



WHY SHOULD I PROTECT MY INTELLECTUAL PROPERTY (IP)?

In today's ever-developing world, ideas and innovations hold immense value and protecting your Intellectual Property (IP) is now more important than ever. IP encompasses the fruits of human creativity, including inventions, artistic works, designs, and trade secrets.

In Australia, IP rights are protected by federal legislation and the common law. Australia is also a signatory to the World Trade Organisation Agreement on Trade-related aspects of Intellectual Property Rights, which sets minimum standards for IP protection and enforcement.

What is Intellectual Property?

IP refers to the creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images used in commerce. This category of property includes patents, trade marks, copyrights, and trade secrets. These intangible assets are often the result of human creativity and innovation and, therefore, worthy of legal protection.

IP can be classified into several distinct categories, each with its specific characteristics and legal protections:

- **Patents** ®

Patents grant inventors exclusive rights to their inventions, preventing others from making, using, or selling the patented invention without permission.

- **Copyrights** ©

Copyright law protects original works of authorship, such as literary, dramatic, musical, and artistic works, giving creators exclusive rights to their works.

- **Trade marks** ™

Trade marks are used to protect symbols, names, and slogans that distinguish goods and services in the marketplace. They offer valuable brand protection and help consumers recognise and differentiate products or services.

- **Trade secrets**

Trade secrets encompass confidential business information, such as formulas, practices, processes, designs, instruments, patterns, or compilations of information that provide a business with a competitive advantage.

Risks of inadequate protection

Failing to protect IP can expose creators and businesses to various risks and challenges. These include:

- **Unauthorised use and exploitation** - where your IP can be vulnerable to unauthorised use, reproduction, or exploitation by third parties, leading to financial losses and reputational damage.
- **Erosion of competitive advantage** – without safeguarding trade secrets, proprietary technologies, or distinctive branding elements, businesses may lose their competitive edge in the market.
- **Legal disputes and litigation** – inadequate protection of IP can result in legal conflicts, such as infringement claims, which can be complex, time-consuming and financially draining for individuals and businesses.

Implementation of contracts and agreements

Utilising contracts and agreements is vital for safeguarding your IP assets, particularly where partnerships, collaborations, or employment relationships are involved. Examples of these contracts and agreements include:

- **Non-Disclosure Agreements** - also known as NDA's or Confidentiality Agreements, these are binding contractual agreements between two or more parties, where the primary objective is to create obligations on one or more parties not to disclose confidential or sensitive information which may be exchanged between parties.
- **Licensing Agreements** - these are formal agreements between two or more parties where the owner of the IP (the licensor) grants another party (the licensee), without ownership, authorisation to use their IP in return for a fee.

The trade mark registration process

A trade mark can be filed in 45 different classes, which cover different products or services. These include everything from clothing and computer software to restaurants and real estate services. It usually takes around 8 months to be registered with IP Australia.

Step 1

Once an application is filed with IP Australia, IP Australia will then examine your IP to determine if it's distinctive enough to be registered, and whether or not there are any similar trade marks to your IP that have been registered.

Step 2

If IP Australia determines that there are no similar registered trade marks, your application will proceed to the next stage: the objection stage. If someone believes that your application has an impact on their trade mark, they can oppose your application by filing a notice of opposition and a statement of grounds and particulars.

Step 3

If no notice of opposition is filed, then your application will be accepted by IP Australia and advertised in the Trade Marks Journal for two months to allow anyone who may have a claim to your trade mark to lodge an application. If no opposition is received, your trade mark will proceed to registration and your IP will remain protected for ten years, after which you may renew your registration.

Conclusion

Protecting your IP is a legal necessity for individuals, businesses and society at large. By recognising the value of your IP and understanding the potential risks associated with inadequate protection, individuals and businesses can take steps to safeguard their IP.

By ensuring that your IP is registered, individuals and businesses can establish legal foundations for their IP and prevent any unauthorised use and exploitation. Additionally, using contracts and agreements further enforces the protection of your IP, ensuring the sustainability, value and integrity of your IP assets.

If you believe your IP has been infringed, or that someone else has registered an IP similar to yours, please contact Murfett Legal for assistance.

Key takeaways

1. IP protections in Australia include trade marks, patents, designs, and trade secrets, each with different protections and registration requirements.
2. Ownership of IP usually belongs to the creator unless transferred, which allows the creator to permit others to use the IP under licensing contracts and agreements.
3. Owners can take legal action against unauthorised use, with remedies like damages and injunctions.
4. IP can be a valuable business asset, providing revenue through licensing, sales or leveraging in negotiations.

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.



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