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EXPLAINING AUSTRALIA / NEW ZEALAND “HEADSTART” PROCESS TO SPEED UP PROTECTION OF A BUSINESS’ NAME, LOGO, LOOK, AND REPUTATION¹

As lawyers we are all aware of the need for business owners to consider registering protective trademarks.

However, the focus is usually on running the business and the traditional trademark registration system.

But, registering a trademark takes months.

One can lodge and then many months later find the Trade Mark registration authority has some issue of a minor or technical nature which could be problematic.

In Australia and New Zealand there is now the “HeadStart System” to expedite early aspects of the process.

The HeadStart system is a way to assess potential risks to registration at a very early date so as to avoid possibly expensive problems arising later, by taking the opportunity at the earliest date to fix certain things.

What Can Be Registered?

As we all know, the key components of a trade mark are:

- the words used, and
- any logo or stylised artwork.

Registration authorities such as IP Australia are less likely to accept marks made up of common, descriptive, or widely used words, as these lack distinctiveness. In general, common English words or acronyms cannot be monopolised by a single business.

Distinctive logo design or stylisation often makes the difference.

A stylised mark or logo is much more likely to be registrable than words alone. For example, “*Augmented Lawyers for Augmented Reality*” would likely not have been registrable as plain words. Once stylised, including using “4” in lieu of “for “, however, it became registrable and is now a registered trade mark.

Australian Trade Mark Registration Costs

IP Australia fees depend on:

- the nature of the mark, and
- the number of classes of goods or services claimed.

IP Australia has a range of Lodgement Fees

The Headstart Application (which I usually recommended for new businesses) process provides early feedback and can reduce cost and risk.

- Step 1 – Headstart request: \$200
- Step 2 – Conversion to standard application: \$130 Even a straightforward

¹ Text is a mere outline of the HeadStart system and does not purport to be advice on any particular situation.

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application typically takes 8–10 months, although you can usually use the mark during this period.

Headstart Applications – When Certainty or Speed Matters

Where there is uncertainty or urgency, a Headstart application is often the best approach.

Benefits include:

- early feedback from IP Australia (within 7 business days),
- identification of potentially conflicting existing marks, and
- the opportunity (more or less a week) to amend the application before committing full fees.

An example I give is a client who wanted some words registered, I replied IP Australia will reject them as a registrable mark as lacking distinctiveness. I recommended adding artwork. He refused. We lodged (but using HeadStart). IP Australia rejected the application for the reason I had given but because we were using HeadStart, we had a week to amend the application by adding a logo / artwork. So we did, and we were up and running but because the artwork had not been lodged up front there were additional artwork lodgement fees.

Even so, it was better to know and have fixed it as the business started using the name and mark, than have IP Australia raise the problem months down the line when competitors may have seen it and lodged a better compliance mark.

While IP Australia technically retains the right to later object, adverse changes of view after Headstart are, in my experience, uncommon.

If you have any queries or wish to discuss any of the above, please contact me through the website or by email Greg@gregdross.com.au or call me 61 413 544 106.

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