

Australian

Intellectual Property Law

Bulletin

2018 . Vol 31 No 8

Contents

- page 146 **Insurance for the silver screen: how to keep the cameras rolling and your clients covered**
Joe Lo Surdo SURA FILM AND ENTERTAINMENT
- page 149 **Parallel imports welcome in Australia**
Chris Round and Olivia Coburn K&L GATES
- page 153 **Beware the composite promise: utility in ESCO Corp v Ronneby Road Pty Ltd**
Mike Pernat BAXTER IP
- page 156 **Parallel importation, unjustified threats and other recent amendments to the Trade Marks Act**
Melinda Upton, Jessie Buchan and Valiant Warzecha DLA PIPER
- page 160 **Vexatious litigant restrained from falsely alleging IP infringement**
Alexis Keating PHILLIPS ORMONDE FITZPATRICK

Editorial Panel

General Editor**Sharon Givoni***Solicitor, Melbourne*

Editorial Board

Rebekah Gay*Partner, Herbert Smith Freehills, Sydney***Marina Olsen***Senior Associate, Banki Haddock Fiora, Sydney***Alison Beaumer***Managing Associate, Allens***Lester Miller***Principal, Foundry IP***Allison Manvell***Special Counsel, Baker McKenzie*

Insurance for the silver screen: how to keep the cameras rolling and your clients covered

Joe Lo Surdo SURA FILM AND ENTERTAINMENT

Top three takeaways

- Film insurance products are designed to help you reach production goals, not impede them.
- Never start shooting without Public Liability Cover.
- #MeToo has changed the public discourse but not the level of cover.

Introduction

Any film production needs the skills and buy-in from a large circle of specialised stakeholders even before a single frame is shot.

It can be a stressful exercise and the more elements and people involved, the more complex it gets.

Picking the right insurance package for a production is a key element to smoothing out the complexity of a shoot. It's designed to ensure your clients stay on schedule and on budget, and are able to clear any hurdles efficiently.

The real role of insurance in film production is to reduce stress and enable the cast and crew to work without worrying an offhand mistake might bring the whole thing to a grinding halt.

Film and entertainment cover is more involved than simply replacing broken cameras or damaged sets. Cover extends to a wide range of production elements from the loss of a major star to third-party legal action.

Striking the balance between appropriate cover and affordable premiums is paramount for a producer. After all, film production isn't cheap. There's plenty to select from and depending on the budget of the project, some will be more important than others. Let's take a look at the types of cover your client should consider before the cameras start rolling.

Content Media Cover

This covers any increased costs due to the loss or damage of the film negative. Often, claims are triggered when there's a fault with a camera or the stock and footage become lost or unusable. When claims are triggered, producers and financiers generally prefer to

correct faults digitally in post-production rather than undertake reshoots. However, the risk and cost of reshooting complex sequences, like an action-packed car chase, make this cover more popular among producers of large-budget productions or advertising campaigns.

Ideal for: All productions regardless of film stock choice and budget.

Film Producer's Indemnity Cover

If you've got a production where the loss of a key person will cause you major heartache, you need to investigate Producer's Indemnity Cover. It's an important safeguard for covering the loss of key members of a production in the event of an untimely accident, illness, mental health issue or death. This could apply to a major star, the director, cinematographer, producer or animator. Most importantly, the cover protects the investment of the producer. If an A-list name is the writer/director of a project and can no longer proceed with their duties, the payout goes to the producer to salvage the production rather than the A-lister. If the production is running at \$100,000 per day, that's what the producer will receive. In a worst-case scenario, the producer can also elect to abandon the project. One of the most high-profile cases of Producer's Indemnity Cover being triggered was after the death of *The Fast and Furious* star Paul Walker during the filming of a series instalment. Due to Walker's pivotal role in the series and the cost involved with rewrites and reshoots, we understand the claim paid the producers tens of millions to rescue the film.

Financiers can also take Essential Elements Cover to insure against extended incapacitation to a major star. This enables the financier to independently abandon the project after 30 or more days of absence of the key person. This cover removes the joint decision between the insurer and the investor on whether to continue and the full cost of the project is paid out to the financier. Government agencies who invest in productions frequently take this cover.

Ideal for: Productions with make-or-break reliance on marquee stars or crew members; government investors; high budget productions and high-budget advertising campaigns.

Public Liability Cover

The cover that no one should start a production without. Public Liability Cover insures your production against damage caused to third parties or property. If you're filming something with pyrotechnics and accidentally burn a neighbouring building, public liability cover comes into play. If someone unassociated with the production is accidentally hit and injured by a drone you're using for a complicated shot, Public Liability Cover comes into play. Forgoing this cover can have huge career ramifications for those involved and should be a compulsory requirement for all producers. This extends to small-budget productions due to the potential cost if an injured party requires long-term medical support or legal representation. Public liability limits in Australia are some of the highest in the world. Why? Because claims in the millions are a definite possibility. With that type of risk, forgoing cover can be akin to bankruptcy.

Ideal for: Any producer or production financier. Do not enter production without it.

Multi-risk or Productions Property Cover

This is the safeguard for all your production equipment such as cameras, sound equipment, monitors, lighting gear, props, costumes, set elements, effects equipment and animatronics. This is very broad cover and ensures you can replace any equipment that might be integral to your production. Producers can also extend it to Extra Expense Cover. This added protection insures financiers against contingencies such as the costs of finding new shooting locations in the event of set damage, if crew are denied access to a required building or if civil unrest or terrorism strikes in an overseas location.

Ideal for: Any type of production; multi-location shoots; productions with high-risk locations; productions with high-value ancillaries and productions that require annual coverage.

Errors and Omissions Cover

All distributors across the world require this cover which makes it integral for any production release. Errors and Omissions Cover is generally used in the event of legal action triggered by a third party for actions such as libel or slander. For example, a film that's based on a true story could incur legal proceedings due to a real-life person being unhappy with the way they are

portrayed in the story. This can also apply to the unauthorised or inadvertent use of music, story elements or an entire script idea. Other instances where this cover can be triggered are in items such as logos, artworks and titles. Titles can be particularly difficult as rules change from country to country and often require detailed discussions with your underwriter. When selecting Errors and Omissions Cover, ensure you're adequately protected for 3–5 years after the completion of the project. Claims can be quite sizeable when triggered, primarily due to the legal costs involved and the amount of time it takes for resolution.

Ideal for: Every production that requires distribution.

Death and Disgrace Cover

Perhaps the most topical of all the types of film and entertainment cover in the current landscape. The rise of the #MeToo movement raised serious questions about how financiers can protect themselves against public resentment towards a key person involved in a production. The past year has been littered with examples of how allegations of inappropriate behaviour can derail a project and kill the profitability of a film. Despite the widespread public discussion about the issue, specific insurance products related to a possible claim against a #MeToo incident are still not widely available. This is partly due to the vast historic timespan of #MeToo incidents and the scale of premiums for something akin to accusation cover being so large as to be largely unmarketable. Put simply, the rise of the movement has sparked a massive increase in public conversation, but it hasn't translated into an appetite for insuring against it in Australia. A small number of products have become available in overseas markets, but they are still not widely available.

