



Editorial



In previous editions of *Inspire!*, we have written extensively about the introduction of the *Raising the Bar Act* and the many effects it has had on Australia's intellectual property laws. In this edition of *Inspire!*, Mark Williams discusses some of the other proposed

amendments to our IP laws, such as the Crown use of patents, compulsory licensing of pharmaceutical patents, enforcement of plant breeder's rights and the alignment

of the Australian and New Zealand patent examination systems. These changes are the subject of the *Intellectual Property Laws Amendment Bill 2013*, which will most likely be passed by Parliament in 2014.

Another active area of reform is copyright law, with the Australian Law Reform Commission due to provide a paper outlining various proposed changes on 30 November 2013. One significant proposal is the introduction of a US style 'fair use' exemption to infringement, which is similar to Section 107 of the US Copyright Act. Helen Kavadias takes a look at these proposed changes in her article on page 7. Some other articles in this edition include a lighter look at the world of IP, the battle between Toyota and Jetstar over 'jump' trade marks, designs registration information and a Q&A on product marketing.

In POF staff news, there have been some important changes over past few months. Peter Rogan, who has been employed at the firm for 51 years as our draftsman, has recently retired. This length of service is an outstanding achievement and we are incredibly grateful to Peter for all his hard work and dedication. We would also like to say welcome to our new trainee patent attorney in the Chemistry & Life Sciences team, David Hvasanov. This July, we also announced seven new promotions; five to the level of Senior Associate and two to the level of Associate.

I hope you enjoy this edition of *Inspire!*

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‘Oh, What a Feeling!’ – Toyota and Jetstar battle it out over ‘jump’ trade marks

by Mark Williams

Many of our Australian readers will be aware of Toyota’s television advertisements in which the advertisement ends with the actors jumping into the air, with the ‘jump’ captured in a freeze frame. This ‘jump’ is usually accompanied by the now trademarked catchphrase ‘Oh, What A Feeling’, and/or a jingle.

In August 2012, Toyota Motor Corporation Australia filed a number of trade mark applications for the Toyota ‘jump’ in respect of motor vehicles. A number of the marks are simply images, whereas others are movement marks.

The movement mark they sought showed a boy leaping into the air from a standing start, extending his arms and legs, and forming a star shape. The image attached to the application was a still of a scene from the video clip. The trade mark does not include words or sound. Movement marks are now deemed acceptable by the Australian Trademarks Office.

Jetstar

Australian airline, Jetstar, also utilise a jump in many advertisements. Their jump could best be described as a ‘star jump’ (perhaps unsurprising given the name Jetstar). As far back as 2007, there were murmurings from Toyota that Jetstar had misrepresented the Toyota jump in their advertisements. A spokesman for Toyota highlighted the parallels between the Jetstar jump (a ‘star jump’) and the Toyota ‘jump’. However, no action was taken at the time.

Previously, the only remedies available to Toyota would have been via the common law tort of passing off and/or for breach of the *Trade Practices Act*, now known as the *Australian Consumer Law*. However, it seems Toyota will now have a further weapon in its arsenal to take action against infringing ‘jumps’, namely trade mark registrations. But of course, there is the vexed question of what sort of ‘jump’ would constitute trade mark infringement? We will leave that question for another day.

Opposition

In late 2012, Qantas (the airline that owns Jetstar) opposed a number of the Toyota ‘jump’ applications. The opposed trade marks are trade marks which include a star-type jump. The remaining trade marks, which include what could best be described as a ‘knee-bend-jump-for-joy’ jump, have proceeded to registration.

In early 2013, Qantas filed four applications for its own ‘jump’ trade marks, and two of these marks (ones resembling a ‘star jump’ below) have been opposed by Toyota.

What next?

As at the time of publication, none of the opposed marks (either filed by Toyota or by Qantas), have reached the stage of filing evidence in support. A number of the oppositions to the Toyota trade marks have been suspended for negotiations.

So we may see an amicable agreement between the two parties, perhaps limiting Toyota to a ‘knee-bend-jump-for-joy’ jump and Jetstar to a ‘star jump’.

