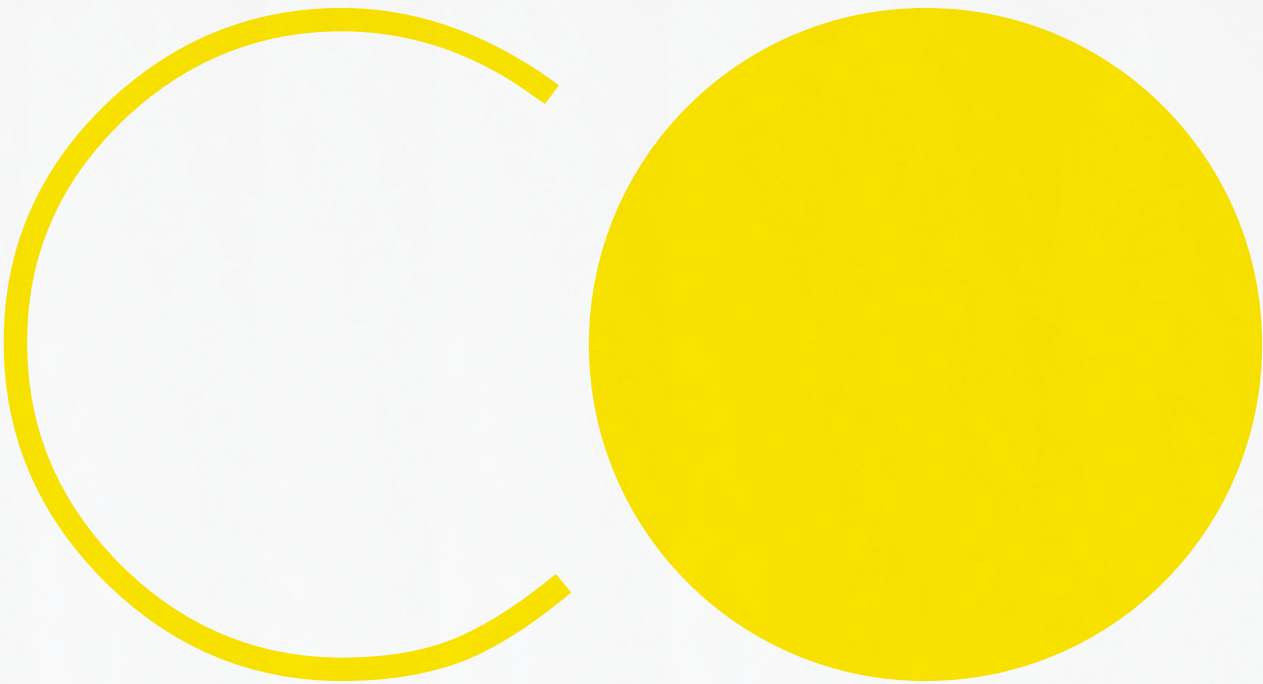





# FASHION RULES

A GUIDE TO  
INTELLECTUAL  
PROPERTY FOR  
AUSTRALIA'S  
CLOTHING AND  
FASHION DESIGN  
INDUSTRY



|  |     |
|--|-----|
| <b>RULE 01:</b><br>OVERVIEW OF IP                                | P03 |
| <b>RULE 02:</b><br>DESIGN  | P07 |
| <b>RULE 03:</b><br>TRADE MARKS                                   | P15 |
| <b>RULE 04:</b><br>COPYRIGHT                                     | P23 |
| <b>RULE 05:</b><br>PATENTS                                       | P25 |
| <b>RULE 06:</b><br>PROTECTION OF INTELLECTUAL<br>PROPERTY RIGHTS | P27 |
| FAQ  | P31 |
| USEFUL CONTACTS  | P32 |
| KEYWORDS   | P34 |



This information pack is designed to help you understand intellectual property issues. You should not regard this publication as an authoritative statement on the relevant law and procedure. You should also note that the requirements and fees may change from time to time. While we make every effort to ensure the information presented is accurate, you should check our website before making any application.

While we can't give you advice about your particular circumstances, we can provide general information and answer questions about our processes and fees. Commercial legal advice is best sought from a registered patent or trade marks attorney or experienced IP professional.



**PROTECTING MY DESIGN.  
WHAT'S IT ALL ABOUT?**

Intellectual property (IP) is an essential tool to protect your ideas and the work you generate as a designer in the clothing and fashion industry. It's also one of the essential building blocks of Australia's economy, because it helps foster creativity and reward innovation.

IP is the result of applying your mind or intellect to create something new or original. IP can exist in various forms, such as inventions, trade marks, books, films, a new season's design or an artistic creation.



Australia's IP laws provide a legal framework to protect your innovative and creative ideas and designs. Legally enforceable IP rights encourage technological innovation and artistic expression in industries, such as fashion and design, and help to build and expand businesses, create new jobs and stimulate the sector both in Australia and overseas.

The legal protection of IP rights provides designers, artists, business people, entrepreneurs and inventors with the exclusive right to use and control, and therefore profit from, their intellectual and creative work.

When most people consider the assets of a business, they tend to think only about physical products, such as equipment, facilities, buildings and people. But IP is a very valuable asset for those in the design industry and an important differentiating factor between one designer and the next. For example, while two designers may each produce a new season's handbag, each bag will have a different design, production technique and brand name, reflecting different types of IP.

### **ABOUT IP AUSTRALIA**

IP Australia is the Australian Government agency responsible for administering patent, design, trade mark and plant breeder's rights. By granting these rights, and contributing to the improvement of Australian and international IP systems, IP Australia is supporting Australia's economic development.