A noteworthy factor for Death and Disgrace Cover is that it does not operate on an innocent until proven guilty basis. Whether this is right or wrong in the court of public opinion is largely inconsequential to the investor. Claims will often be triggered to head off prolonged public backlash where financiers simply don't want to be tied to a questionable personality.

Instances where actors or prominent crew members are suddenly removed from a production are often underpinned by insurance product. In the last 12 months, the bulk of these claims have been triggered by allegations of sexual misconduct or inappropriate behaviour. The cover is also widely used to protect companies in advertising campaigns or sponsorships agreements that feature celebrities or athletes.

Ideal for: Productions with stars or personnel who have questionable histories and financiers who have brand equity to protect.

Volunteers Cover

Film sets are often popular worksites for volunteers or unpaid students looking for career experience. Film insurance packages can also be adapted to cover volunteer staff, usually under the umbrella of an additional insured. In my experience, volunteer perils usually fall under Public Liability Cover. This means your insurer will likely seek out details on what type of work your volunteers will be undertaking. If they're working with the stunt crew on pyrotechnics, it's going to pose a greater risk and a higher premium. If they're doing some simple admin tasks on set or helping with some camerawork, you'll be able to get a more affordable premium.

Ideal for: Productions employing volunteers.

Selecting the right insurance package comes down to analysing the requirements of your shoot and the production goals of the project. Presenting this analysis to an insurer and working alongside them to realise a budget-friendly package is the surest path to minimising the stress of a production.

Disclaimer: Productions vary in size and exposures. Any insurance coverages offered may vary depending upon differing exposures and risks.



Joe Lo Surdo

Managing Director

SURA Film and Entertainment

joe.losurdo@sura.com.au

www.sura.com.au

About the author

Joe Lo Surdo is the Managing Director of SURA Film and Entertainment and Australia's foremost expert in insurance for film productions. As an industry leader for more than 28 years, he is a frequent keynote speaker and adviser to local and foreign production houses.

Parallel imports welcome in Australia

Chris Round and Olivia Coburn K&L GATES

Introduction

This article summarises the changes to parallel importation law as it relates to trade marks as a result of the Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018 (Cth) (the Act). Trade mark holders will now find it much more difficult to prevent parallel imports coming into Australia. Practitioners should be aware that it is no longer good practice to advise clients to assign their Australian trade mark to a local distributor to prevent parallel imports.

Key points

- The legislative changes mean trade mark law is no longer a good mechanism to protect exclusive distribution rights. Practitioners acting for trade mark holders and exclusive distributors may need to revise their commercial and marketing strategies if they wish to seek to prevent parallel imports of branded goods.
- The acts of a parallel importer are unlikely to constitute trade mark infringement. Practitioners should take care in advising their clients about enforcing their rights and avoid exposure to a groundless threats action.
- The changes do not affect the application of the Australian Consumer Law (ACL) to parties selling parallel imports. Businesses selling parallel imports still need to understand their obligations under the ACL.
- The authors of this article consider that introducing a material difference standard for parallel imports would be prudent to balance the interests of consumers and trademark holders.

Parallel importation law has changed to allow more parallel imports into Australia.

The Act received Royal Assent on 24 August 2018. Part 1 of the Act amends the Trade Marks Act 1995 (Cth) to clarify the circumstances in which the parallel importation of trade marked goods does not infringe a registered trade mark. Part 1 of the Act commenced on 25 August 2018.

What is parallel importation?

“Parallel importation” refers to the situation where genuine goods, marked with a registered trade mark with the authorisation of the rights holder outside Australia, are purchased by a third party — the “parallel importer” — who imports and sells them in Australia.

The price and quality of goods can vary across different countries, depending on the marketing strategy of the trade mark owner. Trade mark owners will often design products and packaging to meet certain conditions in specific countries. Parallel importers seek to profit from this variance by selling the parallel imports at a cheaper price than the locally available equivalent and this can often impact the local distributor.

For instance, the company Green Lawns sells a lawn mower cheaper in the US than in Australia, where its sales are made by an authorised distributor. Green Lawns makes changes to its products to meet local standards and consumer expectations in different countries. So while Green Lawns’ lawn mower is cheaper in the US, it has different electrical requirements than the lawn mower it makes available for purchase in Australia. Both lawn mowers bear Green Lawns’ trade mark, which consumers rely on in making the purchase. When a parallel importer sells the US lawn mower in Australia at a cheaper price than the Australian lawn mower without the authority of Green Lawns, the consumer may initially be drawn to the cheaper product — but when it doesn’t meet the consumer’s expectations, Green Lawns (or its Australian distributor) is blamed for the discrepancy and its goodwill diminishes as a result.

Policy considerations

Parallel importation pits the policy interests of promoting competition and protecting intellectual property rights against each other. The parallel importer competes with the registered trade mark owner and its authorised distributors to sell the products in Australia. This disrupts the trade mark owner’s international marketing plans and prejudices their distribution agreements with local licensees.

On the other hand, the policy intent in favour of parallel importation is that competition benefits consumers as it drives prices down and increases consumer access to goods available in other jurisdictions. Although,

as shown in the Green Lawns example above, consumers may be disappointed with the product intended for another jurisdiction and not adapted to their region.

The changes to parallel importation law follow the Productivity Commission's 2015–16 public inquiry into Australia's intellectual property arrangements.¹ The Productivity Commission considered that restricting parallel imports weighed in favour of rights holders at the expense of consumers. Similarly, in July 2013, the House of Representatives Standing Committee on Infrastructure and Communications (Committee) tabled a report² on its inquiry into IT products which found that Australian consumers pay an "Australia Tax" of 50%–100% more for the same product than their counterparts pay in comparable economies. At the time, the Committee recommended that parallel importation restrictions be reviewed and broadened to ensure it is effective to allow the importation of genuine goods.

The proposed changes give effect to the Australian Government's policy position that parallel imports benefit competition, while marking a shift in interests to the detriment of trade mark owners. In his Second Reading speech, the Minister said that:

Recent legal decisions have increased the difficulty for importing legitimately marked goods into Australia. This bill will amend the Trade Marks Act 1995 to reduce uncertainty for importers, which will ultimately strengthen competition, benefiting the market and consumers.³

How has the law changed?

Section 123 of the Trade Marks Act previously provided that a person does not infringe a registered trade mark by using it in relation to registered goods where that mark has been applied to goods with the registered owner's consent. This meant that a parallel importer could rely on s 123 as a defence to a trade mark infringement action where the registered trade mark was applied to the goods by the trade mark owner at the time of manufacture.