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Toyota Motor Corporation Australia Example of trade mark applications



1488963



1488975

Devices (above) opposed by Qantas
– Suspension for Negotiations



1500008



1500014

Movement marks (above) opposed by
Qantas – Suspension for Negotiations

To date, Toyota have filed for thirty ‘jump’ trade marks. Nine of these (generally the ones resembling a ‘star jump’) have been opposed by Qantas, the remainder have been registered.

Qantas (the ‘Applicant’) Example of trade mark applications

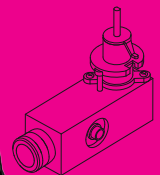


1514517



1517023

Devices (above) opposed by Toyota Motor
Corporation Australia Limited



Designs Registration

by Davin Merritt

Many of POF's clients make use of the designs registration systems in Australia and overseas to secure valuable IP rights for their products. This is particularly so in instances where the physical appearance of a product is of commercial importance.

A product may be the subject of both a granted patent and a registered design. The patent protects the functionality of the product, and the registered design protects the product's unique appearance. It is important to note however, that the option of pursuing design registration may be available even in instances where the product is deemed to be not suitable subject matter for a patent, so long as the appearance of the product is new and distinctive.



Cost

A particularly attractive aspect of the Australian designs registration system is the cost. The cost to obtain a registered design is generally far less than the cost of obtaining a granted patent.

Short Application Process

Another useful aspect of the designs registration system, is the short timeframe between filing of an application and registration. It is generally possible to obtain a registered design within a matter of weeks of the filing date, compared to a period of years often involved in obtaining a patent grant.

The short timeframe is, in part, due to applications proceeding to registration without first undergoing substantive examination. Substantive examination of a design application is optional and, if requested, is undertaken by IP Australia after registration has occurred. If a registration owner elects to proceed with substantive examination, and the registration successfully passes through the substantive examination stage then the registration is certified. This means that it can then be used as the basis for pursuing an alleged infringement.

Publication

Fast registration can have serious commercial implications for some registration owners. This is because registration brings with it publication by IP Australia of the registered design. This can be problematic, particularly where publication of the registration pre-dates the intended commercial release date of the product.

Some registration owners (for example, car manufacturers), place heavy emphasis on the release date of new vehicle models. If you are concerned with an earlier than desired publication of your product, we would be happy to discuss the various options for slowing down the registration and publication of an application.

Application Drawings

Care must be taken with a design application to ensure that the representations filed accurately and clearly depict the product, and don't include any extraneous matter that may limit the scope of protection ultimately obtained.

Statement of Newness and Distinctiveness

It is critical at the filing stage to decide whether or not to include a Statement of Newness and Distinctiveness (SND) in an application.

An SND can be important where it is desired to qualify the drawings to, for example, exclude features not part of the design. The inclusion of an SND may also be important so as to identify the new and distinctive features of the product, particularly where the product is in a crowded field.

Suitable Subject Matter for a Design Application

The Australian Design Act 2003 provides a broad definition of the types of products for which design registration is available. Nevertheless, one area of uncertainty has been whether electronic display screen images are suitable subject matter for design registration. Because of this uncertainty, there are numerous registrations on the IP Australia designs register for electronic screen images, none of which have (up until now), undergone substantive examination.

Australian design registration 345903, entitled "DISPLAY SCREEN FOR AN ELECTRONIC DEVICE" and in the name of APPLE INC., has recently successfully undergone substantive examination and proceeded to certification. This is the first Australian design registration we are aware of for an electronic display screen to be certified by IP Australia. This may indicate a shift in policy by IP Australia, although we have yet to be advised of such a policy shift.

Certification of this registration may be the catalyst for a raft of new design applications for electronic screen images, and may also encourage the owners of existing, unexamined electronic screen image registrations to request substantive examination of their registrations. This may be of particular interest to our electronics industry clients.