For more information about IP Australia visit [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

**WHAT'S PROTECTED**  
**WHAT'S PROTECTED**

Two and three dimensional product designs (e.g. a fabric pattern or the shape of a purse)

**TYPE OF IP PROTECTION**

Registered designs

**WHAT IT MEANS**

The visual appearance of a product is protected, but not the way it works. The owner has the exclusive right to use, sell or license the registered design

Letters, numbers, words, colours, a phrase, sound, scent, logo, shape, picture, aspect of packaging or any combination of these

Trade marks

A trade mark identifies the particular goods or services of a trader as distinct from those of other traders. The owner has the exclusive right to use, sell or license the trade mark

Inventions

Patents

A patent protects how an invention works or functions. The owner has the exclusive right to use, sell or license the invention

Art, literature, music, film, broadcasts, computer programs

Copyright

The owner's original expression of ideas is protected, but not the ideas themselves. The owner has the exclusive right to use, sell or license the copyright work

Trade secrets, confidential information, circuit layouts, new plant varieties

Other

These types of IP rights give creators certain rights and privileges depending on the type of IP protection. This means the owner has the right to use, sell or license the IP

# DESIGN

## WHAT IS A DESIGN?

A design is the visual appearance of a product, such as a skirt with ruffles or the cut or decorative pattern on a shirt. If the design is unique it can be registered. This gives the designer protection for the visual appearance of the product, but not its feel, material or function.

If the feel, material or function of bed linen could be registered as a design, the market would become monopolised. However, Australian artist Ken Done was able to register pillowcases and quilt covers featuring his unique artwork because they were new and distinctive.





Similarly, while a designer would not be able to register the feel, material or function of jeans, Australian designers Sass and Bide were able to register a unique design for detailed straight leg jeans featuring particular designs of the pockets.

A design must be new and distinctive to be registered. This means it can't be the same or similar to designs already produced (even in a sketch). There are certain designs that can't be registered, including designs featuring scandalous graphics.

To prevent registration being refused or revoked, applicants need to be sure their design is new and distinctive. Before filing a design application with IP Australia, you can search existing design records through the IP Australia website [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au) Legal action may be taken against you if you infringe the rights of another designer.

A registered design that has been examined and certified gives you a legally enforceable right to use your product's design and prevent others from using your design without your permission.

Advice and assistance in design registration can be sought from a professional. Patent attorneys and intellectual property lawyers can be found in the Yellow Pages and on the IP Australia website.

### **I AM A DESIGNER. SHOULD I REGISTER MY DESIGN?**

Registering your design is a commercial decision that only you can make. However, the following information provides some background to assist you.

These days it's not enough just to be a talented designer to build your label, you must also be a smart business person. If you have a unique product that will be released into the public domain, it may be wise to register it as a design. Once examined and certified you are able to take legal action against the product being copied by a competitor. In addition, registration may provide you with acknowledgement of the portfolio of your designs that may be licensed or sold.

However, be aware of the publicity trap. Gaining recognition within the fashion industry can be all about the new and distinctive look of your garments, bags and associated products. If you have publicly disclosed your designs (e.g. if your designs have appeared in fashion magazines, paraded garments at a fashion show or sold it as a product) prior to registration you may have lost your ability to protect your designs.





#### THE BENEFITS OF REGISTRATION

A registered design can be a valuable commercial asset. If you own a registered design you have the right to enforce your design once it has been examined and certified. You may sue for infringement once the registered design is certified, if another person uses your registered design without your permission.

As the registered owner, you:

- Have the exclusive right to use the design specified in your registration
- Have the exclusive right to authorise other people to use your design as specified in the registration
- Have a registered design that is personal property and can grow in value and be sold
- Have a registration which covers the whole of the Commonwealth of Australia
- Can take action to stop other people using your design after certification.

#### TERM OF PROTECTION

Registration initially protects your design for five years from the date the application was filed. The design registration can be renewed for a further five years up to the maximum term of 10 years. If you do not renew your registration it will cease. You can't make an application to re-register the same design. Once the design has ceased it passes into the public domain and is free for others to use.

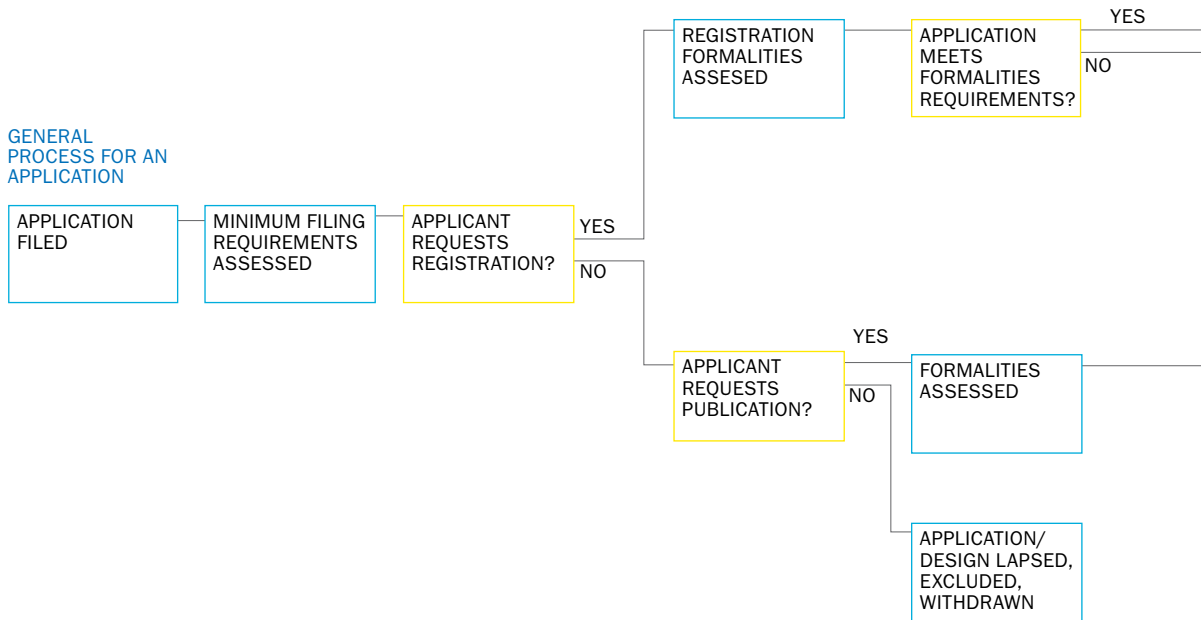
#### COSTS AND MAINTENANCE

A fee per design is payable at the time the application is lodged. The minimum fee\* to commence your application is \$200. Once registered, no further costs are required until renewal. Costs for renewal are \$275.