Previously, trade mark owners were able to preclude parallel importers from relying on this defence by assigning the registered mark to their local Australian licensee, distributor or subsidiary. Once the mark had been assigned to a new registered owner, goods sold in Australia by parallel importers would not have the mark applied with the registered owner's consent. These agreements typically included an option to reassign the trade mark back to the original owner, with the effect that the original trade mark owner maintained a level of control over the trade mark.

The effect of these arrangements was upheld in cases such as *Sporte Leisure Pty Ltd v Paul's International Pty Ltd*⁴ and *Lonsdale Australia Ltd v Paul's Retail Pty Ltd*.⁵

In the latter case, Paul's Retail acquired genuine Lonsdale branded products from a European licensee of the Lonsdale brand. Paul's Retail sold those products in Australia. Lonsdale Australia Ltd, the local Australia licensee, was the owner of the Lonsdale trade mark. As Lonsdale Australia Ltd had not consented to the application of the trade mark to the goods imported by Paul's Retail, Paul's Retail could not rely on the s 123 defence. Paul's Retail was found to infringe the trade mark. If these cases were decided now, they would have been decided in favour of Paul's Retail. The other authorities in the area will also be effectively overruled.

These cases relied on the legal fiction that goods that have been created in one factory have effectively two levels of authorisation for the affixing of the trade mark: the consent of the global trade mark owner for goods sold outside Australia and the consent of the Australian trade mark owner for goods sold in Australia. In reality, for many products such as clothing, there is no practical difference between the goods at all. The manufacturer of the goods may not even be aware that the trade mark owner in Australia is a different company.

The changes introduced by the Act facilitate parallel importation to the benefit of consumers by limiting the strategic use of such restrictions by trade mark owners. The Act repealed s 123 of the Trade Marks Act as it related to goods and inserted a new s 122A. The new s 122A comprehensively sets out the circumstances in which the parallel importation of trade marked goods does not infringe a registered trade mark.

Those circumstances are where:

- the goods are similar to the trade marked goods
- the goods have been put on the market in Australia or a foreign country
- at the time of use, it was reasonable for the person using the registered trade mark to assume the trade mark had been applied to or in relation to the goods by or with the consent of the registered owner or certain other entities (which are set out below)

The parallel importer may assume the trade mark has been applied by or with the consent of:

- the registered owner
- an authorised user
- a person authorised to use the trade mark by the registered owner or authorised user
- a person with significant influence over the use of the trade mark by the registered owner or authorised user
- an associated entity of any of the above persons

By comprehensively setting out the persons who the parallel importer can assume applied, or consented to applying, the trade mark to the goods, trade mark owners are no longer able to prevent parallel importers from relying on the parallel importation defence through assignments and other corporate and contractual arrangements. Parallel importers will also be protected where the owner of the trade mark changes between the application of the mark to the goods and the use of the goods in Australia, as they may make the assumption at the time of their use of the trade mark. The changes also remove the evidentiary burden on parallel importers, as they will not have to prove that the registered owner actually applied the trade mark to the goods or consented to the application of the trade mark to the goods by another party — only that it was reasonable for parallel importers to assume as such.

The changes apply the principle of “international exhaustion” to the effect that the trade mark owner’s rights are exhausted once they market their goods in their home jurisdiction.

Comment

In our view, the changes are lacking in that they do not address the problem that consumers, relying on the trade mark, will purchase goods that may not meet their expectations. This is to the detriment of both consumers and the registered trade mark owner. In particular, the value of the goodwill attached to the trade mark could be undermined and the consumer’s expectations could be frustrated.

These problems could be mitigated through a “material difference” standard, to the effect that parallel importers could not rely on the s 122A defence where there is a material difference between the imported goods and the goods put on the market in Australia. A material difference could relate to quality, language, lack of warranty, electrical standard, absence of instructions or incorrect measurements. This is the approach adopted by courts in the US, which we consider strikes a better balance between the competing policy interests.

As the law stands, trade mark owners will have limited recourse to existing measures to protect their brand from parallel imports, namely:

- Exclusive distribution agreements: it is open to trade mark owners to negotiate a provision in exclusive distribution agreements preventing distributors from onselling goods to customers if they know those customers are likely to then import those products into another jurisdiction in competition with local distributors. The difficulty inherent in this approach is that such a clause may be in breach of local law and, in any case, would likely

be difficult to enforce as it would require the distributor to make inquiries into its customers and require the trade mark owner to prove the distributor’s knowledge of a parallel importer.

- The consumer law: parallel importers still need to comply with product safety and labelling requirements, provide accurate information to consumers about their products, and not engage in misleading or deceptive conduct or make false or misleading representations. An example where a trade mark owner succeeded in a consumer law case regarding unsafe electronic equipment is *Pioneer Electronics Australia Pty Ltd v Lee*⁶ where a parallel importer attempted to modify Japanese electrical plugs to suit Australian conditions.

Lastly, trade mark owners may also resort to customs notices to prevent the importation of counterfeit products. This measure will not prevent parallel imports to the extent that they are not infringing; however, it is useful to prevent the importation of infringing goods. This method involves lodging a notice with the Department of Home Affairs requiring customs officers to seize goods that appear to infringe a registered trade mark. Trade mark owners need to provide a formal undertaking agreeing to repay the transportation, storage and destruction costs resulting from seizures.



Chris Round
Partner
K&L Gates
chris.round@klgates.com
www.klgates.com



Olivia Coburn
Lawyer
K&L Gates
olivia.coburn@klgates.com
www.klgates.com

Footnotes

1. Productivity Commission *Intellectual Property Arrangements Inquiry Report No 78* (2016) www.pc.gov.au/inquiries/completed/intellectual-property/report/intellectual-property.pdf.
2. House of Representatives Standing Committee on Infrastructure and Communications *At what cost?: IT pricing and the Australia tax* (2013) www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=ic/itpricing/report.htm.
3. Commonwealth, *Parliamentary Debates*, House of Representatives, 28 March 2018 (D Coleman).

4. *Sporte Leisure Pty Ltd v Paul's International Pty Ltd* (2010) 275 ALR 258; 88 IPR 242; [2010] FCA 1162; BC201008028.
5. *Lonsdale Australia Ltd v Paul's Retail Pty Ltd* [2012] FCA 584; BC201205200.
6. *Pioneer Electronics Australia Pty Ltd v Lee* (2001) 108 FCR 216; 51 IPR 291; [2000] FCA 1926; BC200008446.

Beware the composite promise: utility in *ESCO Corp v Ronneby Road Pty Ltd*

Mike Pernat BAXTER IP

Introduction

The question of utility arose in *ESCO Corp v Ronneby Road Pty Ltd*,¹ and in particular, whether a sequential listing of advantages of the invention linked by conjunctive grammar constitutes a composite promise, that being a collection of promises, each and every one of which is required to be achieved either by each claim, or across the entire claim set.

Key points/ how does it affect you?