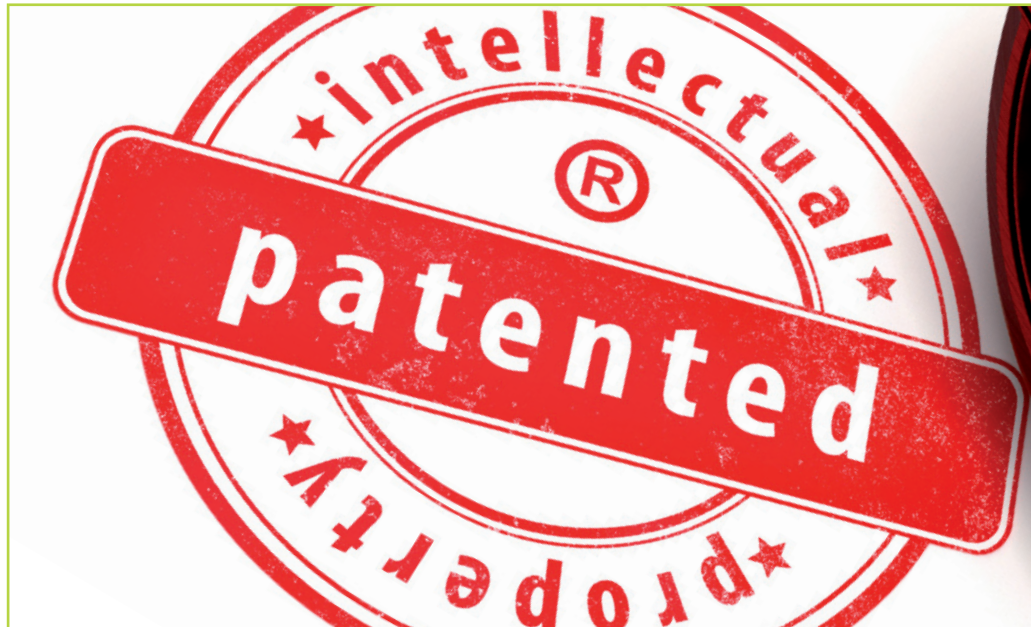
Our attorneys can assist you in all stages of design registrations.

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©, ®, ™, Patent Pending: POF's Q&A about product marketing

by Annette Rubinstein



1. Do I have to put any of these markings on my products, packaging or website?

Not if you don't want to. Product marking is not compulsory in Australia, and intellectual property owners are not legally penalised (as they are, for example, in the United States in relation to damages) if they do not do so. However, there are legal and practical benefits of product marking.

Firstly, a statement that you own intellectual property rights may discourage a potential competitor from copying your product or otherwise infringing your rights. Secondly, an IP rights statement can usually prevent an infringer from arguing that it did not know that it was infringing your rights, which can be relevant to a court's decision about the remedies it will grant you.

2. What is the best form of copyright statement?

Copyright statements should be in the form: © The Great Australian Widget Company Pty Ltd (ACN 91 123 456 789), first published Australia 2013.

If The Great Australian Widget Company wanted to sue someone for copying a substantial part of its copyright work, it would normally have to prove it owns copyright by

proving where, when and by whom the work was created, and how the author's rights came to be owned by The Great Australian Widget Company. However, if the copyright statement appears on the work, the litigation would proceed on the basis that The Great Australian Widget Company owned the copyright, unless the infringer could prove that any of the statements made in the copyright statement were false. They had better not be false, as it is an offence to make a false copyright statement.

3. What is the difference between ™ and ®?

® is limited to registered trade marks. It is an offence to use it in Australia in relation to anything other than a registered Australian trade mark. The fact that the goods have been imported from a country where the trade mark is registered is no excuse, if the trade mark is not registered in Australia. ™ can be used on registered and unregistered trade marks, including trade marks for which an Australian trade mark application has been made, but which has not been granted.

4. What does 'Patent Pending' mean?

It means that a patent has been applied for but not yet granted. If the patent in question is a standard Australian patent, once it is granted, the patent owner gets the right to sue for use or sale of the patented product or method back to



the date the patent application was published. This is usually 18 months after the date the patent application was filed. Publication may be many years before the date the patent is granted, particularly if someone has opposed the grant of the patent unsuccessfully.

Using 'Patent Pending' on a product sold in Australia if an Australian patent has not been applied for, is likely to be considered misleading and deceptive conduct. It would also contravene the *Australian Consumer Law*.

5. What should I put on my product when a patent is granted?

If you have a standard patent, 'Patented in Australia' is enough, although you might like to add the company name, ACN and the patent number. If your patent is an uncertified innovation patent, we recommend that you do include the patent number. This is because until an innovation patent is examined and certified, the owner of the patent has no right to prevent anyone from using the invention. If the owner did not provide sufficient information to allow someone viewing the product to identify the patent as an uncertified innovation patent, just using the words "made under licence of an Australian Patent", could be misleading or deceptive. In addition, it could contravene the *Australian Consumer Law*, by implying

that using the invention infringes a patent, which it does not yet do. Your statement could read 'Covered by Australian Patent Number 123456789'.