Should you need to enforce your design, examination and certification need to occur. The fee to have your design examined is \$360. If the design passes examination, certification follows. There is no additional fee for certification.

It is important to keep your details up-to-date to ensure we can remind you when your design is due for renewal. Firms, such as patent attorneys and IP professionals, can help you register and maintain your designs.

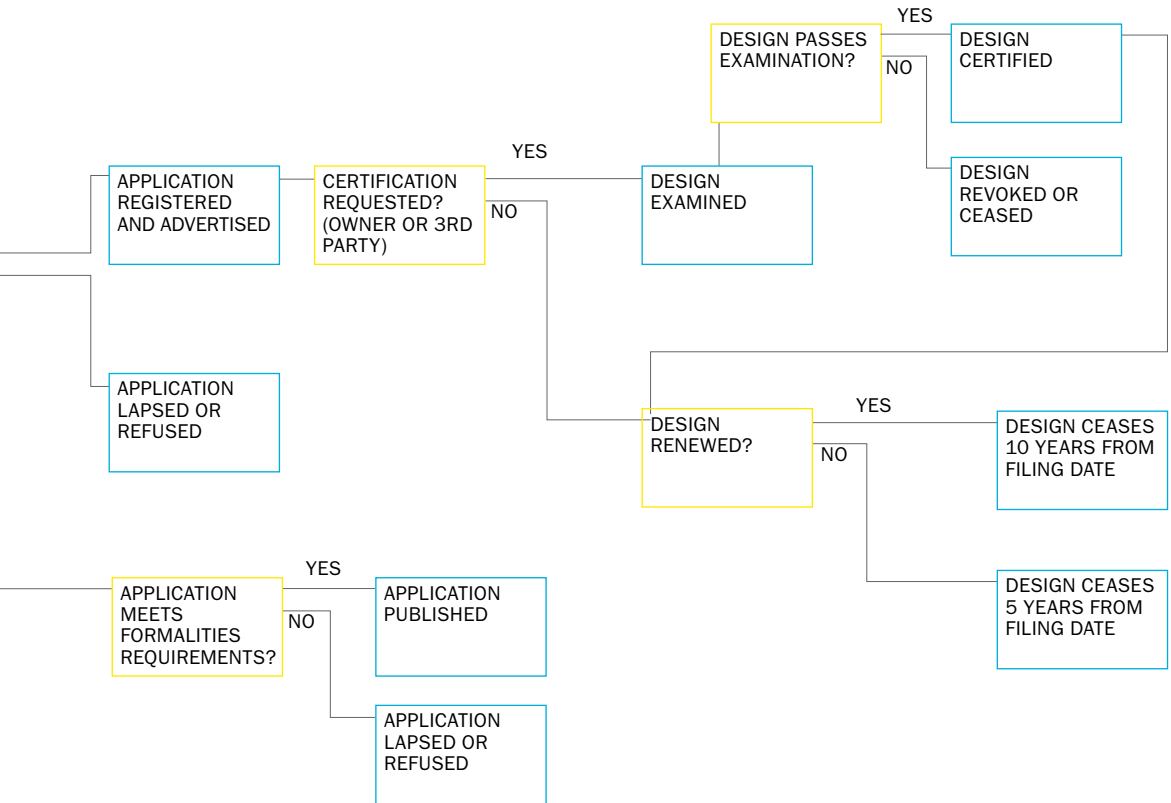
\* Fees correct at time of publication. For the most up-to-date fees go to [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)



#### APPLICATION

IP Australia has a plain English application kit to help you through the process. In general, the application form is a two-pager, which asks for details such as your name, address and product name. The design needs to be represented clearly through either a drawing or photograph. The kit and application forms are available from [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

Presently, if the application is in order and passes a formalities check, registration will occur within a matter of weeks. However, the rights you obtain through registration will be tested during examination (if sought). Therefore, applications may need to be carefully prepared taking into account similar designs already on the market.



**DISCLOSURE**

If you have already disclosed your design (e.g. exhibited, sold copies, catalogued or post your lookbook on your website), you may no longer be able to register it as it may not be considered to be new and distinctive. However, you can use a formal publication process to prevent others from obtaining certification of a similar design.

This alternative option to registration is called publication. While this doesn't give you any rights in respect to the design, it does prevent others from obtaining certification. Therefore, if you are unable to register your design but want to prevent others from obtaining registration for the same design, a formal publication request can be used.

You may consider publication as a defensive strategy where registration cannot be obtained. The fee\* to file an application for publication is \$200 per design. As the purpose of this action is to have the design published, there are no renewal fees.

\* Fees correct at time of publication. For the most up-to-date fees go to [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

### SO HOW DO I ENFORCE MY RIGHTS?

A design owner can take action to enforce their registered design if a certificate of examination has been issued. If the Registrar of Designs finds the design in question meets all the requirements of the legislation then a certificate of examination will be issued and the design will remain on the register. If the Registrar finds that the design is not valid, it will be removed from the register.

A registered design can only be enforced if it has a certificate of examination.