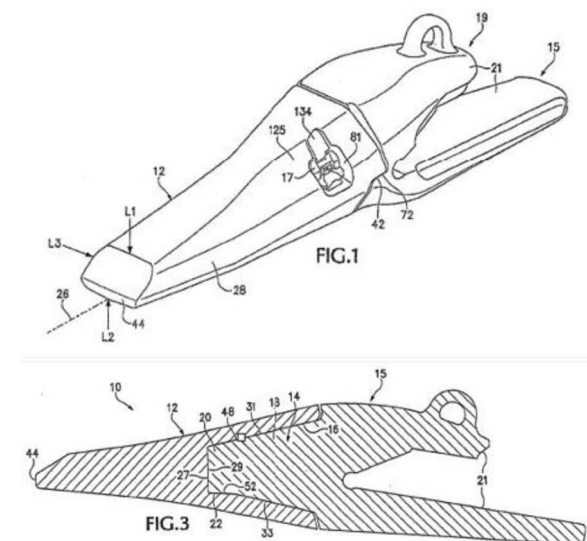
- Takeaway principle: the specification as a whole, including the claims, is to be considered in deriving the promise(s) of the invention.
- A list of advantages stated in respect of a general invention was not considered a list of promises as the promises were to be derived more sensibly from the specification elsewhere.
- Alternatively, if the list of advantages linked by an “and” conjunction were considered a list of promises, when considering the specification as a whole, these promises were not considered a collection of promises (“composite promise”) to be fulfilled by each claim, but rather were considered disjunctive promises, any one of which need be fulfilled by each claim.
- Advantages stated in respect of particular features in the body of the specification were considered promises of claims containing those particular features.

ESCO Corp (ESCO) was the applicant for Australian standard patent application No 2011201135 entitled “Wear Assembly”. As examination was requested prior to commencement of the Intellectual Property Laws Amendment (Raising the Bar) Act 2012 (Cth) (Raising the Bar Act), utility provisions introduced with s 7A were not under consideration. Thus the utility requirement, as under s 18(1)(c), was that the invention, so far as claimed in any claim, be useful.

The specification provided that the invention “pertains to a wear assembly for securing a wear member to excavating equipment”.² By way of background, “wear parts are commonly attached to excavating equipment,

such as excavating buckets or cutterheads, to protect the equipment from wear and to *enhance* the digging operation.”³

Shown below, Figures 1 and 3 illustrate a wear assembly (10) comprising: a base (15) having a nose (14) and two rear legs (21) for fixing the base to the lip of an excavating bucket; and a wear member (12) having a front digging edge (44) and a through hole (81), the wear member (12) being placed over the corresponding nose (14) of, and releasably locked to, the base (15) by a lock (17) passing through the through hole (81).



A first group of claims in the application defined a wear member for attachment to excavating equipment, while a second group of claims defined a wear assembly for excavating equipment, including a wear member.

Specifically, the wear member of independent claim 1 includes:

... a lock integrally connected in [a] through-hole [of the wear member] and movable without a hammer between a hold position where the lock can secure the wear member to [a] base [fixed to excavating equipment] and a release position where the wear member can be released from the base, the lock and the through-hole being cooperatively structured to retain the lock in the through-hole in each of the said hold and release positions irrespective of the receipt of the base in the socket or the orientation of the member.⁴

Importantly, in relation to the issue of utility, para 6 of the specification states that “the present invention pertains to an improved wear assembly for securing wear members to excavating equipment for enhanced stability, strength, durability, penetration, safety and ease of replacement.”⁵

Additionally, para 15 of the specification provides:

In one other aspect of the invention, the lock is integrally secured to the wear member for shipping and storage as a single integral component. The lock is maintained within the lock opening irrespective of the insertion of the nose into the cavity, which results in less shipping costs, reduced storage needs, and less inventory concerns.⁶

Also relevant was para 16 of the specification, which provides:

In another aspect of the invention, the lock is releasably securable in the lock opening in the wear member in both hold and release positions to reduce the risk of dropping or losing the lock during installation. Such an assembly involves fewer independent components and an easier installation procedure.⁷

At first instance, Ronneby Road Pty Ltd (Ronneby) argued that each and every stated advantage in para 6 was a promise to be fulfilled by each and every claim. ESCO, on the other hand, argued that the advantages were not promises but rather purposes or advantages of a general want, as indicated by use of the term “pertains to” in para 6. Rather, ESCO contended that aspects of the invention described in para 15 of the specification were the true source of the promise.

The primary judge considered that the six stated advantages in para 6 of the specification constituted six promises, each and every one of which was required to be achieved by each and every claim. Given then that none of the claims were considered to achieve the promises of enhanced strength, durability or penetration, the primary judge found that the promised result was not delivered by the invention as claimed, leaving all claims lacking in utility.

On appeal, the Full Court considered that any promises of the invention should be derived from considering the specification as a whole, including the claims. The Full Court provides that:

... it may well be necessary to turn to the body of the Specification, *then* turn to the claims, and *then* turn back to the Specification to identify what degree of symmetry exists between the subject matter of the claims (for example those relevant to the wear member only) and the paragraphs of the Specification which contain the promise relevant to those claims.⁸

It was noted that para 6 of the specification referenced only the wear assembly and not the wear member, to which an entire claim group was directed, so it made little sense for the listed advantages to be read as promises required of the entire claim set.

On reviewing the specification as a whole, the Full Court determined that the true promise of the invention was found in paras 15 and 16 of the specification, as these paragraphs contained the only aspects of the described invention relevant to claim 1. As claim 1 did achieve the promises set out in paras 15 and 16, it was found to be useful and therefore valid.

Finally, although it was accepted that para 6 of the specification did not provide the relevant promise of the invention, in the alternative event that it did, the six stated advantages were not to be considered as a composite promise (as the primary judge did). Rather, the promises were to be read disjunctively across the full set of claims, with any claim achieving any one of the six promises being considered useful.

Conclusion

- Although the specification as a whole is to be considered in deriving the promises of the invention, it still pays to be careful with your use of conjunctions when listing advantages of the invention, as this will form part of the specification under consideration. Therefore, present lists of advantages as alternatives using “and/or” or “or”, rather than “and”, conjunctions. The issue of the composite promise could have been entirely avoided had disjunctive language been used.
- Be overly general on the one hand and/or very specific on the other when stating advantages of the invention. Be overly general by providing a list of advantages in respect of the general invention, using disjunctive grammar (“and/or” or “or”) and without specifying particular features of the invention, so that any one of the advantages can be used to impart utility to each of the claims. Additionally, or alternatively, be very specific in stating particular advantages in respect of particular features in the body of the specification, but only where such advantages result with certainty from those features. Such statements are likely to be considered a promise of claims containing those particular features (but not of claims without) and so should impart utility to those claims assuming the promise is met.



Mike Pernat

Senior Associate

Baxter IP

michael.pernat@baxterip.com.au

www.baxterip.com.au

Footnotes

1. *ESCO Corp v Ronneby Road Pty Ltd* (2018) 358 ALR 431; 131 IPR 1; [2018] FCAFC 46; BC201802157.
2. Above, at [14].
3. Above n 1, at [17].
4. Above n 1, at [36].
5. Above n 1, at [24].
6. Above n 1, at [254].
7. Above n 1, at [254].
8. Above n 1, at [303].

