

GUIDE TO: TYPES OF INTELLECTUAL PROPERTY

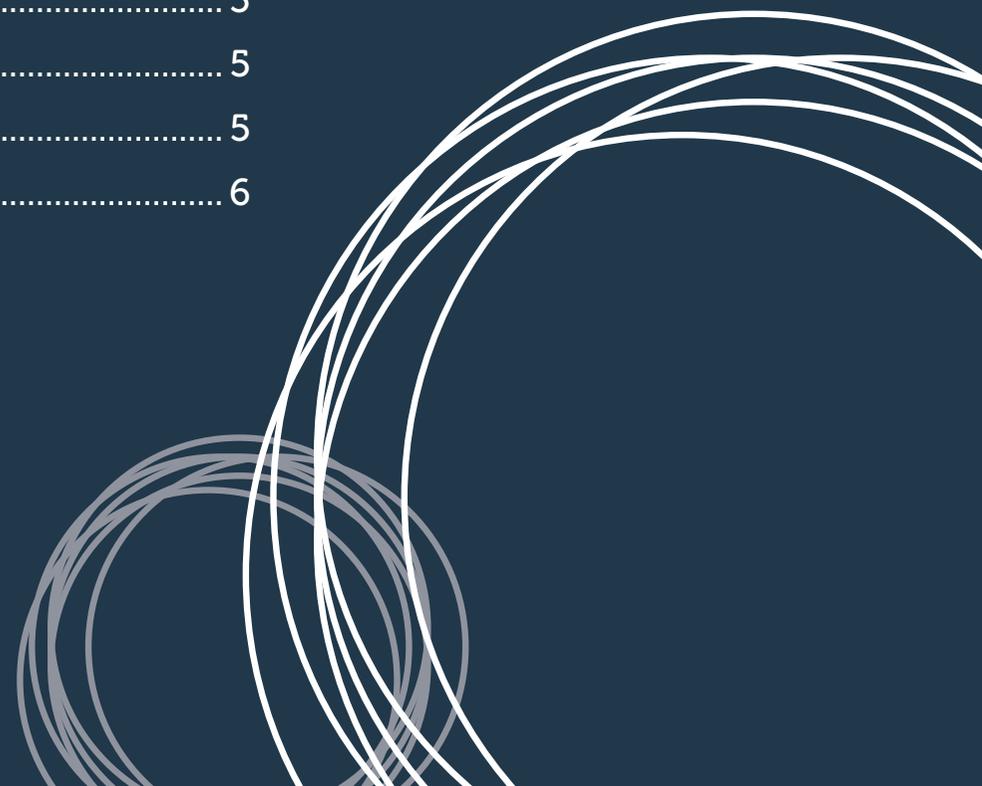


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What is Intellectual Property?

Intellectual Property or “IP”

Is precisely as the name suggests – property that is created from the mind or from intellect.

There are various forms of IP, some of which provide ‘automatic’ protection and rights to the creator and others require registration to gain such protection and rights. This document will discuss the various types and provide some basic information on each. Please note that the information contained is related to Australian IP – some details may vary in different countries.

Trademarks

Registration is required in order to claim protection and ownership. Rights are not automatic.

A trademark is basically a “badge of origin” and often referred to as a “brand name”. Technically it is a sign that you use to identify your goods or services as yours and to distinguish them from other traders that deal in the same goods or services. A trademark can be a name, logo, slogan, colour, shape, scent, sound or aspect of packaging so long as it is capable of distinguishing your products or services.

It can be difficult to register a trademark if it is too similar to something that is already registered or pending and it can be difficult to register a trademark if it’s too descriptive or commonly used in your industry. It’s encouraged that you have a trademark search conducted as soon as you think of a ‘brand name’ for your goods or services to ensure you are not infringing someone else’s registered rights.

Life Span: Trademarks can last forever so long as renewal requirements are met and so long as they remain in use.

Trademarks are the form of IP our office specialises in so contact us with any questions you may have, or, visit our website for a Free trademark search to get the process started.



Patents

Registration is required in order to claim protection and ownership. Rights are not automatic.

