



# Trademarks and Designs in Australian Law

## Briefing Paper No. 3

### Plain English material

Like other intellectual property rights, trademarks and designs are legal rights granted to individuals or corporations, provided under Australian intellectual property laws over things to which they have exclusive rights.

However, unlike copyright law, which gives automatic protection to an author once their words, songs or stories are recorded or written, to gain rights over a particular trademark or design it has to be registered. This costs money. The relevant intellectual property laws are the *Trademarks Act 1995*, and the *Designs Act 2003*.

### What is a trademark?

Trademarks are product brands or business names such as Coca-Cola™, Qantas™ or Toyota™. They can help sell a product and are important for marketing, as they indicate where the product came from and say something about its quality. A trademark can also be assigned to a colour, letter, word, signature, label, shape, sound or smell that is specifically associated with a product that is developed for commercial purposes. Once a trademark is registered under the *Trademarks Act 1995*, the registered owner will be given a type of property right to use the trademark for their trade. For a trademark to be registered it must be distinctive and avoid confusion with other registered trademarks. This is to protect the originality of already registered trademarks. Once registered, a trademark will become the personal property of the owner (whether an individual or a corporation), and will be registered for 10 years. After the first ten years it has to be renewed.

Under the Trademarks Act there is provision for '**geographic indicators**'. This part of the Act identifies, and protects as part of the trademark, the location or region that the product comes from. Like trademarks, geographical indicators are words or terms associated with a thing or product. However, as they are also associated with a specific area this can indicate that they are authentic and special and belong to the particular group that has made the product. Well-known examples are champagne from France and Stilton cheese from the UK.

For Aboriginal and Torres Strait Islander people, this could mean that a bush food or bush medicine can be trademarked as coming from a particular area. However, this can be difficult to do, as the

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product has to be demonstrated to be exclusive, and a boundary has to be drawn around the area that the product (such as a plant/name/medicine) belongs to or comes from.

The Trademarks Act also makes provision for '**collective [trade] marks**', which can apply to members of an association and '**certification [trade] marks**', which may be used to ensure that a product is authentic and of a certain quality. Both of these types of trademark could be useful for Aboriginal and Torres Strait Islander businesses.

### **What is a design?**

A design is an image, logo or artwork that could be reproduced onto a calendar, t-shirt, greeting card, clothes fabric, book-jacket, or other product. Like a trademark, a design has to be [registered](#). The relevant law is the *Designs Act 2003*. Most organisations and corporations have logos associated with them, such as the Central Land Council and Ninti One.

### **Implications for Aboriginal and Torres Strait Islander people**

Like other intellectual property laws, the emphasis in the Trademarks and Design Acts is on **exclusive or monopoly rights**. These laws can only grant rights to people if the products they make from their words, images or designs are in some kind of permanent form.

But there may be ways that Aboriginal and Torres Strait Islander people can use the Trademarks or Designs Acts to protect their knowledge, if the product based on this knowledge can be shown to have changed, or has added to the knowledge in some way, and if people can certify the authenticity of the product and the knowledge.

For further information see the Government's intellectual property website at:

<http://www.ipaustralia.gov.au/trademarks/index.shtml>

and for designs: <http://www.ipaustralia.gov.au/designs/index.shtml>

### **References**

Hansen S and Van Fleet J. 2003. *Traditional knowledge and intellectual property: A handbook on issues and options for traditional knowledge holders in protecting their intellectual property and maintaining biological diversity*. American Association for the Advancement of Science, Washington DC.

Janke T. 1998. *Our culture, our future. Report on Australian Indigenous cultural and intellectual property rights*. Michael Frankel and Company. Sydney. See pages 63–72.

Janke T. 2003. *Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions*. World Intellectual Property Organization. Geneva.



Posey D and Dutfield G. 1996. *Beyond intellectual property: toward traditional resource rights for indigenous peoples and local communities*. International Development Research Centre. Ottawa, Canada.

Smallacombe S, Davis M, Quiggin R, Christie M, Craig D, Cronin D, Davies J, Davis M, Douglas J, Duffy M, Edwards T, Evans L, Guy J, Jordon L, Muir K, Raven M, Rea K and Sherwood J. 2007. *Scoping Project on Aboriginal Traditional Knowledge*. DKCRC Research Report 22. Desert Knowledge CRC. Alice Springs.