Parallel importation, unjustified threats and other recent amendments to the Trade Marks Act

Melinda Upton, Jessie Buchan and Valiant Warzecha DLA PIPER

Extract/introduction

The Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018 (Cth) (the Act) recently passed through parliament and amended several key provisions of the Trade Marks Act 1995 (Cth).¹ In this article, we discuss these changes and their implications for trade mark practice in Australia.

Key points

Notable changes to the Trade Marks Act include:

- limiting the circumstances where contractual relationships or corporate structuring can be used by brand owners to prevent parallel importation through infringement proceedings (in effect)
- preventing parties from commencing infringement proceedings to avoid actions brought for unjustified threats (in effect by 24 February 2019)
- allowing additional damages to be awarded for unjustified threats of infringement proceedings that are flagrant, and guidance on the factors that the courts may consider in making such an award (in effect by 24 February 2019)
- clarifying that merely notifying a party of the existence of a registered trade mark is not an unjustified threat (in effect by 24 February 2019)
- reducing the grace period for trade mark non-use actions from 5 to 3 years from the date that registration of that mark was entered on the Trade Mark Register (in effect by 24 February 2019)
- clarifying that the Registrar of Trade Marks may require persons to provide security for the costs in a wider range of opposition proceedings (in effect by 24 February 2019)
- new powers for the Registrar to use computerised or computer-assisted decision making (in effect)

Parallel importation

Parallel importation is the practice of purchasing genuine goods in one country intended for sale in that market and importing them into another country for sale

in parallel with the authorised supply chain in that country. This allows importers to profit from the price differential between markets and can lead to considerable loss of sales by brand owners and their authorised distributors or licensees. The policy debate surrounding this issue is extensive, however, remains beyond the scope of this article.

Engineering technical independence

Until recently, cases such as *Paul's Retail Pty Ltd v Sporte Leisure Pty Ltd*² and *Paul's Retail Pty Ltd v Lonsdale Australia Ltd*³ meant that brand owners were advised to combat this practice by using corporate structuring and/or contractual arrangements to create technical independence from manufacturers that apply the brand owner's trade marks in overseas markets. This included assigning and/or filing trade marks in the name of holding companies, subsidiaries, distributors or licensees with formal or informal agreements that would allow for notional surrender of trade mark rights, however in substance, retention of control and/or resumption rights. With such measures in place, trade mark infringement proceedings could be brought against parallel importers and they would be unable to rely on the defence that the trade mark was applied by, or with the consent of, the registered owner.⁴

Exhaustion of a trade mark

As of 25 August 2018, the insertion of s 122A and amendment to s 123 of the Act has significantly limited the effectiveness of measures that can be used to create technical independence in supply chains.

Section 122A sets out the criteria that must be met for a person's activities to be taken as *not* infringing a registered trade mark. These circumstances are where:

- the goods the person has imported are the same or similar to those covered by the registered trade mark
- "reasonable enquiries" have been made for whether the registered trade mark was applied by the owner or with their consent; the level of enquiry

depends on the facts of each case, however, requesting a certificate of provenance from a supplier is likely to be considered sufficient in most instances

- an objective “reasonable person”, after having made these enquiries, would conclude that the trade mark was applied by, or with the consent of, a person (a relevant person) who was at the time of the use:⁵
 - the registered owner
 - an authorised user, as defined in s 8 of the Trade Marks Act
 - a person permitted to use the mark by the registered owner, such as a licensee or distributor
 - an authorised user, with power to give such permission, such as a sublicensee
 - a person with significant influence over use of the trade mark by the owner or authorised user or
 - an associated entity within the meaning of the Corporations Act 2001 (Cth) of any of the above persons, such as a foreign entity that is the assignee of a trade mark

Notably, (5) is drafted with deliberate ambiguity to capture formal agreements, non-contractual arrangements such as deeds or equitable interests and informal understandings (ie, exercising influence through promises of future business or the threat of withdrawal of business).

This provision further clarifies that the application of a trade mark with consent may be subject to a condition or reasonably inferred from the conduct of the relevant person.⁶ For example, where a trade mark is applied to goods that are intended for sale in a foreign country only, consent can be reasonably inferred.⁷ Similarly, for permitted persons or those with significant influence (as described above), it does not matter how the permission or influence arose. Specifically, consent can arise directly or indirectly, or “by way of proprietary interest, contract, arrangement, understanding, a combination of those things, or otherwise.”⁸

Practical implications

The overall principle introduced by this provision is that the registered owners’ trade mark rights are now exhausted following the initial application of the trade mark to, or in relation to, goods that are to be offered for sale in Australia or any other country. However, as was found with the interpretation of the old s 123, it remains unclear whether this provision will be applied by the courts as intended. Nevertheless, it appears that the most

common methods used to engineer technical interdependence have been contemplated.

Unjustified threats

As is the case with most intellectual property (IP) regimes around the world, parties that are threatened with infringement proceedings without a proper basis may seek a remedy against the threatening party. For example, a threatened party may seek:

- a remedy in the form of declaratory relief that the threat was groundless
- an injunctive relief restraining the threatening party from continuing to make the threats and/or
- recovery of damages arising out of the threatening party’s conduct

However, unlike instances of flagrant infringement, Australian courts did not previously have authorisation to award additional punitive damages for heavy-handed threats of infringement proceedings.

From 24 February 2019, amendments to s 129 of the Trade Marks Act will:

- modify the language of the provision from having “no grounds for making a threat” to making “unjustified threats”, importing existing case law that applies to other IP regimes in Australia⁹
- prevent parties from bringing trade mark infringement proceedings to avoid an action being brought for unjustified threats
- allow the award of additional damages for unjustified threats of infringement proceedings and guidance on the factors the courts may consider in making an award against a party that has made an unjustified threat, including:¹⁰
 - “the flagrancy of the threat”
 - deterrence
 - the conduct of the threatening party after the threat has been made
 - any benefit gained from making the threat
 - any other matters the court considers relevant
- clarify that mere assertion of the existence of a trade mark does not constitute a threat of infringement proceedings¹¹

Most notable are the amendments that prevent parties from commencing infringement proceedings as a defensive strategy against unjustified threats actions. Repeal of this section corrects a significant imbalance in the rights of parties that have been threatened, particularly where in the past the merits of the infringement proceedings were not considered in dismissing an unjustified threat action.

Similarly, explicitly stating that assertion of a trade mark's existence is not an unjustified threat gives practitioners a clearer indication of conduct that will amount to a threat. This also reflects the broader objective of deterring heavy-handed or overzealous assertion of rights, as reflected by allowing for the award of additional damages.

