

About Trade marks



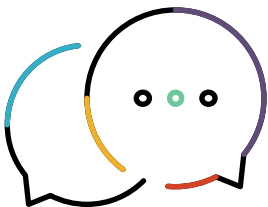
Australian Government

IP Australia



At a glance

- *trade marks are a way of identifying your particular products or services and protecting your brand*
- *costs \$250 (min) for a standard application (using the picklist/one class)*
- *registration may be gained in as little as 7 months*
- *initial registration period is for 10 years with the option of renewal*
- *tip — a registered business or domain name is not the same as a trade mark and does not protect your IP.*



Trade mark filers grow larger than their peers after filing their first trade mark.

10th Annual Australian Intellectual Property Report, 2022

(Published 26 April 2022)

What's a trade mark?

A trade mark is a form of intellectual property (IP) which distinguishes your brand and helps customers recognise your products or services from those of your competitors.

Trade marks can be registered or unregistered. A registered trade mark generally provides much stronger legal protection than an unregistered trade mark.

Registered trade marks can be used to protect a logo, phrase, word, letter, sound, smell, picture, movement, colour or aspect of packaging or any combination of these. They play an important part in marketing and brand management strategies.

A registered trade mark can also give access to powerful brand protection tools on social media platforms such as Facebook and online marketplaces like Amazon and eBay.

Protection period

The initial period of protection for a registered trade mark is 10 years from the filing date. You can renew indefinitely every 10 years. For example, the first trade mark registered in Australia was PEPs in 1906 and is still registered today.

For more information about the protection period and when to renew your IP see our [website](#).

Our [short video](#) explains 'What are trade marks?'.

Why should I register a trade mark?

A registered trade mark will:

- give you exclusive rights to use your trade mark in Australia
- be a business asset. The more successful your business becomes, the more valuable your trade mark becomes
- give you the legal right to place the ® symbol next to your trade mark
- give you a stronger position to deter others from using your trade mark and the right to obtain relief for infringement
- give you the ability to sell your trade mark, or license it for others to use e.g., as part of a franchise business model.

What can be a trade mark?

When you apply for a trade mark you need to tell us what type of trade mark you need. There are different types of trade marks depending on the elements of your brand you're looking to protect. These include:

- word or phrase trade marks
- non-English trade marks
- logo or figurative trade marks
- series of trade marks e.g., Greyscale and colour variations of the same logo, and colour, shape and sound, scent, and movement trade marks.

For more information visit our [website](#).

*all prices are correct at time of publication

An IP story:

Tutu by You and Trade marks

Tutu by You started as an idea in 2018 by business partners and cousins Steph Young and Emily Murry. They wanted to create a brand for kids that would inspire individuality and bring joy and happiness to the world.

Both Steph and Emily understood intellectual property (IP) with Emily stating, 'once you're in the market there's no coming back'. Both understood that they could not protect everything but knew that there were certain parts of their brand that they could protect. Steph and Emily developed their IP strategy 'to protect what we can' and with two and a half years of work preparing, launched their business in 2020 with their registered trade mark Tutu by You.

During preparation for their launch Steph and Emily were aware of the risk of not having registered IP. Before applying to register their trade mark, they decided to engage with IP professionals to assist them navigate application processes. As quoted by Emily 'We did not want to register the wrong thing and for it to bite us down the track. We really felt like the investment in getting a legal firm on was going to pay dividends in the end.'

As a result of this decision, Steph and Emily were able to navigate the legal requirements for registering their trade mark. Emily explains that for them, 'protecting our IP is so important its everything, right?'

To read more IP stories like the one by Tutu by you visit our [website](#).



What can't be trade marked?

When applying for a trade mark there are certain elements of a brand that can be difficult to register as a trade mark or can only be registered under special circumstances. Every day, commonly used language and symbols should remain open for all businesses to use. This means that in most instances it will be difficult to register the following:

- descriptive words
- generic terms
- simple shapes
- symbols common to the trade
- common words, phrases, and images
- common surnames
- #Hashtags that are descriptive
- geographical names
- words or images prohibited by law (e.g., terms such as BANK, Red Cross, defence force logos and words, and flags of foreign countries)
- scandalous (offensive) material
- misleading or confusing words or images.

For more information visit our [website](#).



Things to consider before you apply for a trade mark:

Registering your business name does not give you exclusive IP rights to that name

If you run a business in Australia and do not trade under your own name, you'll need to register your business name with the Australian Securities and Investments Commission (ASIC). However, this will not stop others from using the same or similar business name. If you want exclusive rights to your business name for use on your products or services, you need a registered trade mark.

Registering a website domain does not give you exclusive IP rights to that name

When you register your business name as a domain name, you secure an internet address (website URL) for customers to visit. This does not prevent others from using your business or domain name as a trade mark.

For example, Ben's business, Threads & Treads, sells t-shirts and sneakers. He registers the domain name: www.threadsandtreads.com. To prevent others from using his business and domain name as a trade mark, Ben needs to apply for registration. Obtaining a registered trade mark would allow Ben to prevent others using his business name and domain name or something similar for similar products.

Examples of registered trade marks



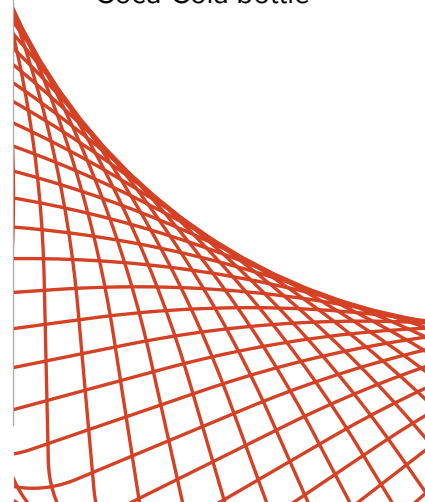
Logo
Nike swoosh



Colour
Cadbury purple



Shape
Coca-Cola bottle



Commonly used terms, phrases or images can be difficult to trade mark.

