

# Brand Protection 101: What You Need to Know



When starting a business, your most valuable asset is your idea. Read this guide to find out about brand protection and how to do it the right way.

# Introduction

When you [start a business](#), one of the first things you'll have to think about is your brand and promoting it. However, what's just as important is making sure you protect it. As your business grows, your brand becomes more valuable. This is why it's also wise to get legal protection for your brand early on. In this guide, we'll cover everything you need to know about brand protection. We'll also discuss how licensing works and the importance assigning your intellectual property.

## What does brand protection mean?

Brand protection means being able to enforce your rights if your brand is used without your permission. This comes under intellectual property, which is defined as 'property of the mind'. Starting a new business inevitably involves creativity, and this is what intellectual property protects. Some common examples of intellectual property assets businesses have include:

- Logo
- Slogan
- Phrase
- A type of product
- Business name

# Intellectual property

Intellectual property can be broken down into six main areas, with trademarks and patents being the two main ones. The other types include designs, circuit layouts, plant breeder rights, and copyright.

## Trademarks

Brand protection normally involves protecting your business's name, logo or image and this is normally done by [registering a trademark](#). Trademarks are a valuable marketing resource. They allow you to own either a name, word, a phrase, letter, number, shape, smell, sound, colour, or image. Two famous examples are the purple colour synonymous with Cadbury chocolate. Secondly, there are the world-famous McDonald's Golden Arches. McDonald's has trademarked those Golden Arches because the moment people see it, they know it's in reference to McDonald's. For newer businesses, the first thing you should protect is your name.



# Benefits of registering your trademark

One of the many benefits of trademarking is the economic benefit. Once you register a trademark, you have exclusive use of that trademark. Using these rights to your advantage can be highly lucrative for your business. You'll also have brand protection throughout all the states in Australia (but not internationally). It will be valid for ten years, and you can use it in different ways, such as licensing or selling it.

## Conducting an online trademark search

Having a registered trademark means you can enforce it, and stop other people from using it. However, before you do this you should also check that it isn't already registered by someone else. You can do this by using IP Australia's [online trademark search tool](#). You can upload an image you may wish to trademark or type in a name, word or phrase. For example, if you typed in the word 'Google', you would see there are multiple trademarks registered for that name. This means that you won't be able to trademark this word, and if you used it, you may face legal action from Google to enforce their trademark.

After doing your initial search, you can get a feel for whether your trademark will be approved once you've applied by having an initial assessment done. An initial assessment will let you know the likeliness of your application being approved so you can feel confident when you actually apply.

## Trademark classes

Trademarks come in multiple [classes](#), and it's important you pick the right one when registering your trademark. In choosing the class for your trademark, you should think about what industry and market your business will be targeting.



### Example

You want to register a trademark for a new perfume you have created, named 'Ultra'. This would fall under Class 3, which covers cosmetics and cleaning substances. If another business has already registered a trademark for a sports equipment brand named 'Ultra', you would still be able to register your trademark as they would fall under different classes. A real-life example of this is the brand 'Dove'. There is both a chocolate brand and a cosmetics brand named 'Dove', but they can both use their trademarks freely as they fall under different categories. There are 45 different trademark classes in Australia, and they're broken down into goods and services. Classes 1 to 34 are for goods, whilst 35 to 45 are for services. If you're not sure what class is right for you, a [trademark attorney](#) can help you choose the right one. Further, if none of the classes perfectly fit your product or service, you will need to choose the most appropriate one.

## Protecting your different assests

It's important to note that your business name, logo and slogan (if you have one) are all different assets. This means that you'll have to apply for separate trademarks to get complete brand protection. It's recommended that businesses first apply for brand protection through their business name. This is because assets such as your logo often stem from your business name. The sooner you protect your business name, the more equipped you'll be to design a logo that captures what your business is about and be in a position to legally protect it.

## International trademarks

Trademark registration through IP Australia is only enforceable within Australia. If you intend to expand your business overseas, then you will need to look at obtaining brand protection in those jurisdictions as well. Similar to the process you would follow in Australia, you should protect your business's name first and then everything else after that. To know where to register your trademark, you should look at the markets that you think you're going to be entering into over the next couple of years and start from there. Many countries also categorise their trademarks into similar classes, so you won't have to start from scratch when deciding what to register them as.

A good example are Australian software companies who want to make their mark in Silicon Valley. These companies look to register a trademark in the United States as quickly as possible. However, before this, companies need to trademark in a host country. This is normally the country where operations first commenced, such as Australia.

## After you've applied

Trademarks aren't immediately effective. Once you've applied for your trademark, there will be a three or four month period where your application will be pending. This is so that there is a chance for it to be disputed if something substantially similar is already registered by someone else.