6. I have licensed another company to make my patented product and to use my registered Australian trade mark THE GREAT AUSTRALIAN WIDGET on it. What statement should I tell the company to put on the box?

We recommend 'This patented product is made, and the GREAT AUSTRALIAN WIDGET ®trade mark is used, under licence from The Great Australian Widget Co. Pty Ltd ACN 91 123 456 789'. For an uncertified innovation patent, we recommend, 'This product, which is covered by Australian Patent Number 123456789, is made, and the GREAT AUSTRALIAN WIDGET ®trade mark is used, under licence from The Great Australian Widget Co. Pty Ltd, ACN 91 123 456 789'.

7. Can I include a copyright statement on my product if it has been made in accordance with a design created by my employees?

This is a tricky area. In general, there is no copyright in a product itself, as opposed to an artistic work appearing on the surface of the product. The exception being if the product is a "work of artistic craftsmanship, which is not mass produced". There is also copyright in design drawings of a product. However, it is not an infringement of copyright in design drawings to make the product itself, once the owner of the copyright in the design drawings has made and sold the product in industrial quantities (usually 50 or more). For this reason, we do not recommend routinely putting copyright statements on products, as they are likely to be misleading and deceptive. However, it is fine to put a copyright statement on packaging or instructions, as long as it is clear that the statement does not apply to the product itself.

We do recommend considering applying for design registration for new products before they are put on the market. Such products can be labelled "This product is covered by an Australian Registered Design No. 123456789". The design registration number should be included, as registered designs are like innovation patents; they are granted very quickly, but are not enforceable until they have been examined and certified.

8. What should I do when my intellectual property rights expire or are revoked?

You will need to make sure that products and packaging do not carry out of date intellectual property markings, as they will be considered misleading and deceptive. They may also contravene intellectual property legislation if you no longer possess the intellectual property rights.

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You will need to make sure that products and packaging do not carry out of date intellectual property markings, as they will be considered misleading and deceptive.

IP Round Up – A Lighter Look at the World of Intellectual Property

by Rodney Cruise

The juggernaut HBO show '**Game of Thrones**' has become a world-wide phenomenon. HBO has recently gained acceptance of the trade mark 'KHALEESI' in Australia, Khaleesi being the much loved 'mother of dragons' character on the television show. Given that the mark was accepted in Class 3, we can presumably expect a rash of 'KHALEESI' branded cosmetics to hit the market sometime soon. It remains to be seen whether a range of 'Cersei', 'Joffrey' or 'Ned Stark' products will follow.

Charles Foley, the inventor of the game '**Twister**' recently passed away at age 82. Charles held patents for the game in the United States of America, France, the Netherlands and United Kingdom. Other famous games such as 'Monopoly' and 'Cluedo', were also the subject of patent protection.

A corporate lesson in due diligence was recently handed to Finnish airline, **Finnair**. Finnair had repainted an A330 aircraft with the



designs of a Finnish clothing and homewares company, who provided textiles and tableware for the aircraft. Unfortunately for Finnair, the Finnish clothing and homewares company had appropriated the design from a 1963 painting by deceased Ukrainian folk artist, Maria Primachenko. A very expensive repaint job!

In an attempt at marketing genius, or an attempt at tempting fate, Clive Palmer's Blue Star Line shipping company has filed a series of trade mark applications for '**Titanic II**'. No word yet on whether Leonardo Di Caprio and Kate Winslet have pre-booked tickets on the yet to be built replica of *RMS Titanic*.

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Apple Inc., finally got an Australian shape mark registered for their iconic 'iPod' shape. The endorsement reading, "The mark consists of the shape of a portable and handheld digital electronic media device comprised of a rectangular casing displaying circular and rectangular shapes therein. The details shown in broken lines, indicating the location of device connectors, switches and jacks, are not part of the mark." Just in time as this version of the iPod probably will not be sold for much longer!