Non-use applications

Trade marks are now susceptible to removal from the Register if they have not been continuously used for a 3-year period prior to the date of the removal application.¹² Previously, trade mark owners were given a "grace period" of 5 years before such a removal action could be brought. When this amendment commences, the grace period will be reduced to 3 years from the date that the trade mark is entered on the Register.

Notably, this amendment only applies to trade mark applications that are filed on, or after, the day on which the new provision comes into effect.

This shortened grace period will bring Australia into line with international standards and allow trade mark applicants to challenge the existence of registered trade marks that are blocking the progress of their applications much sooner than is currently the case.

Customs notices

Notices of Objection are documents submitted by IP rights holders that allow Australian Border Force to seize imported goods that infringe a trade mark, among other types of IP.

For Notices of Objection submitted by rights holders on or after 25 August 2018, the Comptroller-General of Customs has been given greater discretion with respect to the issuing of customs seizure notices. Specifically, the Comptroller-General may now omit the name and address of the objecting trade mark owner if they are satisfied that the omission is necessary to preserve the confidentiality of the rights holder. The Explanatory Memorandum notes that this discretion is intended to be a safeguard and can allow suppression of a party's details if there is a physical safety threat. This suggests that the power will not be available to parties for strategic purposes, though in most instances the owner of the IP is fairly obvious.

Australian Border Force is now also empowered to issue customs seizure notices by any means, such as electronic transmission. Previously, the Trade Marks Act and other IP regimes required service of the seizure notices "either personally or by post". This prevented the use of quicker and lower cost service by email. Whilst a common sense amendment, this will greatly speed up the seizure process for both rights holders and importers.

Security for costs in oppositions

In proceedings initiated by parties that do not reside or conduct business in Australia, it is common for the responding party to seek security for any costs that may be awarded against the instigating party.

When this amendment commences by 24 February 2019, the Registrar will have the power to order opposing parties to provide security for costs in a wider range of opposition proceedings. These include oppositions filed in relation to amendments to applications that have already been advertised, and amendments proposed to ensure consistency with obligations under an international agreement. This brings these proceedings into line with other types of oppositions and allows parties defending an opposition greater protection.

Trade Mark Office technology

On commencement of these amendments by 24 February 2019, the Registrar of Trade Marks will be given powers to use computer programs for decision-making, and otherwise discharging its obligations under the Trade Marks Act.¹³

This power has been drafted in the broadest possible way to allow for advances in technology, and for the full spectrum of decisions to be made using computers, if appropriate. As expected, all computer-made decisions must meet the respective legislative requirements and maintain all existing appeals processes. Notably, the power enables the Registrar to substitute an incorrect decision without parties being required to formally request a review. This appears to anticipate incorrect decisions that inevitably will be made by computer programs.

On the whole, this should improve the processing time for applications and allow the Trade Marks Office to concentrate on complex decisions.

Miscellaneous amendments

The Act also makes the following consequential amendments, including the power for the Registrar to:

- create a specific fee schedule for documents filed by certain preferred means
- issue official documents by any means necessary such as by email, including reports of the final outcome of examination, revocation of registration and notification of the application for removal of a trade mark from the Register

These changes are unlikely to significantly impact existing practice.

Conclusion

Perhaps most notably, practitioners should be aware that most, if not all, methods that have been previously used to engineer technical independence in a supply chain are now likely to be ineffective to prevent parallel importation through trade mark infringement proceedings.

Further, they should be mindful of the commencement date for amendments set to come into force by 24 February 2019, which provide that:

- Notifying a party that a trade mark registration exists is not considered a threat of infringement proceedings.
- Additional damages may be awarded against parties that make flagrant unjustified threats.
- The commencement of infringement proceedings will no longer allow a party to avoid an action brought for making an unjustified threat.
- The grace period for bringing a trade mark non-use action is reduced from 5 to 3 years.



Melinda Upton
Co-Managing Partner
DLA Piper
Melinda.Upton@dlapiper.com
www.dlapiper.com



Jessie Buchan
Senior Associate
DLA Piper
Jessie.Buchan@dlapiper.com
www.dlapiper.com



Valiant Warzecha
Solicitor
DLA Piper
Valiant.Warzecha@dlapiper.com
www.dlapiper.com

Footnotes

1. The authors acknowledge that a number of other intellectual property regimes were amended by the Act, however, these changes fall beyond the scope of this article. Similarly, the changes considered in this paper are not exhaustive of recent amendments to the Trade Marks Act.
2. *Paul's Retail Pty Ltd v Spote Leisure Pty Ltd* (2012) 202 FCR 286; 95 IPR 151; [2012] FCAFC 51; BC201202001.
3. *Paul's Retail Pty Ltd v Lonsdale Australia Ltd* (2012) 294 ALR 72; [2012] FCAFC 130; BC201206766.
4. Trade Marks Act, s 123.
5. Trade Marks Act, s 122A(1)(c).
6. Trade Marks Act, s 122A(2).
7. Trade Marks Act, s 122A(3).
8. Trade Marks Act, s 122A(4)(b).
9. Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act (IPLA Act), s 129(2)(a).
10. IPLA Act, s 129(2A).
11. IPLA Act, s 130A.
12. Trade Marks Act, s 93A.
13. IPLA Act, s 222A.

Vexatious litigant restrained from falsely alleging IP infringement

Alexis Keating PHILLIPS ORMONDE FITZPATRICK

Extract

InfaSecure, a wholesaler of children's products, has obtained an injunction from the Federal Court restraining Debra Crocker from repeating false representations concerning a child safety restraint it sold. Ms Crocker previously emailed InfaSecure's customers, alleging they and InfaSecure infringed her intellectual property (IP) in selling the child safety restraints, which she claims to have designed.

Introduction

In May 2018, Reeves J handed down a final decision in proceedings concerning Ms Crocker and InfaSecure.¹ His Honour found that Ms Crocker made false, misleading or deceptive representations in alleging to InfaSecure's customers that it had infringed her IP in selling child-safety restraints. His Honour made orders restraining Ms Crocker from repeating the representations and also declared that threats of copyright infringement made by her against InfaSecure were unjustified.

The decision is the latest in a series of no less than six proceedings between Ms Crocker and InfaSecure. The various proceedings, which were broadly unfavourable for Ms Crocker, saw her bankrupted, imprisoned for contempt and broadly restrained from instituting proceedings in the Federal Court of Australia.

Key points

This case illustrates the dangers of alleging IP infringement without legal advice. While practitioners would be quite unsurprised by his Honour's latest findings, an understanding of the proceedings as a whole is not without purpose. Together, the proceedings serve as a cautionary tale against self-representation in the IP context. Lawyers tasked with justifying a need for their services to potential clients may wish to draw upon this case as a cautionary tale and advise:

- It is crucial to obtain legal advice before alleging infringement of your IP. IP legislation protects against unjustified or groundless threats of infringement proceedings. Notably, the legislation allows for recovery of damages for loss suffered as a result of the threat.