Third parties can request examination of registered designs and provide information relevant to the validity of the design registration. The Registrar can also initiate examination where the circumstance warrants.

### PUTTING OTHERS ON NOTICE

Taking infringement action against another party can be a costly process so there can be a benefit in taking steps to avoid having to take action. If you have a registered design, it's a good idea to let others know so that they don't copy it. An appropriate notice on your labeling, packaging or other marketing material may be all that is required. The notice could simply be the term Registered Design followed by your registration number.

### WHAT DOES IP AUSTRALIA LOOK AT IN EXAMINING A DESIGN?

The threshold requires a design to be new and distinctive to be registerable.

The design cannot be substantially similar to an already registered or published design, which means minor changes may be irrelevant if the overall impression is the same. If the overall impression is the same as a prior registered design, it may be an infringement on the rights of its owner.

In addition to being checked against designs previously registered, used or published in Australia, the design can be checked against those published anywhere in the world.

## INTERNATIONAL FASHION

While design registration systems are generally the same from country to country, there is no blanket method for world-wide design registration.

If you want to promote your designs on the runways of Milan, Paris, Tokyo or New York, the protection you have in Australia will not necessarily prevent someone in another country from copying your design. Although the principles of design protection may be similar in other countries, the actual laws may differ.

Prior to filing an application for registration in any country (even Australia), it is important to consider your market, your ability to effectively exploit your design, benefits of protection and the strength of your rights in these jurisdictions. In short, these commercial considerations will depend on the position of your business and the importance of the design. Consequently, it may be wise to consider seeking legal advice before you disclose your design. The disclosure of your design in one country may jeopardise your ability to protect the same design in other countries.

There are two strategies to apply for a design in an overseas country:

1. Make an application as though it were for the first time (a national application).
2. Make an application in another country within six months of your Australian application. When filing your application in the other countries, you can claim priority to the date that you lodged your Australian application (a convention application).

The priority date is a concept in intellectual property law where the first to apply for registration of a design is given preference. In most countries, this means if two people apply for registration for the same or a similar design, the person with the earliest priority date is given precedence.

Australia belongs to the International Convention for the Protection of Industrial Property, also known as the Paris Convention. There are around 100 member countries of this treaty, including Italy, France, Japan and the United States of America. This treaty is what enables a convention application to be made.









# TRADE MARKS

## WHAT IS A TRADE MARK?

A trade mark can be a word, phrase, letter, number, sound, scent, shape, logo, picture, aspect of packaging or a combination of these.

It is used to distinguish the goods and services of one trader from those of another. It could be the name of a company or its logo or other distinguishing signs such as slogans or aspects of packaging.

The difference between a trade mark and a design can be seen with French fashion house Hermès International. While HERMÈS is a trade mark, the appearance in the shape of its famous Kelly bag may have been registered as a design.



#### WHAT DOES THIS MEAN FOR ME?

Your label is a valuable marketing tool. It is the name that customers identify with when they make a purchase. A distinctive trade mark should be an integral part of the marketing strategy for your goods and services. The public will identify a certain quality and image with goods and services bearing your trade mark. It can become an important means of maintaining goodwill with your clients and improving your bottom line.

TRADE MARK REGISTRATION IS NOT COMPULSORY...

...but it is advisable. After so much hard work building up a label, designers can't afford to have competitors launching lines under deceptively similar brands. Although there is automatic protection against misrepresentation under common law, as well as the trade practices and fair trading legislation, this can be time-consuming and expensive.

British fashion house Burberry, which has held IP rights since 1905, won a clear US district court victory in 2006 against New York company Marco Leather. Marco Leather had imported and sold more than 100,000 counterfeit handbags, wallets and goods bearing the check and knight trade marks owned by Burberry. Marco Leather had also tried without success to register the trade marks as their own.

#### TYPES OF TRADE MARKS THAT ARE DIFFICULT TO REGISTER

A trade mark that describes your goods or services is difficult to register. A trade mark must not be a sign that other traders may wish to use to promote or describe their goods and services, nor can it mislead the public about the nature of your goods and services. For example, the trade mark SOCKS for the goods of socks or the trade mark TAILOR for the services of tailoring, clothing design and manufacture are trade marks that would be difficult to register as these trade marks directly describe the goods or services covered.

It is also very difficult to register a geographic name or a common surname as a trade mark. There may be an exception for an applicant who has used one extensively for a considerable period of time.

Before settling on a trade mark to use or register it is best to brainstorm a range of trade marks or logos which you think could be appropriate. This should always be followed by a thorough search of the trade marks database and other goods and services existing in the market place to ensure that you won't be infringing any existing registered or common law trade mark rights.

#### APPLICATION FOR REGISTRATION

IP Australia has a plain English application kit to help you through the process. In general, an application needs to have detail of your name, address, the mark and a specification of goods or services. The mark can be in plain typescript or a graphic representation. The kit and application forms are available from [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au) It is also possible to file on-line at a reduced cost.

It is important to be clear about the mark that you intend to use and also the specification of your goods and services as only changes to limit the specification may be available during examination.

Applications are examined in order of filing, to see if they meet the requirements of the *Trade Marks Act 1995*. The period of time taken between filing and examination of applications can vary considerably due to significant fluctuations in the number of applications lodged at any given time. However, your trade mark will be registered from the date you filed your application, not from the date it was examined or accepted. While it may be possible to expedite the examination of your application, in line with our obligations under international conventions, the earliest that a trade mark can be registered is around 7 months.

However, a registered trade marks or

patent attorney and other experienced IP professionals may be able to provide you with advice on the registrability and use of your proposed trade mark. Alternatively, if you are unsure of the acceptability of your trade mark for registration, IP Australia provides a service (TM Headstart) to assist you to understand whether your proposed trade mark is acceptable for registration.

