

Overview of Australian Food Compliance Laws

- Part 3

Readers please note:

This document is provided for information purposes only. The regulatory compliance information is provided as a guide only. You must not rely on any such information for commercial decision-making.

If you require compliance advice, please contact the firm FoodLegal to speak with either Joe Lederman or one of our other principal legal consultants.

Intellectual Property Searches

Before using a new brand name or product, you ought to have searches made of government databases to make sure that no one already owns the brand name or company name or owns a patent over a particular product. You should not use a name or start producing a particular product before checking the existing trade mark and other registrations. The following free links can be useful starting-points.

Please note these links do **not** provide totally comprehensive information, and the results of any search should not be considered as legal advice or be relied upon in your final commercial decision. Professional advice from a lawyer or trade mark attorney is recommended before you make any important commercial or legal decision in this area.

Trade mark search

According to the Australian Trade Marks Act, a trade mark is a sign used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person." Section 17, Trade Marks Act 1995.

If a trade mark is registered in the IP Australia database, the registered proprietor has "exclusive use" of that trade mark for certain classes of products or services. This means no one else supplying products or services within those classes can use the same or similar trade mark except by agreement of the registered proprietor. The proprietor of a registered trade mark may take action against anyone using a trade mark that is substantially identical or deceptively similar to their registered trade mark.

You must ensure before any proposed trade mark is used, that it is not substantially identical or deceptively similar to a registered trade mark.

A trade mark not registered in Australia might not be strictly enforceable except if the trade mark already has a reputation in Australia. International trade mark databases are provided below for reference purposes only.

In Australia, it is possible to register as a trade mark any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent" (refer to Section 6, Trade Marks Act 1995).

Here are some links to help with your search:

[The AUSTRALIAN Trade Marks Online Search System \(ATMOSS\)](#)

[Intellectual Property Office of NEW ZEALAND](#) - Click on Trade Mark Search" on the left hand navigation bar

[United States Patent and Trademark Office Trademark Electronic Search System \(TESS\)](#)

Business name search

Business names are names which identify a business. However, a business name does not inherently carry additional statutory protection of the intellectual property in the name. There can be common law rights attaching to the reputation of a business name and these rights can be protected. In Australia, business names are usually registered with a State government department (such as the Department of Business Affairs) but the Australian Securities & Investments Commission (ASIC) provides searches covering registered business names all around Australia.

ASIC also keeps registers of other useful information about companies such as banned & disqualified persons, enforceable undertakings and company alerts.

[Click here to go to searchable ASIC registers](#)

Web address search

The internet is becoming more and more of an important marketing tool and therefore it is important that when considering brand names that any desired .com or .com.au internet address (domain name) referring to the name will also be available.

A relatively useful search function is available here:
<http://whois.domaintools.com/>

Australian Patent search

A patent is a right to “exclusive use of either an invention or new manner of manufacture” which has been granted in return for full disclosure of the details of an invention on the IP Australia register.

Limited patent searching is available through the IP Australia website:
http://www.ipaustralia.gov.au/patents/search_index.shtml (No full text searching)

International Patent search

International patent registers may also be relevant as similar patents on such registers may preclude registration in Australia:

[Intellectual Property Office of New Zealand](#) - Click on Patent Search" on the left hand navigation bar

[United States Patent and Trademark Office Patent Full-Text and Full-Page Image Databases](#)

Professional advice ought to be sought before relying on the results of any patent search.

Designs search

Registered designs provide exclusive rights relating to the look of a product.

Search by product is available on Australian registered designs: [IP Australia Design Search](#)

Plant Breeders Rights

Plant Breeders Rights are exclusive rights granted for the use of registered plant varieties.

The Australia Plant Breeders Rights registry is available here:

[Plant Breeders Rights Database Search](#)