- Unless you have a court finding of IP infringement, refrain from contacting third parties alleging infringement by your opponent. A mistaken attack may leave you liable for misleading and deceptive conduct, if not defamation.
- Be wary of commencing proceedings if you are unable to financially meet an adverse costs order or award of damages against you. In this case, for example, misguided pursuit of litigation led to significant adverse financial consequences for Ms Crocker.
- Ensure you pay the renewal fees on your patent, if you wish to enforce it during its term. Once the 6-month grace period has lapsed, the patent will no longer be enforceable.

Background

Proceedings against InfaSecure

InfaSecure is a wholesaler of infants and children's products. From 1995 to 1998, its corporate predecessor, Infa Products, purchased child car-safety restraints (the Securap device) from Maternally Yours Pty Ltd. Ms Crocker was a director of Maternally Yours and claimed to have designed the Securap device.

In 1998, Maternally Yours ceased to trade and was deregistered as a company. In 2000, when supplies of the Securap device had been exhausted, Infa Products (and subsequently InfaSecure) began manufacturing the Securap device itself and later commissioned its manufacture overseas.

In 2006, Ms Crocker contacted a director of Infa Products, claiming she held a patent over the Securap device. Further, Ms Crocker threatened to commence patent infringement proceedings against Infa Products, unless it paid her a royalty on the sales of the device. On that basis, Infa Products made payments to Ms Crocker. However, it declined to make further payments when it emerged the patent had lapsed some years earlier due to non-renewal.

Infa Products, and later InfaSecure, continued to market the Securap device and later a new version of that device called the "Securall".

In November 2014, Ms Crocker sent a letter to InfaSecure's lawyer headed "COPYRIGHT CEASE AND DESIST LETTER", in which Ms Crocker claimed to own copyright in the Securap device. Ms Crocker also indicated that she would be pursuing costs and damages in the Federal Court of Australia.

Shortly afterwards, in December 2014, Ms Crocker did commence proceedings against InfaSecure and three of its retailer customers (the 2014 proceeding). Her claims included copyright infringement, trade mark infringement, misleading or deceptive conduct and a collection of sundry claims, including fraud, plagiarism and counterfeiting.²

In 2016, the 2014 proceeding was stayed and ultimately dismissed.³

Ms Crocker was unrepresented throughout the 2014 proceeding.

Proceedings against Ms Crocker

Shortly after commencing the 2014 proceeding, Ms Crocker sent series of inflammatory emails to several of InfaSecure's retailer customers, including Toys 'R' Us, Baby Bunting and Baby Kingdom. The first email stated:

I have commenced action in the Federal Court of Australia as attached and sealed by the Court.

...

Your website is showing that you are selling the product and as such, your company is to be added to the claim.⁴

The seven emails, together, also included the following representations:

- InfaSecure infringed Ms Crocker's IP by supplying the Securap device
- InfaSecure and the retailers had knowingly counterfeited the Securap device
- Ms Crocker has suffered fraud at the hands of InfaSecure
- InfaSecure was supplying instances of the Securap device which had been stolen from Ms Crocker
- trading in the Securap device constituted criminal conduct
- each instance of the Securap device is Ms Crocker's property and she was entitled to possession of any instance of the device in a trader's possession
- the addressees were stealing from Ms Crocker by trading in the Securap device
- InfaSecure and the retailers, in trading the Securap device, had acted in disregard for the welfare of children on whom the Securap device was used
- each of the addressees was liable to compensate or account to Ms Crocker in respect of their use of the Securap device

The emails, InfaSecure alleged, were designed to damage its standing among its customers. InfaSecure claimed the representations were false, misleading or deceptive and as part of the 2014 proceeding filed an application for an interlocutory injunction to restrain Ms Crocker from continuing her representations. Ms Crocker then discontinued her 2014 proceeding against InfaSecure.

InfaSecure then commenced a separate proceeding against Ms Crocker (the 2015 proceeding), seeking an interlocutory injunction in essentially the same terms as sought in the 2014 proceeding.

In January 2015, at the hearing of the interlocutory application, Ms Crocker gave undertakings not to communicate with any person about the subject matter of either proceeding.

However, in January, February and July 2015, Ms Crocker sent further emails to retailers alleging, inter alia, that InfaSecure and its lawyers were guilty of theft and fraud.⁵ Unsurprisingly, in August 2015, Ms Crocker was found guilty of contempt of court, having breached her undertaking a total of 27 times.⁶ In March 2016, she was found guilty of a further two counts of contempt and sentenced to 13 weeks imprisonment, 11 weeks of which were suspended.⁷

Ms Crocker was unrepresented in the 2015 proceeding, save for some legal assistance in respect of the contempt charges.

Final relief sought

Following Ms Crocker's criminal conviction, InfaSecure sought a:

- permanent injunction restraining Ms Crocker from suggesting to any retailer or consumer that, by marketing the Securap or Securall device, InfaSecure or resellers engaged in criminal conduct or infringed IP rights
- declaration that that Ms Crocker's threats of action for copyright infringement were unjustifiable in contravention of s 202 of the Copyright Act 1968 (Cth) and an injunction against the repetition of such threats
- declaration that InfaSecure had established goodwill in the Securap device and was entitled to supply it for resupply

InfaSecure also sought damages under s 202 of the Copyright Act, however such claim was abandoned at trial. InfaSecure also abandoned claims for damages for contraventions of the Australian Consumer Law (ACL) and passing off.

Notably, by the point of trial, Ms Crocker had been declared bankrupt.

Decision

In May 2018, Reeves J found that Ms Crocker had contravened ss 18 and 29 of the ACL in making false, misleading or deceptive representations found in the seven emails. In considering whether the representations were made in trade or commerce, his Honour noted Ms Crocker's emails were directed to retailers who were existing or potential customers of InfaSecure. Because Ms Crocker's main purpose in sending the emails was to influence those retailers with respect to their trade in the Securap device, his Honour found the representations were made in trade or commerce.

As to whether the representations were false, misleading or deceptive, his Honour considered there was no reasonable basis for Ms Crocker's belief that she held IP rights in the Securap device; that the Securap device posed a risk to children or that any of the retailers committed any unlawful act or crime.

His Honour considered it likely that Ms Crocker may repeat some of the representations and, therefore, exercised his discretion to issue a permanent injunction. The injunction, issued a fortnight later, restrained Ms Crocker from repeating the contravening representations.

His Honour also found that Ms Crocker's threats of action for copyright infringement contravened s 202 of the Copyright Act, her threats having been unjustified. His Honour ultimately made a declaration to this effect, restraining Ms Crocker from threatening to bring a copyright infringement action in respect of the Securap device.

However, Reeves J declined to make a declaration that InfaSecure had established goodwill in the Securap device. His Honour's reasons included that there were insufficient consequences flowing from the declaration to justify it being made, noting InfaSecure had not traded in the Securap device since 2014.

Costs were awarded against Ms Crocker.