The TM Headstart service provides an assessment that can help you determine the suitability of your trade mark for registration. It is simple, fast and offers you the opportunity to speak with an IP Australia staff member about the registrability of your proposed trade mark with minimum delay (around five days). Using the service may help you overcome difficulties associated with meeting the requirements for registration of your trade mark.

While the TM Headstart service is simple and fast, there are some other advantages and also limitations to this service. The service is only available online at [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au). Also, a plain English information kit about trade marks and the application process is available from [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

### BUSINESS NAMES, COMPANY NAMES AND DOMAIN NAMES

The difference between trade marks, business, company and domain names sometimes causes confusion. Registration of a business, company or domain name does not in itself give you any proprietary rights - only a trade mark can give you that kind of protection.

The same word(s) may be registered by different people as business names and trade marks. However, the registered trade mark owner can sue the business owner for infringing the trade mark if they use the words on goods or services similar to those covered by the trade mark registration.

**Caution:** Before you register your business name, be careful that it does not infringe on someone else's trade mark. It is always wise to search the trade mark databases first.

A **trade mark** identifies a product or a service, distinguishing it from the similar products or services of other traders. Registration of the trade mark gives the owner the legal right to exclusively use or control the use of the mark for the goods or services for which it is registered. Registration is obtained under the *Trade Marks Act 1995* and in most cases covers the whole of Australia.

A **business name** is a trading name only. However, a business name is only valid in the state(s) it is registered.

A **company name** identifies a legally incorporated entity. If a company wishes to trade using a name other than its registered company name, it must register that trading name as a business name.

**Domain names** are site addresses on the internet. Registration of a domain name gives you exclusive use of that Internet address but only for an agreed period of time.

No proprietary rights in the name are gained through business name, company name or



domain name registration in itself.

#### **CASE STUDY – THE IMPORTANCE OF REGISTERING A TRADE MARK**

A talented young designer started a boutique fashion label in the mid 1990s. As with many young designers, he considered that registering a trade mark to protect the brand as an unnecessary expense in the initial start-up phase. The trade mark was therefore left unregistered. Over the next few years the business grew and the designer and his label became well known in the marketplace, participating in Australian Fashion Week on several occasions and

winning a number of industry awards.

In 2002 the business was sold to a larger company. At the time of the sale it was noticed that the trade mark was unregistered but no steps were taken to formally register it by the new owners. The business continued to flourish under new management and a number of retail stores were opened around Australia.

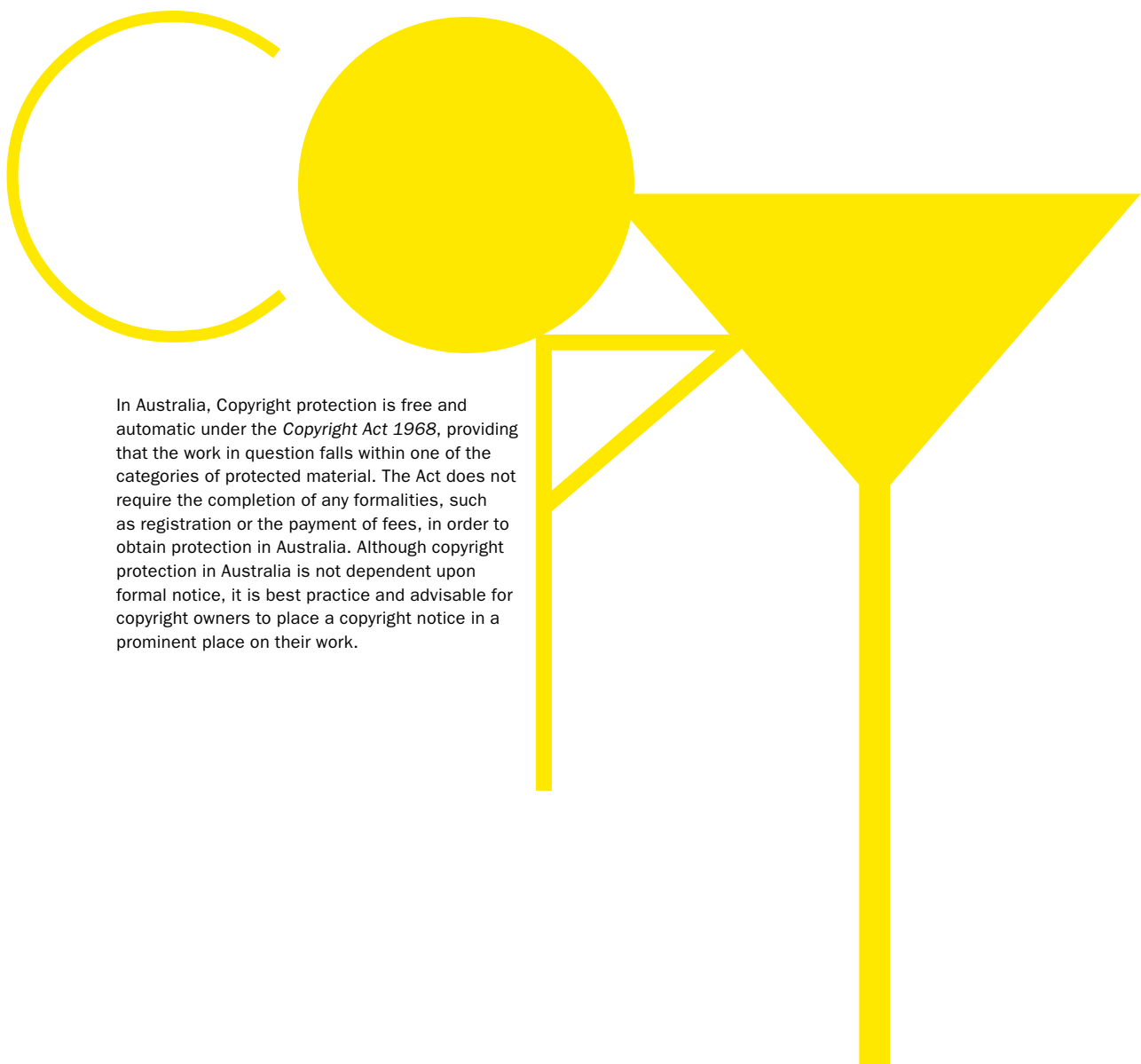
In 2005, customers at the Sydney flagship store began commenting on the existence of a clothing label with the same name being sold by a discount shop in the same shopping centre. Investigations revealed that a foreign-based company owned the label and had registered it as a trade mark with IP Australia.