Heineken wasn't always just for drinking – at least back in the 1960s! A Heineken bottle design for their famous beer beverage was designed to be functional, and also act as a 'glass brick' to be used in building houses. The designer, John Habraken, hoped the bottles (presumably empty!), could be re-purposed for building low cost housing. This would have made for an interesting process of getting the approximate 10,000 bottle bricks needed to build a dwelling. Unfortunately, this idea did not make it beyond the testing phase. A shame, as that well-known phrase may have become "People in glass houses, probably drink a lot of Heineken!"

Summary of the ALRC Copyright and the Digital Economy Discussion Paper

by Helen Kavadias

On 5 June 2013, the Australian Law Reform Commission (**ALRC**) released a Discussion Paper for its 'Copyright and the Digital Economy' inquiry containing 42 proposals to reform the *Copyright Act 1968* (Cth) (**the Discussion Paper**). The ALRC's final paper is due by 30 November, 2013.

In summary, the ALRC has proposed:

- > The introduction of a fair use exception to copyright infringement;
- > The removal of statutory licensing;
- > Amending current provisions relating to retransmission of broadcasts to extend to retransmission over the internet; and
- > That agreements that contract out of certain copyright exemptions will have no effect.

Fair use exception

The proposed fair use exception will expressly state that fair use of copyright material does not infringe copyright. It will include non-exhaustive lists of:

- > Factors for determining "fair use":
 - Purpose and character of use
 - Nature of copyright material
 - Amount and substantiality of the part of the copyright material used
 - Effect of use on potential market or value of copyright material
- > Illustrative uses or purposes that may qualify as fair uses:
 - "(a) research or study;
 - (b) criticism or review;
 - (c) parody or satire;
 - (d) reporting news;
 - (e) non-consumptive;
 - (f) private and domestic;
 - (g) quotation;
 - (h) education; and
 - (i) public administration."

The ALRC has also proposed that the fair use exception should be applied to determine whether the following uses infringe copyright:

- > Professional advice (not listed as an illustrative use)
- > Back-up and data recovery (not listed as an illustrative use)
- > "Transformative use" (i.e. that a certain use of a work does not infringe the owner's copyright due to the public interest in the usage (not listed as an illustrative use)

- > Use of an "orphan work" (i.e. a copyrighted work for which the copyright owner cannot be identified or contacted) (not listed as an illustrative use).

Statutory licences

It is also proposed that the statutory licensing schemes be removed and replaced with voluntarily negotiated licences for governments, educational institutions, and institutions assisting persons with a print disability.

Broadcasting-retransmission of free-to-air broadcasts

Section 10 of *Copyright Act 1968* (Cth) defines a retransmission as a retransmission of a broadcast, where the content of the broadcast is unaltered and either simultaneous with the original transmission or delayed until no later than the equivalent local time. Retransmission without the permission of the original broadcaster does not infringe copyright in broadcasts, by virtue of provisions contained in the *Broadcasting Services Act 1992* (Cth). In particular, section 212 of the Act provides that no "action, suit or proceeding lies against a person" in respect of the retransmission by the person of certain television and radio programs. However, the retransmission must be within the licence area of the broadcaster or, if outside the licence area, with the permission of the Australian Communications and Media Authority (ACMA).

The ALRC has proposed two options for amending the current provisions relating to retransmission of free-to-air broadcasts. The first option is to repeal the exception to broadcast copyright provided by the *Broadcasting Services Act 1992* (Cth) and the statutory licensing scheme applying to the retransmission of free-to-air broadcasts. This would leave the extent and remuneration of retransmission entirely to negotiation between the parties (i.e. broadcasters, retransmitters and underlying copyright holders).

The other option is that the exception to broadcast copyright provided by the *Broadcasting Services Act 1992* (Cth), and applying to the retransmission of free-to-air broadcasts, should be repealed and replaced with a statutory licence.

Limitation on contracting out

It is also proposed that an agreement that excludes or limits the following copyright exceptions should have no effect:

- > Exceptions for libraries and archives
- > Fair use or fair dealing exceptions that apply to use for research or study, criticism or review, parody or satire, reporting news, or quotation.

Should you require any further information on the ALRC discussion paper, please do not hesitate to contact us.

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Fixing the Bar and Moving the Goalposts – the OTHER IP Laws Amendment Bill (2013)

by Mark Williams

On 30 May 2013, the Australian Parliament was presented with a Bill for an Act to amend legislation relating to intellectual property called the *Intellectual Property Laws Amendment Bill 2013* ('the Bill'). This is not to be confused with the *Intellectual Property Laws Amendment Act 2012* (aka the Raising the Bar legislation), which came into effect on 15 April 2013. However, the announcement of a Federal Election in Australia means that implementation of the Bill is still some time off (likely early next year).