A patent is the right granted to new, inventive and useful devices, substances, methods and processes. In Australia, you may also receive rights to an innovation patent, which allows protection for devices, substances, methods and processes that are new, innovative and useful. It's critical to keep any inventions or innovations top secret until patent advice is obtained. As they must be new this can mean if you sell, demonstrate, promote or even discuss your 'invention' before filing an application you could lose the opportunity to patent it. Without a patent in place, your competitors may be able to freely use your invention.

Life Span: 20 years maximum for standard patents usually and 8 years for an innovation patent.

Designs

Registration is required in order to claim protection and ownership. Rights are not automatic.

In IP terms a design protects the way a product looks – its shape, configuration and/or ornamentation. To be registrable a design must be new and distinctive. This means it cannot already exist in the Australian market, and it cannot have been published in any document anywhere in the world to be considered new. The distinctive requirement relates to other products of a similar nature already out in the marketplace. To be registrable your design must be distinctive when compared to such other products in terms of its overall appearance.

Life Span: Maximum 10 years

Plant Breeders Rights

Registration is required in order to claim protection and ownership. Rights are not automatic.

These rights are for new varieties of plants that are distinguishable, uniform and stable. If you have bred a new variety, rights could be considered. This is not the same as creating a new name for a plant, which would be dealt with under trademarks. The application process is complicated and professional assistance should be considered. The application process can be quite long before full rights are granted (usually around 2.5 years, but can be more than 10 years for some species!).

Life Span: Maximum 20 years for most species, except for trees or grapevines, which have a maximum 25 years.

Copyright

Rights are Automatic – official registration is not required.

Copyright applies to ‘works’ that are original. Literary works, dramatic works, musical works and artistic works for example are all covered by copyright. Ownership is usually that of the original author or the creator, unless a different agreement is in place. It does not protect an idea or concept, but protects the way you choose to express that idea – for example an idea could be a story and the way you choose to write it is your copyright. Therefore, copyright doesn’t prevent someone from writing a story about the same thing, simply they can’t copy the way you have already chosen to write it.

If you are the original creator of a ‘work’ covered by copyright you are entitled to display a notice – such as: © Mark My Words Trademark Services Pty Ltd 2011.

Life Span: Generally copyright will last for the life of the author or creator plus 70 years. In some cases, copyright depends on the date of publication (rather than creation), which sees copyright lasting for 70 years from that date.

Circuit Layout Rights

Rights are Automatic – official registration is not required.

Circuit layout rights protect the layout designs for integrated circuits and computer chips that are original. The rights are based on copyright laws. They are a 2 dimensional picture of the 3 dimensional location of components in an integrated circuit. The design of such is complicated and can often be very valuable. Whilst formal registration is not required, rights still have a relatively short life span.

Life Span: Maximum 20 years; from the first commercial exploitation (which must occur within 10 years of creation) rights will be in place for 10 years.

Confidential Information & Trade Secrets

Rights are Automatic – official registration is not required.

A trade secret can be an effective strategy to protect IP that is difficult to copy or reverse engineer. It basically covers confidential information and “know-how”. The most famous “trade secret” is the Coca-Cola recipe. The company has effectively kept this as a trade secret for many years. Keeping something ‘secret’ however, does not prevent someone independently coming up with the same thing, or in some cases being able to reverse engineer a product.

It is important to have everyone that must know your ‘secret’ sign a confidentiality agreement. It is then possible to take action if someone breaches this agreement. If your ‘trade secret’ has built a reputation, it may be possible to take action against others if they are ‘passing off’ a product or other matter to be affiliated with you.

Life Span: There is no maximum life span, however, it can be difficult to maintain trade secrets over a long period of time, as more and more people become aware and familiar with the ‘secret’.



Business names, company names & domain names?

A **business name** is a trading name and does not provide you with any exclusive rights to use the name. It's essentially an alias for whoever is carrying on the business.

Owning a business name does not prevent others from using or registering the same or similar names – and, further, when you register a business name you should ensure someone does not already have trademark rights to that same name, or your use of the business name may infringe those rights.

Business names are registered Australia wide either on a yearly or three yearly basis and need to be renewed accordingly.

A **company name** is not 'intellectual property' unless it is also a trademark.