Because it was not the owner of the trade mark, the company that bought the label had to prove to IP Australia that it had prior use of the trade mark. Although ultimately successful (meaning the new registered trade mark was disallowed) it was a lengthy and costly process. This considerable expense could have been avoided if the designer or the company had registered the label as a trade mark from the outset.

While there are many benefits to registering your trade mark, it is always wise to search the trade marks database before using a new trade mark and before filing an application to register it. Save yourself time and trouble by finding out if there is an existing trade mark similar to the one you plan to use or you may face legal action from the trade mark owner.

Identical or similar trade marks for the same or closely related goods or services could block your application for registration. The search could also save you trouble and money by alerting you to existing trade marks which are so similar to the one you plan to use, that you may face legal action from the owners of those trade marks.

When you search the trade marks database, look for other trade marks that are identical or similar to your own trade mark, and which relate to similar goods and services. The trade marks database is accessible online in the trade marks section of the IP Australia website [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)



In Australia, Copyright protection is free and automatic under the *Copyright Act 1968*, providing that the work in question falls within one of the categories of protected material. The Act does not require the completion of any formalities, such as registration or the payment of fees, in order to obtain protection in Australia. Although copyright protection in Australia is not dependent upon formal notice, it is best practice and advisable for copyright owners to place a copyright notice in a prominent place on their work.



Some types of intellectual property, such as ideas, information, styles, techniques and names, cannot be protected under copyright law. Copyright does, however, protect original artistic works, which means that sketches and patterns are afforded some copyright protection. This protection is limited, however, as copyright owners of a pattern cannot generally take action for copyright infringement for the “reverse-engineering” of garments. In this situation, it will be necessary to rely on the *Designs Act 2003* for protection.

Copyright protection is also likely to be available for works of artistic craftsmanship, such as one-off fashion garments and jewellery. However, if you intend to mass produce or make multiple copies of items, you should rely on design law rather than copyright law. The *Designs Act* generally requires registration. Copyright and design laws overlap to some extent. These laws are complex and given the danger of the publicity trap and prior publication, it is wise to seek commercial legal advice before seeking protection, publishing or manufacturing your artistic work.



RULE 05:  
025

PATENTS



### WHAT IS A PATENT?

A device, substance, method or process that is new, inventive and useful can be patented.

A patent gives the owner exclusive right to commercially exploit the invention for the life of the patent and can be applied for via the IP Australia website.

In Australia, there are two types of patents: a standard patent that gives protection for up to 20 years or an innovation patent that gives protection for up to eight years.

### IS A PATENT OF USE TO ME?

Patents give protection to new products, methods or processes. Patents have the potential to exclusively secure long-term commercial gain.

In return, applicants must share their know-how by providing a full description of how their invention works. This information becomes public and can provide the basis for further research by others.

You can't patent artistic creations, so not many designers have a need for patents. However in 1998, American Buck Weimer was granted a patent for his new invention Under-Ease. The airtight underwear contains a charcoal filter to cleanse noxious gasses for flatulence. He won the 2001

IG Nobel Prize in biology for his invention.

Adding devices to clothing is fast becoming a trend in this age of technology, which means patents for new devices and new methods of use for devices are an option worth considering.

American designer Lauren Scott is currently adding radio frequency identification tags to her line of children's wear. The tags have previously been used to track shipments of freight. In clothes, the tags could carry medical information in case of an accident or emergency and could also prevent abductions by triggering an alarm if a certain perimeter is breached (e.g. tags inside pyjamas could trigger readers placed at various locations in a house if the child leaves the premises).

There is also an increasing use of patents in the textile manufacturing industry. The next generation of textiles includes fabrics treated with inherently conductive polymers developed by CSRIO that allow energy to be transferred to heat and cool the body without electrical wiring.

An infringement is the unauthorised use of IP rights. To take action against an infringer is called enforcement.





# LECTURA

# K



## YOUR RIGHTS

Your label is important for business success and income. You need to know your rights and be prepared to act if they are infringed. It is wise to seek help from a professional in case of infringement. If you make unsubstantiated claims about an infringement on your design, you can be sued.

A professional can also help you understand the costs and risks involved in infringement action, as well as advise on the best course of action. There is a range of options available before court, such as a letter of warning and negotiations.

## OBLIGATIONS AND RESPONSIBILITIES

### PROTECTION

Although IP Australia receives, processes applications and maintains registers of trade marks, patents, design and plant breeder's rights varieties it is not responsible for policing the rights of owners of the IP. Fundamentally, registered IP is a property right and as with all property it is the responsibility of the owner to maintain and defend that right.

### EXTENT OF YOUR RIGHTS

Your registered IP provides you with a legal monopoly on the matter only covered by the registration. For example, if your trade mark is only registered for clothing and headwear and you also use your trade mark on handbags you may want to consider registering your trade mark for these other goods. Also, if you alter your product from that shown on your registered design, then your design may not cover you if others copy the altered designs.