The Bill focusses on a number of areas, which were not addressed in the Raising the Bar legislation. It also seeks to clarify some of the Raising the Bar provisions on each of the *Patents Act 1990*, *Trade Marks Act 1995*, *Designs Act 2003* and the *Plant Breeder's Rights Act 1994*.

Crown use

A recent Australian Productivity Commission report into 'Compulsory Licensing of Patents', found that there was a lack of transparency and some ambiguity relating to Crown use. Crown use relates to the notion of government use of IP rights, without the authorisation of the owner of the IP.

The Bill proposes amending existing provisions to:

- > Clarify that Crown use can be invoked for the provision of a service that the Australian, State and/or Territory Governments have the primary responsibility for providing or funding
- > Require that the Crown attempt to negotiate use of the patented invention prior to invoking Crown use
- > Require that the Crown provide the patentee with a statement of reasons no less than 14 days before such use occurs
- > Require that Crown use be approved by a Federal Minister or State Attorney General
- > Require that in instances of Crown use, the patentee is entitled to remuneration determined on the same basis as that for a compulsory licence.

The Productivity Commission report (upon which the proposed amendments in the Bill are based), considered that Crown use would be a more efficient and cost effective way

for governments to make use of patented inventions than compulsory licensing. If the Bill becomes law, we may start to see increased reliance on Crown use from government entities.

TRIPS protocol amendments: compulsory licensing of pharmaceutical patents

Under the Trade-Related Aspects of Intellectual Property (the TRIPS Agreement), products made under compulsory licence must be predominantly for the supply of the domestic market, and are not allowed to be exported. This creates a problem for less economically developed countries (LEDCs), which may have insufficient capacity to obtain or manufacture necessary pharmaceuticals during a public health crisis.

The Bill proposes amendments to enable LEDCs to source generic versions of patented pharmaceutical products from Australia to treat public health crises. Effectively, this is a proposal for a 'manufacture for export' exception to pharmaceutical patent rights in Australia. These proposed amendments are to apply to all existing patents and patents for which the application was filed before the commencement of the changes.

A rough outline of the proposed process for obtaining and exercising a compulsory licence is as follows:

1. Identify a need for a pharmaceutical, and establish an insufficient manufacturing need in a country
2. Identify an Australian manufacturer and identify the relevant patent(s)
3. Attempt to obtain authorisation from the innovator (patentee)
4. Notify an intent to use the system
5. Apply to the Federal Court for a compulsory licence
6. Notify the grant of the compulsory licence
7. Determine remuneration
8. Manufacture and export the patented pharmaceutical
9. Notify details of shipment
10. Take reasonable measures to prevent re-exportation.





The Bill proposes to allow Australian pharmaceutical manufacturers to apply to the Federal Court for a compulsory licence to manufacture generic versions of patented medicines (under specific conditions), and export these medicines to developing countries. Compensation for the patent holder will be negotiated, although there appears to be no indication as to who will negotiate adequate compensation or how such negotiation will occur.

Federal Circuit Court now available to owners of plant breeder's rights

The Bill proposes changes to provide the owners of plant breeder's rights (PBR) in a plant variety with the option of taking action in the Federal Circuit Court (previously known as the Federal Magistrates Court) against alleged infringers.

The amendments address the need for a way to resolve disputes about the infringement of a PBR that is quicker and less formal than taking action in the Federal Court. As most disputes over PBR are less complex matters than say a patent dispute, and many of the

parties involved are small businesses with limited resources, the Federal Circuit Court is well placed to hear such cases.

Further alignment of Australian and New Zealand patent systems

The Bill proposes a single patent Examination model, which provides that if separate patent applications for the same invention are filed in both Australia and New Zealand, then both applications are examined by a single Examiner in either country. However, the Bill will take into account the separate national laws. In theory, a single patent application process will remove duplication and reduce costs to intellectual property owners.

Also proposed is the implementation of a bilateral arrangement between the Australian and New Zealand governments for the trans-Tasman regulation of patent attorneys in both Australia and New Zealand. Effectively this will allow for a single register of patent attorneys, a single set of qualifications for registration, a single governing Board and single Disciplinary tribunal.