Some words, phrases or images can be difficult to register as trade marks. That is because they are descriptive or in common use and should be available for everyone to use. For example: 'warm' for heaters or 'ultra white' for paper. If your trade mark is made up of commonly used terms or phrases, it may be difficult to obtain registration.

What are classes of goods and services for trade marks?

When you apply for a trade mark, you need to list the goods and/or services you will use your trade mark for. It is important to get this right because this determines what your trade mark protects. You will only have exclusive rights to use your trade mark for the goods and services you list in your application.

You can select these from a pre-determined list of goods or services, called the Picklist, or you can provide your own description. Your application is examined against the goods and services listed. There are 45 different classes which are broken down into Classes of goods 1 – 34 and Classes of services 35 – 45.

This example with Dove shows how different companies can have similar trade marks for different goods and services.

How do I apply for a trade mark?

There are 4 ways you can submit your application for a trade mark.

1. Our pre-application service (TM headstart) is for anyone who is new to filing a trade mark, providing you with feedback from an examiner before you file your application.
2. TM Checker a free pilot tool makes it easier for small businesses to check if a trade mark is available, gives an indication of costs, and seamlessly links to the application process.
3. Our standard online application which is for anyone who is comfortable with filing trade mark applications as well as IP professionals filing small volumes of applications.
4. Engage an IP professional.

Why use TM Headstart?

Our pre-application service, TM Headstart, is an application method chosen by many first-time trade mark applicants. When you apply with TM Headstart, an examiner will assess your trade mark before you formally apply. You will get feedback and an indication of whether your trade mark is likely to encounter any problems to its registration, and an opportunity to fix errors in your application, increasing your chances of a getting a registered trade mark. This is also a fast turnaround service, with an indication as to the registrability of your trade mark provided within five working days. Using the TM Headstart service does not guarantee registration of your trade mark.

Why use TM Checker?

TM Checker a new pilot tool that makes it easier for small businesses to check the availability of a trade mark.

The tool is free and gives you:

- an early indication of whether your proposed trade mark is likely to be registered in the relevant classes of goods and services
- an estimate of how much your application could cost
- an estimate of how long the trade mark application could take
- a seamless link to our trade mark application process.

This example with Dove shows how different companies can have similar trade marks for different goods and services.

Dove



Unilever PLC

Dove[®]
Chocolate

Mars Australia Pty Ltd



Try our new pilot tool
TM Checker.

What is the IP Australia fee?

Registering a trade mark through TM Headstart costs a minimum of \$330*. Standard application fees start at \$250* per class and are payable via our online services. There are additional charges for subsequent classes.

Further information on timeframes and fees is available on our [website](#).

Do renewal fees apply?

Yes. Your trade mark can be renewed up to a year before the renewal due date. There is no limit to the number of times a trade mark can be renewed. Renewal fees start at \$400* per class and can be paid online. The renewal is effective immediately.



International protection

There are three ways to apply for trade mark protection overseas:

1. Directly through a country's intellectual property office.
2. Through a regional intellectual property office that administers the rights for a specific group of countries. For example, the European Union Intellectual Property Office (EUIPO) or the Benelux Organisation for Intellectual Property (BOIP).
3. Through the Madrid System. Administered by the World Intellectual Property Organization (WIPO) this allows you to file for trade mark protection in a number of countries through one application.

You may wish to engage an IP professional to assist with international applications. See more on International IP on our website.

Once you file a trade mark application in Australia, you can generally claim 'priority' from this Australian application when applying in other countries in the following 6 months. This means that your corresponding overseas applications will have the same effective filing date as your Australian application. The 6 month 'priority period' allows time to determine which foreign countries are a priority, and also defers filing costs for foreign applications.



Professional assistance

If you need some help or advice, [intellectual property \(IP\) professionals](#) can assist you along your IP journey. An IP professional is an expert in a professional field. They can help you during different stages of your IP journey by providing you with legal, financial, or business advice. Due diligence investigations are an important consideration before commencing use of IP, and professional advice early on can save significant expenses and inconvenience later down the road.

Your time is important, and an expert's time can be expensive. It is useful to prepare before you meet them and ask your IP professional if there is anything that you need to prepare ahead of your meeting.



To find out more about trade marks visit our website.



Check your trade mark is available before you apply. Access Australian Trade Mark Search, to check registered and pending trade marks in Australia.

Upskill:

IP Australia's small business education for trade marks.

If you're looking to learn more about trade mark protection for your business, we encourage you to start with our 5-step education program Upskill. This free online course covers everything necessary to be sure you can successfully submit your own application. You'll learn:

- what IP is, and how to identify what type of IP you may already have
- the value of your business' brand, and protecting it with a trade mark
- how to determine if your trade mark is unique
- how to apply for a trade mark
- what's involved when taking your brand overseas
- what's involved for managing your trade mark.

From start to finish, the self-paced course takes approximately 5 hours to complete. You can pause and jump back in at any time. Start today with [Upskill](#).



For further information on trade marks head to <https://www.ipaustralia.gov.au/trade-marks>

Contact us: <https://www.ipaustralia.gov.au/about-us/contact-us>

Phone: 1300 651 010
(9am to 5pm, Monday to Friday)