Regular audits of your IP can assist you in ensuring that your rights protect you for the goods and services that you manufacture or sell.

### MAINTAINING YOUR RIGHTS

If you own registered IP, keep track of important dates (e.g. renewal) and ensure your particulars are kept up-to-date on all registers both in Australia and in other countries where you have registered rights. IP professionals such as registered Patent and Trade Marks Attorneys may offer maintenance services to help you track your IP portfolio.

### AVOIDING INFRINGEMENT

Infringement can be a costly process, so take steps to avoid having to take action. Some measures can be relatively simple to follow. Before using or applying to register IP, it is wise to search first. Searching can help you understand the rights of others and consequently take steps to avoid infringing on those rights. If you own IP, you can use appropriate marking or symbols (®, ™, ©, Pat Pending, Reg'd Des) to demonstrate that there is ownership of the IP. Using appropriate marking can be a useful warning to put others on notice.



**Q: What is the difference between the trade mark symbols <sup>TM</sup> and <sup>®</sup> ?**

A: You may use the <sup>®</sup> (Registered symbol) next to your trade mark once your trade mark is registered. If your trade mark is registered overseas but not in Australia, you can also use the symbol, but you need to show the country of registration close to it. Anyone can use the <sup>TM</sup> symbol (TM) as this does not indicate that the trade mark is registered.

**Q: What benefit is there in trade mark registration as opposed to common law protection?**

A: If a trade mark is not registered and another person uses it, the owner may have to take passing off action under the common law to stop the infringement. They will have to prove that they have developed a reputation in the trade mark and that use of the other trade mark would be likely to confuse or deceive the public. This can be difficult and expensive. If the trade mark is registered, a letter from an IP professional such as a registered trade marks attorney or lawyer experienced in trade mark matters may be all that is needed to deter the infringer.

**Q: How long does protection last for trade marks and design?**

A: A trade mark is initially registered for a period of ten years and continues indefinitely as long as the renewal fees are paid every ten years.

Design registration lasts for a maximum term of 10 years\*. The initial period of registration is for 5 years and can be renewed for a further term of 5 years.

\*The period of registration of a design changed with the introduction of new legislation in June 2004.

**Q: How much does it cost to register a trade mark?**

A: In general, the minimum fees\*\* to apply for and register a trade mark are under \$400. The fees are split for the application and registration. Application fees commence from \$120 and registration fees from \$250.

**Q: How much does it cost to register a design?**

A: A fee per design is payable at the time the application is lodged. The minimum fee\*\* to commence your application is \$200. Once registered, no further costs are required until renewal. Costs for renewal are \$275.

Should you need to enforce your design, examination and certification need to occur. The fee to have your design examined is \$360. If the design passes examination, certification follows. There is no additional cost for certification.

\*\*Fees correct at time of publication. For the most up-to-date fees go to [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

**Q: Do I need to use a lawyer or attorney to file my application?**

A: No. However, early advice from an IP professional such as registered Patent and Trade Marks Attorneys can be crucial in understanding the specific issues affecting your proposed patent, trade mark or design and ensuring that any application is professionally prepared and adequately covers your ideas and products.

IP professionals may be able to provide you with business advice, prepare applications, infringement action, licensing, IP audits and also in maintaining your rights.

**Q: Can I still protect my design if I have sold copies of it in different stores and also via an on-line store on the Internet?**

A: No, if you have publicly disclosed your design prior to registration you may have lost your ability to protect your designs.



# USEFUL CONTACTS

IP Australia can provide useful information if you are:

- Seeking formal IP protection via patents, trade marks, designs and plant breeder's rights
- Disputing or opposing a patent, trade mark or design
- Researching existing IP documents and searching patents, trade marks, designs or plant breeder's rights databases
- Interested in promoting IP within your organisation

| WHAT           | WHO   | HOW   |
|----------------|---|---|
| Business names | Contact the relevant government body in your state or territory | Australian Capital Territory<br>02 6207 0461<br><a href="http://www.rgo.act.gov.au">www.rgo.act.gov.au</a><br><br>New South Wales<br>13 32 20<br><a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a><br><br>Northern Territory<br>08 8982 1700<br><a href="http://www.tbc.nt.gov.au">www.tbc.nt.gov.au</a><br><br>Queensland<br>1300 658 030<br><a href="http://www.fairtrading.qld.gov.au">www.fairtrading.qld.gov.au</a><br><br>South Australia<br>1300 138 918<br><a href="http://www.ocba.sa.gov.au">www.ocba.sa.gov.au</a><br><br>Tasmania<br>03 6233 2225<br><a href="http://www.consumer.tas.gov.au">www.consumer.tas.gov.au</a><br><br>Victoria<br>1300 558 181<br><a href="http://www.consumer.vic.gov.au">www.consumer.vic.gov.au</a><br><br>Western Australia<br>1300 304 014<br><a href="http://www.docep.wa.gov.au/bizline">www.docep.wa.gov.au/bizline</a> |