Administrative changes and amendments to the Raising the Bar Act

The Bill proposes administrative changes to the Patents, Trade Marks and the Designs Acts to repeal document retention provisions which currently require IP Australia to physically retain patent, trade marks and designs documents for a certain period of time (25 years in some cases).

This Bill also proposes a number of technical amendments to the *Patents Act* to address oversights in the drafting of the *Intellectual Property Laws Amendment (Raising the Bar) Act 2012*.

Should you require any further information on the Bill and how it may affect your IP interests, please do not hesitate to contact us.

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Finding Historical Use of Trade Marks in Australia

by Rodney Cruise



Before filing a trade mark, it is important to establish whether it has previously been used in the market in which you intend to trade. In other circumstances, a client may wish to establish that a mark has not been in continuous use in the past three years in order to support a non-use action. Alternatively, a client may need evidence of actual use in the marketplace in legal proceedings.

“Application for removal of trade mark from Register

- (2) The application:
- (a) must be in accordance with the regulations; and
 - (b) may be made in respect of any or all of the goods and/or services in respect of which the trade mark may be, or is, registered.”

Establishing such use is usually easy if one is attempting to show current use, however historical use can be problematic. When investigating the historical use of a mark, the first port of call is often with the client, the owner of the trade mark. Many clients keep accurate historical records of use of their marks, however mergers, changes of ownership and indeed changes of staff within an organisation, can make obtaining that evidence problematic. Similarly, when considering use by a third party, it is often not possible to access their historical records to show the nature and extent of previous use of a mark.

Investigators will take a multi-pronged approach to establishing historical use. This may include:

- (a) Consulting the company records
- (b) Conducting general and specific internet searches
- (c) Looking at trade journals and newspaper articles
- (d) Reviewing historical company annual reports
- (e) Accessing market research data
- (f) Interviewing market users and suppliers

- (g) Accessing historical shopping research databases (e.g. Mintel).

Food and beverages are one of the most common type of products that require this type of investigation. The often rapid turn-over of product marks in this space makes it difficult to know when, where and how a mark may have been used. Typically this includes:

- (a) How the mark was used
- (b) The type of packaging, including images
- (c) When the use commenced and when the use ceased
- (d) Where the product was purchased and where the product was available
- (e) Sales figures on the sale of the product
- (f) Cost of the product when on sale.

Research will often generate leads, and depending on the nature of the product of interest, specific resources can be used to obtain this information.

While this approach is ideal for examining the historical use of registered trade marks, it can also be a valuable approach in examining the historical use of what is known as ‘common law’ marks. That is, marks that have been in use in the marketplace, but formal registration with the Australian Trade Marks Office (IP Australia) has never occurred. We often see ‘common law’ marks in food, beverage and fashion goods, which is often due to their short marketing life span.

We utilise in-house registered private agents to track down relevant information, which clients can use in legal proceedings. Our considerable expertise in this area means that clients can rest-assured that if there is information to be found about use of trade marks, we will find it.

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Congratulations to our new Senior Associates and Associates

We are pleased to announce seven new promotions across the POF Group.

Our patent and trade mark attorney firm, Phillips Ormonde Fitzpatrick (POF), has promoted five professionals to the position of Senior Associate, and our IP law firm, Phillips Ormonde Fitzpatrick Lawyers (POFL), has promoted two lawyers to the position of Associate.

Managing Partner Graham Cowin says, "The past few years have been challenging for businesses both in Australia and across the globe, and with many of our clients based overseas, we know this well. We have streamlined our operations to make sure we can continue to deliver the best client service. Our staff have worked hard to make this happen, and it is great that we can recognise their achievements with these promotions."

We are pleased to announce the following promotions to the position of Senior Associate at Phillips Ormonde Fitzpatrick:



Grace Chan

BSc(Hons) PhD MIPLaw FIPTA

Grace's experience spans a range of chemical fields, with specialisations in polymers, drug delivery, medical technology and nanotechnology.



Helen Kavadias

LLB BMedSc (Hons) MIP

Helen is both a registered patent & trade marks attorney and solicitor.

Helen's experience includes numerous years of working in private practice as

an intellectual property and technology lawyer, as well as an In-House Corporate Counsel.