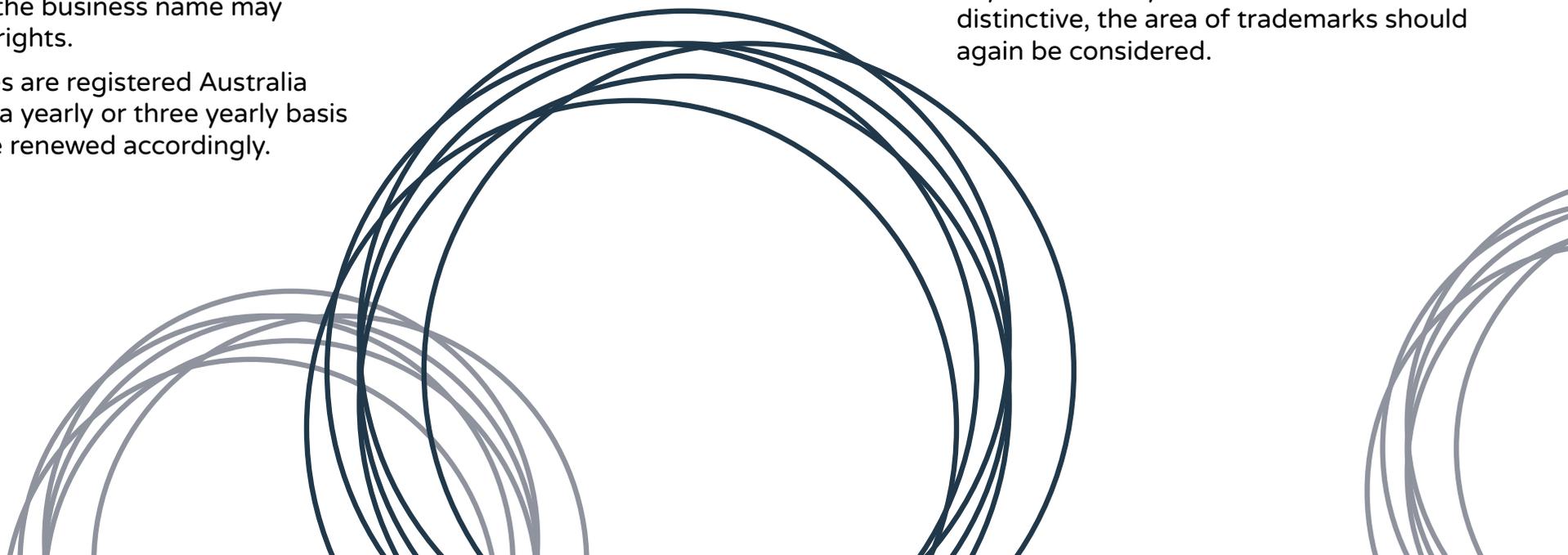
A registered company, unlike business names, is a legal entity (rather than simply an alias for the entity).

Again, owning a company name does not prevent others from using the same or similar names in trade and the area of trademarks should be considered to ensure you are not infringing rights.

A **domain** name is more or less a website address, for example:
mmwtrademarks.com.au.

These are registered to make it easy for people to visit your website. Again, unless your domain name also functions as a trademark it's not IP in itself.

There are instances where people's domains do become their trademarks – for example, realestate.com.au. If the key element of your domain name is distinctive, the area of trademarks should again be considered.



More Information

As this guide shows there are many forms of IP available, some of which require formal registration to enable you the right to 'use' exclusively and exploit the property (as well as take action against infringers), whereas others just 'exist'. The registration process of the various forms of IP can be complicated and in some cases if not done correctly from the very beginning could result in the loss of rights, or invalid rights achieved.

Our office are trademark specialists, and have contacts in all areas of IP so please don't hesitate to contact our office with questions.

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ADDITIONAL INFORMATION AVAILABLE:

- Trademark forms (Australia)
- Guide to international trademark registration
- Guide to Australian trademark registration
- Designs
- Licensing & royalties
- Other types of intellectual property

Please note that this publication is provided for information purposes only and is not intended to be legal advice, nor should it be substituted for such advice. Areas of law are complex, and professional advice should be sought prior to the commencement of any action related to trademarks.

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