What is Trade Mark Due Diligence?

Client Fact Sheet

DISCLAIMER

This factsheet provides an overview of key commercial terms and definitions commonly used in business and legal contexts. It is intended for general informational purposes only and **does not constitute legal, financial, or professional advice**. No reliance should be placed on this information as a substitute for professional guidance.
For advice specific to your circumstances, please contact our sister business YLP Legal to discuss your situation with a qualified professional.

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Introduction

Conducting trade mark due diligence is a vital part of protecting a business's intellectual property (IP) no matter how long your business has been trading or using its current branding. Trade mark due diligence ensures that your business's brand assets are properly registered and enforceable, while also identifying risks that could expose your business to legal disputes or loss of brand value.

For new businesses, trade mark due diligence can help to determine whether a proposed brand name is available and capable of being registered as a trade mark. It also reduces the risk of needing to rebrand the business later on down the track.

This factsheet provides an overview of what trade mark due diligence is, why it is important and when to engage YLP Advisory for strategic legal support.

What is Trade Mark Due Diligence?

Trade mark due diligence is a strategic review of a business's trade marks and/or brand assets to assess their ownership, scope, enforceability and any associated risks. It is often conducted as part of:

1. Considering whether to register a trade mark
2. Setting up a new business
3. Acquiring or selling a business
4. Licensing intellectual property as part of a franchise
5. Expanding a business within Australia or overseas
6. Rebranding a business or brand portfolio audits

Why Does Trade Mark Due Diligence Matter?

If you have registered a trade mark with IP Australia, you are responsible for ensuring that no one else is infringing on your registered trade mark. This can be an overwhelming task if you are also trying to run your business.

Failing to conduct regular and thorough trade mark due diligence can result in:

1. Unexpected legal disputes or litigation;
2. Loss of brand value; and
3. The inability to use a key trade mark or brand asset.

Conducting trade mark due diligence on a regular basis reduces these risks and supports informed decision-making. YLP Advisory provides analysis and strategic recommendations to help you maximise the commercial potential of your brand portfolio.

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What Are the Key Components of Trade Mark Due Diligence?

1. Ownership and Validity Checks
    a. Confirm that any registered trade marks are registered in the correct name (individual, entity, trustee).
    b. Verify that registrations are valid and in force (e.g., renewal dates met).

2. Scope of Protection
    a. Review the classes of goods/services covered by your registered trade marks.
    b. Assess whether your trade marks provide sufficient coverage based on the goods and services that your business is currently providing or intends to provide in the near future.
    c. Identify gaps where unregistered marks or pending applications may leave your brand assets vulnerable.
    d. Evaluate whether any unregistered brand name or logo can be protected via registering trade marks.

3. Infringement Risk and Clearance
    a. Search for existing third-party trade marks that may conflict or overlap with your proposed or current brand to avoid infringement claims, particularly in your target markets.
    b. Conduct clearance searches in relevant jurisdictions to identify infringement risks and avoid brand disputes.

4. Commercial use and brand value
    a. Confirm that trade marks are actively used in a manner consistent with their registration and commercial purpose.
    b. Review brand usage across digital platforms (e.g. domain names, social media, advertising) to ensure consistency and compliance.

How YLP Advisory Can Help Your Business

YLP Advisory brings commercial and brand experience together to offer:

1. Tailored trade mark due diligence solutions to save you time and effort; and
2. Strategic advice on brand protection and enforcement through our sister business YLP Legal – Your Legal Partner.

For expert assistance in assessing your brand's assets, contact our team today.