

### DISCLAIMER

This Factsheet provides an outline of trade mark law as it currently exists both at Federal common law and in statute.

**This factsheet is not intended to be a substitute for professional legal advice** and no reliance should be placed on the information as if it were such. Please consult YLP Legal should you have any queries in relation to trade mark matters.

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### Introduction

There are a number of reasons why you may not be able to trade mark your business name or logo with IP Australia. These reasons are found in the *Trade Marks Act 1995 (Cth)* and have been summarised below.

### What cannot be trade marked in Australia?

1. Any mark that is already registered as a trade mark on IP Australia's Trade Mark Register;
2. A name such as 'John' or 'John Smith';
3. A geographical location such as 'Adelaide';
4. Anything that is offensive such as swear words;
5. Anything that is purely descriptive and cannot distinguish the applicant's goods and/or services from the goods and/or services provided by someone else (i.e. 'Good Lawyers');
6. Anything that is contrary to law (something that is considered to be illegal or unlawful);
7. Anything that is by its nature scandalous;
8. Anything that is likely to deceive consumers or cause confusion; and
9. Any sign that is listed in Schedule 2 to the *Trade Marks Regulations 1995 (Cth)* such as 'Olympic Champion.'

### What if my mark (business name or logo etc) falls into one of the above categories?

In some cases, it is possible to have a trade mark that falls into one of the above categories registered. However, this can be a complex and lengthy process that requires large amounts of evidence to be provided to IP Australia. The outcome of providing your evidence to IP Australia often cannot be predicted. For this reason, it is important to seek professional advice from an intellectual property lawyer before you begin trading with a business name or logo. If you do not seek advice, you may find in future that you have invested good money in building a brand and reputation that you cannot protect from your competitors.

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### What should I consider when creating a brand (business name and logo etc)?

1. Is the name and/or logo common or similar to other names and/or logos?;
2. Is the name and/or logo going to distinguish the goods and/or services that my business provides from the goods and/or services that my competitors offer?;
3. Does the name and/or logo fall into one of the other categories above?;
4. Conduct searches for the name and/or logo that you are thinking of using. Searches can be conducted online (Google, Facebook, Instagram and other social media platforms, on IP Australia's Trade Mark Register, in the Yellow Pages or other similar directories, industry or profession specific publications such as newsletters; and
5. Obtaining professional advice from an intellectual property lawyer before starting to use the name and/or logo.

### Registering trade marks in countries other than Australia

The above information relates to the *Trade Marks Act 1995 (Cth)* which governs trade making in Australia only. If you wish to consider registering trade marks in other countries, please contact one of our intellectual property lawyers for further information.

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