Edwin Patterson

BEng (Hons) PhD MIPLaw FIPTA AIMChemE

Ed's considerable portfolio includes a range of work in the chemical and materials Engineering area and he is convenor of POF's Resources

Industry Group.



Scott Whitmore

BSc PhD MIP FIPTA

Scott has extensive experience within academia, commercial research and private practice. He manages the Biotechnology and Medical Devices practices

in the Adelaide office for a broad range of clients.



Mark Wickham

BSc (Hons) PhD MCommrclLaw CSci FIFST

Mark's extensive practical experience includes molecular and cell biology, immunology, microbiology, animal and

human disease models, genetics, cancer and inflammatory disease.

We are pleased to announce two promotions to the position of Associate at Phillips Ormonde Fitzpatrick Lawyers:



Magda Bramante

BSc LLB LLM

Magda joined POFL as its sole Articled Clerk in February 2007 and was admitted to practise as a solicitor in 2008. Magda attained her patent

attorney qualification in April 2011. She has worked within the Chemistry and Life Sciences team and on numerous litigious matters.



Leonie Heaton

Juris Doctor BSc DipEd GradDip (Ed & Pub)

Leonie is part of the legal firm's commercial and transactional advice group. She joined POFL after significant experience as

a commercial lawyer and SME business owner. This greatly assists Leonie to identify risks and opportunities in our clients' relationships with consumers and in their B2B transactions, and to draft plain English agreements, policies, regulatory and consumer documents accordingly.

Congratulations to our new appointments!

Staff news

Phillips Ormonde Fitzpatrick says farewell to Peter Rogan, and welcome to David Hvasanov.

Peter Rogan – Draftsman

In July 2013, our Draftsman of 51 years retired. At the time of his retirement, Peter Rogan was the longest serving employee at Phillips Ormonde Fitzpatrick. We would like to take this opportunity to extend our warmest gratitude to Peter for all his hard work, dedication and for being an inspirational colleague.

Peter began his career at POF on 8 January, 1962, following an interview with Bertram Fitzpatrick, POF's Managing Partner at the time. Peter was inspired to become a draftsman by his engineer grandfather, who often left blueprints lying around, which fascinated and intrigued the young Peter. Peter excelled at drawing and had a natural aptitude for mechanics.

Peter has seen considerable changes in his time at POF, from firm name changes, the transition from paper to paperless and the introduction of computers and email. Throughout all this, Peter's work was continuously of the highest standard, and he adapted to these changes with ease.



Upon his retirement, Peter is going on to pursue his passions of photography, cameras, cars (Jaguars in particular), home renovation, and of course his family. He is particularly looking forward to spending more time with his grandchildren and travelling the globe.

David Hvasanov – Trainee Patent Attorney

David recently joined our Melbourne office as a trainee patent attorney in the Chemistry and Life Sciences team. Prior to joining POF, David completed his undergraduate degree in science at the University of New South Wales (UNSW), for which he was awarded the university medal. The university medal is awarded to undergraduate students who show highly distinguished merit in their academic programme.

Continuing his studies, David completed an honours project at the UNSW School of Chemistry, where he collaborated with the University of Sydney's Australian Centre for Microscopy and Microanalysis. He studied self-assembled hydrogels based on urea and dipeptide gelators as potential drug carriers against cancer cells.

David then went on to complete a PhD at UNSW, where his thesis investigated light harvesting bioconjugates as photosynthetic mimics. This work involved collaboration with the laser spectroscopy group at the University

of Sydney, and the National Oceanography Centre in Southampton, UK. During his PhD studies, David developed cross-disciplinary experience in protein chemistry, organic chemistry, polymer chemistry and imaging techniques, including electron and fluorescence microscopy.

David's work has been presented at many local and international conferences, including the American Chemical Society National Meeting in San Diego, USA, as well as Pacificchem in Hawaii, USA. His work has received awards at both national and international conferences, in addition to receiving a research excellence award from UNSW. David's work has also been featured in several high-impact journals, and he has published a book chapter for the Royal Society of Chemistry.

David says, "I've always loved research and innovation that drives new ideas. Working at POF allows me to help clients turn ideas into commercial products."



David enjoys landscape and time-lapse photography, running and is an avid moviegoer.



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