

PROTECT YOUR BRAND

Before a business can decide what legal steps are taken to protect its brand, the business must first determine what type of brand it is has or is going to market:

- corporate identity; and/or
- brand identity or image.

Corporate Identity Branding

Corporate identity is concerned with the market being aware of the company's presence.

In Australia, Johnson & Johnson has a high corporate identity. Whereas, an equally large multinational has only a minimal corporate identity in Australia. Procter & Gamble is not a household brand. But most households would know many brands of Procter & Gamble products:

- N



TM;

- Pringles™;
- Whisper™;
- Cover Girl™;

Consumers are aware of Unilever as an entity while also being aware of the products Unilever markets which have their own brand identity and brand image.

Corporate identity centres on the businesses visual image in terms of logo, design and collaterals in respect of the person that is selling a particular line of products or providing a specific service.

Corporate identity and brand identity simultaneously exist in the consumers' perceptions of the business and the brands due to the corporate identity and the brand identity being one and the same (eg Johnson & Johnson). Consumers who have a good feel about Johnson & Johnson from using its baby powder are more likely to try a new Johnson & Johnson product. Consumers who have had a bad experience with a Johnson & Johnson product can be turned off trying a new product line just because of the association of the new product with the corporate identity under which the new product is sold: Johnson & Johnson.

Brand identity

Brand identity is the message that a product makes to consumers - the promise it makes. Brand identity encompasses features and attributes, benefits, performance, quality, service support, and the values that the product possesses. The brand can be viewed as a product, a personality, a set of values, and a position it occupies in people's minds.

The legal protection of a brand

Having decided which of the branding strategies to follow the armoury of legal weapons needed to protect your brand can be determined.

Trademarks

Trademarks are:

- The commercial form of the brand used to mark cattle as belonging to one station owner from another.
- Badges of origin.
- A badge that once seen sends a message to the consumer about the products, features, attributes, benefits, performance, quality, service support, and the values that the product possesses.



Business Names

Businesses that trade under a nom de plume, indirectly gain protection under the Business Names Act. The Act while not giving any proprietary right over a business name to the user, in a practical sense effectively stops others from registering the same or deceptively similar names to those already registered.

Business name registration does not give any protection to a business from a competitor who uses a common law trademark that is the same as, or deceptively similar to a registered business name of your business.

Company Names

Having a registered company name protects corporate Identity. To ensure consumers are not confused by companies with the same or substantially similar names ASIC refuses to register companies whose names could conflict with an existing company's name.

As with Business Names, a company name does not of itself mean that a competitor may not have a legitimate right to use the same registered or common law trademark. One reason for this is that registration of a trademark is given (in most cases) on a first come first registered basis.

Which weapons to use?

The weapons to use are those that will give your business the best protection you can afford to have.

To obtain the best protection you should:

- Register a trademark for each product you sell or service you provide.
- Ensure you have a business name or company name or both.
- When you have products or services whose brand is different to that of your company or business name, you ought to consider obtaining trademarks for each brand and in each class that is appropriate as well as obtaining business names for each of the different brands.