## The Madrid system

The Madrid system is based on the [Madrid Agreement 1891](#). This system allows you to register a trademark in multiple jurisdictions. As of the date of this article, there are 104 member countries who have signed up to the Madrid protocol, including Australia. Applying under the Madrid system means you can have trademark protection in multiple countries, and that you won't have to worry about applying under the domestic jurisdictions of each country you'll be operating in.

## Fees

Trademark fees have recently changed, and it's become far cheaper for you to register a trademark. In Australia, the cost for a standard application starts at \$250, with a more comprehensive application process offered for \$330. Legal fees differ, however, a trademark lawyer can make sure that your application is accepted the first time, as you won't be able to get a refund if your application is rejected by IP Australia.

# Patents

Patents allow you to register a process, device, substance or a method that you use. This is why patents are normally used for inventions, or new medicines. Having a patent means that you will have a monopoly over that idea or thing for a number of years. Patents can be extremely expensive and extremely complicated, so it's important to consult with a patent lawyer before applying. Patents aren't used as often these days because of the ever-changing nature of product development and the fact that patents cannot be amended.



## Example

You've invented a new piece of software, and you wish to patent the unique code which operates it. However, it's highly likely that the code you've invented will be changed to fix bugs. If you've registered a patent, the protection will not apply to the new code.



## Standard patents

Standard patents are traditional patents which give you 20 years of protection, however the actual application process can take up to about five years. To obtain a standard patent, there needs to be an inventive step. This means that you need to have invented something new, that has a significant aspect of originality to it.

## Innovation patents

Innovation patents are more frequently used than standard patents as the process is a lot faster, however protection only lasts for 8 years. To obtain an innovation patent, there needs to have been an innovative step taken. This means you could invent something, or substantially innovate or improve on something that's already out there. However, innovation patents are being phased out by the Government and will be completely abolished by 2027.



# Circuit layout rights and plant breeder's rights

If you're building computer hardware you can also get protection under circuit layout rights. This means that you'll have the exclusive right to use and copy the layout in your products. Plant breeders can also get protection for their plants, which gives them a commercial monopoly over breeding and selling the plant for a certain amount of time.

## Copyright

Copyright is a form of intellectual property protection that automatically attaches to particular works, meaning you do not have to register it. It covers the expression of original ideas, but not the ideas themselves. For example, it attaches to books, songs, articles, designs, artwork and films. Often, these forms of expression will have the well known © symbol on them, but it's important to note that copyright still exists even if this symbol isn't present.

# Domain names

Although you may operate your business's website, you do not actually own its name. Domain names work on a leasing basis, which means that you purchase your domain name and you have the exclusive right to use it for a period of time, often for either 1, 2 or 5 years. After this, your domain will expire and if you don't renew it, it can be purchased by someone else. A way you can manage this is by electing to automatically renew your domain name on the site through which you've registered it.

## Assignment

It's important that the right entity owns your intellectual property. If you have a trademark, it needs to be owned by the company. This is because if you're looking to sell your business in the future or get capital from investors, they will want to see that all the assets of the business are owned by the company. If you've already registered for intellectual property protection under your own name, you can assign it to the company. You can do this using an [assignment of intellectual property deed](#). You can use this deed to assign all types of intellectual property.

# Hiring contractors

A lot of your business's intellectual property assets may be designed by a contractor. To ensure that the assets are owned by your business, you can use an assignment of intellectual property deed or have a clause assigning the property in your website development agreement. This will serve as written evidence that all the intellectual property assets are owned by the company.

## Common problems

Intellectual property can no doubt be a complicated topic for businesses to get their heads around. Here's a couple of common dilemmas businesses can have when it comes to intellectual property:

### The moonlighting problem

A common problem can be if you're looking to start a new business whilst still working for another employer. This is because a lot of employees will have a clause in their contract which automatically gives the ownership of any intellectual property they create to the employer. To alleviate this, you should check that there's an assignment of intellectual property clause in your contract, that you're not working on your idea during office hours and that any work you do for your new venture isn't done on your employer's property (i.e. your work computer).

## The Zuckerberg problem

Facebook is one of the most popular websites in the world, however the original idea for a social networking site apparently came from someone other than Mark Zuckerberg. He allegedly stole the idea after being hired to program a similar site called 'ConnectU'. When Facebook launched a few short months later, the founders of ConnectU sued Zuckerberg. However, all the founders of ConnectU had to rely on was a couple of emails and the oral contract made between them. This is actually a surprisingly common problem, which further illustrates why it's so important to have the right legal documents in place, such as a website development agreement or contractor agreement.



# Conclusion

Your brand is your business's identity, and it's crucial to protect it early on. Whether it's by registering the right trademarks, or applying for a patent – this is legal protection which you'll be glad you have as your business grows. If you're unsure about which type of protection is right for you, it is worth consulting with a [lawyer](#).

## How Lawpath can help?

Unsure where to start? Contact a Lawpath consultant on 1800 529 728 to learn more about customising legal documents and obtaining a fixed-fee quote from Australia's largest legal marketplace.

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