| WHAT   | WHO   | HOW  |
|--|---|--|
| Company names  | Australian Securities and Investments Commission  | 1300 300 630<br><a href="http://www.asic.gov.au">www.asic.gov.au</a>   |
| Copyright  | Australian Copyright Council<br><br>Attorney-General's Department<br>Copyright Law Branch   | 02 9318 1788<br><a href="http://www.copyright.org.au">www.copyright.org.au</a><br><br>02 6250 6655<br><a href="http://www.ag.gov.au">www.ag.gov.au</a><br><a href="http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright">www.ag.gov.au/www/agd/agd.nsf/Page/Copyright</a> |
| Industry representation                                  | Council of Textiles and Fashion Industries of Australia<br><br>Australian Fashion Council   | 03 9866 8962<br><a href="http://www.tfia.com.au">www.tfia.com.au</a><br><br>03 9866 8962<br><a href="http://www.australianfashioncouncil.com">www.australianfashioncouncil.com</a>   |
| Internet domain names                                    | .au Domain Administration   | 1300 732 929<br><a href="http://www.ada.com.au">www.ada.com.au</a>   |
| Inventors association                                    | Contact the Inventors Association in your state or territory  | <a href="http://www.inventors.asn.au">www.inventors.asn.au</a>   |
| IP lawyers   | Contact the Law Society in your state or territory<br><br>Intellectual Property Society of Australia and New Zealand<br><br>Licensing Executives Society of Australia and New Zealand   | <br><br><a href="http://www.ipsanz.com.au">www.ipsanz.com.au</a><br><br><a href="http://www.lesanz.org.au">www.lesanz.org.au</a>   |
| IP research  | Intellectual Property Research Institute of Australia   | 03 8344 1127<br><a href="http://www.ipria.org">www.ipria.org</a>   |
| IP rights associations and interest groups               | Australian International Design Awards<br><br>Australian Graphic Design Association<br><br>The Australian Manufacturers of Patents, Industrial Designs, Copyright and Trade Mark Association  | 02 8206 6090<br><a href="http://www.designawards.com.au">www.designawards.com.au</a><br><br>02 9955 3955<br><a href="http://www.agda.com.au">www.agda.com.au</a><br><br>02 9458 7416   |
| Patent and trade mark attorneys                          | Institute of Patent and Trade Mark Attorneys of Australia<br><br>Professional Standards Board   | 03 9857 0311<br>1800 804 536<br><a href="http://www.ipta.com.au">www.ipta.com.au</a><br><br>02 6283 2345<br><a href="http://www.psb.gov.au">www.psb.gov.au</a>   |
| Patents, trade marks, designs and plant breeder's rights | IP Australia<br><br>IP Australia has a range of resources including:<br><br>Σ Application kits – kits are available for designs patents and trade marks and to help you file for an IP right.<br><br>Σ Don't give away your most valuable asset – a brochure designed to introduce you to IP<br><br>Σ IP Toolbox – a comprehensive IP guide for business<br><br>Σ Smart Start – a tailored product for small to medium-sized businesses | 1300 651 010<br><a href="http://www.ipaustralia.gov.au">www.ipaustralia.gov.au</a>   |

# KEYWORDS

## ATTORNEY

Patent and trade mark attorneys are experienced professionals who can assist clients to protect and exploit their IP rights.

## BUSINESS NAME

A business name is a name under which a business operates. Business name registration provides a means of identifying the owners of the business and is obtained under state or territory legislation. Registration of a business name does not provide proprietary rights.

## COMPANY NAME

A company is the name given to a corporate entity incorporated within the Commonwealth of Australia. This may not necessarily be the business name that the company trades under. An entity may trade under its company name without having a registered business name.

## CONFIDENTIAL INFORMATION

Information and materials of commercial or personal value kept secret from the general public.

## COPYRIGHT

Copyright protects the original expression of ideas, not the ideas themselves. It comes into existence automatically and gives you the right to control and exploit the copying of your original works of art, literature, music, films, broadcasts and computer programs for a period of 70 years. The copyright notice © generally indicates that the work is protected and identifies the copyright owner, although it is not necessary to display this notice for copyright to subsist.

## DESIGN REGISTRATION

Design registration protects the way manufactured products look. Design refers to the features of shape, configuration, pattern or ornamentation.

## DOMAIN NAME

A domain name is the unique name that corresponds with an internet protocol address. It is often easy and intuitive to remember. For example, IP Australia's domain name is [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

## INFRINGEMENT

Infringement occurs when someone consciously or inadvertently uses IP without permission.

## INNOVATION PATENT

An innovation patent is a form of protection available in Australia for comparatively minor innovations and improvements. Protection is available for up to eight years. For suitable subject matter, innovation patents require only novelty and an innovation step to be valid.

## INTELLECTUAL PROPERTY (IP)

Intellectual property is property generated through intellectual or creative activity. Types of IP include patents, trade marks, designs, confidential information, trade secrets, copyright, circuit layout rights and plant breeder's rights.

## IP RIGHTS

The right to prevent use by others of your intellectual property, e.g. patents, designs, copyright, trade marks, circuit layout rights, plant varieties or confidential information.

## PATENT

An exclusive right to exploit an invention commercially, granted for a limited term in return for public disclosure of the invention.

## PLANT BREEDER'S RIGHTS

Plant breeder's rights are used to protect new varieties of plants by giving exclusive commercial rights to market a new variety or its associated reproductive material.

## PRIORITY DATE

A priority date is a concept in IP law whereby the first to take a particular action is entitled to a right that excludes others who may have innovated later. For example, in most countries, if two people apply independently for a patent on the same invention, the earlier application has priority and so can prevent the second succeeding. Also public disclosures made before the priority date are relevant for determining whether an invention is new and inventive for patents and new and distinctive designs.

## TRADE MARK

A trade mark is a sign used commercially to distinguish goods and services of one trader from those of another. It can be letters, numbers, words, colours, a phrase, sound, scent, logo, shape, picture, aspect of packaging or any combination of these. A registered trade mark gives the owner the exclusive right to use, license or sell it within Australia (and any other country in which it is registered) for the goods and services for which it is registered. The ® symbol can be applied to registered trade marks. The TM symbol can be used for unregistered trade marks.

## TRADE SECRET

Information known to a trader and kept out of the public domain for business advantage. The law protects against damage done to a business through unauthorised disclosure of trade secrets, but not against independent discovery of the trade secret.

[www.ipfashionrules.gov.au](http://www.ipfashionrules.gov.au)

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Australian Government  
IP Australia

Australian Government  
Department of Innovation  
Industry, Science and Research

AUSTRALIAN FASHION COUNCIL