provide you with sound advice before you spend time and money on a trademark application. We will first determine whether your mark may be registered or is likely to be opposed so your time and money are not wasted.
- **Open communicators** – we communicate with you at every stage of the process so you know exactly how your application is progressing.
- **Focused on achieving long term results** – trademark registration is only the beginning. We offer a range of products and services that assist you in valuing your trademark, reflecting the value in your business, capitalising on that value, and protecting it into the future.

So what do I do next?

Contact us at Aspect Legal on 02 8666 7900 or info@aspectlegal.com.au We're ready to have an obligation-free conversation with you to go over any questions you might have, and then we can take it from there.