Bankruptcy and prohibition from instituting proceedings in the Federal Court

Following Ms Crocker's discontinuation of the 2014 proceeding against InfaSecure, InfaSecure obtained a certificate of taxation attesting to nearly \$35,000 in party-party costs. InfaSecure relied on this costs liability to obtain a bankruptcy notice and, following Ms Crocker's non-compliance, petition for Ms Crocker's sequestration. Ultimately, in July 2016, a sequestration order was made against Ms Crocker. When Ms Crocker applied for the annulment of her bankruptcy, InfaSecure sought a vexatious proceedings order against Ms Crocker, pursuant to s 37AO of the Federal Court of Australia Act 1976 (Cth).

Having found that Ms Crocker frequently instituted vexatious proceedings decided in favour of InfaSecure,

Logan J ordered that Ms Crocker be prohibited from instituting proceedings in the Federal Court against InfaSecure, or indeed anyone.⁸ Exception was made, however, for any appeal or post-judgment interlocutory application in respect of the 2015 proceeding.

Conclusion

It can be tempting for IP litigants (whether represented or not) to contact third parties, naming and shaming persons they believe to be infringing their IP. This case demonstrates, however, the enormous risk of doing so. Clients would be well-advised to refrain from alleging IP infringement publically or to third parties, in the absence of a court finding of IP infringement.

This web of proceedings also highlights the importance of obtaining legal advice before embarking on litigation.

In an affidavit filed prior to sentencing for contempt, Ms Crocker stated, "I now understand that the way I have been conducting myself in this proceeding has been seriously misguided and inappropriate". She noted she had "become somewhat obsessed with this litigation" and had therefore "lost perspective".⁹

Ms Crocker's statements serve as useful reminder that litigation, without legal representation, is a difficult course to navigate not just legally but personally. Potential clients who are minded to enforce their rights without legal representation would be well-advised to keep this in mind.



Alexis Keating

Lawyer

Phillips Ormonde Fitzpatrick

alexis.keating@pof.com.au

www.pof.com.au

Footnotes

1. *Infa-Secure Pty Ltd v Crocker (No 3)* [2018] FCA 605; BC201803542.
2. *Infa-Secure Pty Ltd v Crocker* [2015] FCA 830; BC201513463 at [18].
3. *Crocker v Toys 'R' Us (Aust) Pty Ltd* [2017] FCA 619; BC201704263.
4. Above n 1, at [18].
5. *Infa-Secure Pty Ltd v Crocker (No 2)* (2016) 338 ALR 586; [2016] FCA 202; BC201602031 at [2].
6. Above n 2.
7. Above n 5.
8. *Crocker v Infa-Secure Pty Ltd* [2018] FCA 84; BC201800764.
9. Above n 5, at [17].

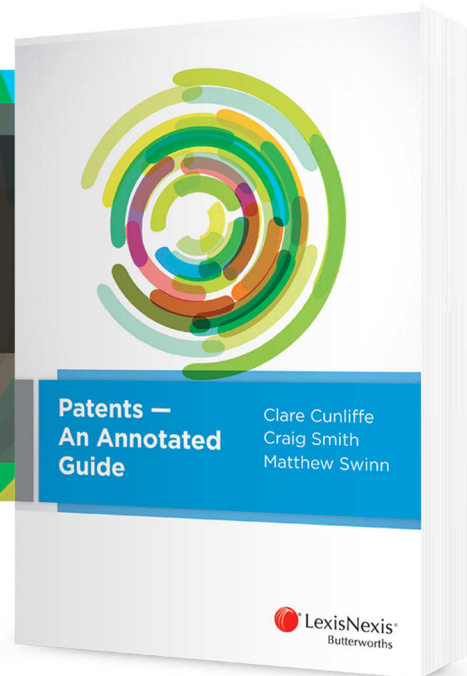


Table of Contents

Introduction to Patent Law

Patents Act 1990 (CTH), Act No 83 of 1990

Chapter 1	Introductory
Chapter 2	Patent rights, Ownership and Validity
Chapter 3	From Application to Acceptance
Chapter 4	Publication
Chapter 5	Opposition to Grant of Standard Patent
Chapter 6	Grant and Term of Patents
Chapter 6A	Divisional Applications
Chapter 7	Patents of Addition
Chapter 8	PCT Applications and Convention Applications
Chapter 9	Re Examination of Standard Patents
Chapter 9A	Examination, Re Examination and
Chapter 10	Amendments
Chapter 11	Infringement
Chapter 12	Compulsory Licenses and Revocation of Patents
Chapter 11	Withdrawal and Lapsing of Applications and
	Ceasing of Patents
Chapter 14	Contracts
Chapter 15	Special Provisions Relating to Associated Technology
Chapter 16	Jurisdiction and Powers of Courts
Chapter 17	The Crown
Chapter 18	Miscellaneous Offences
Chapter 19	The Register and Official Documents
Chapter 20	Patent Attorneys
Chapter 21	Administration
Chapter 22	Miscellaneous 309
Chapter 23	Transitional and Savings Provisions

ISBN: 9780409344226 (Book)

ISBN: 9780409344233 (eBook)

Publication Date: April 2017

Order now!

☎ 1800 772 772

✉ customersupport@lexisnexis.com.au

📱 lexisnexis.com.au/textnews



*Prices include GST and are subject to change without notice. Image displayed is only a representation of the product, actual product may vary. LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. ©2017 Reed International Books Australia Pty Ltd trading as LexisNexis. All rights reserved.

VC012017NS



Intellectual Property in Australia

6th edition

Andrew Stewart, William van Caenegem,
Judith Bannister, Adam Liberman and Charles Lawson

Clear discussion of intellectual property law,
its commercial application and future direction

ISBN: 9780409345780 (Softcover)

ISBN: 9780409345797 (eBook)

Publication Date: October 2017

Order now!

 1800 772 772

 customersupport@lexisnexus.com.au

 lexisnexus.com.au/textnews



*Prices include GST and are subject to change without notice. Image displayed is only a representation of the product, actual product may vary.
LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. ©2017 Reed International Books Australia Pty Ltd trading as LexisNexis. All rights reserved.

1110062017N15

For editorial enquiries and unsolicited article proposals please contact Aidan Fisher at aidan.fisher@lexisnexus.com.au.

Cite this issue as (2018) 31(8) IPLB

SUBSCRIPTION INCLUDES: 10 issues per volume plus binder www.lexisnexus.com.au

SYDNEY OFFICE: Locked Bag 2222, Chatswood Delivery Centre NSW 2067

CUSTOMER RELATIONS: 1800 772 772

GENERAL ENQUIRIES: (02) 9422 2222

ISSN 1035-1353 Print Post Approved PP 255003/00767

This newsletter is intended to keep readers abreast of current developments in the field of intellectual property law. It is not, however, to be used or relied upon as a substitute for professional advice. Before acting on any matter in the area, readers should discuss matters with their own professional advisers. This publication is copyright. Except as permitted under the Copyright Act 1968 (Cth), no part of this publication may be reproduced by any process, electronic or otherwise, without the specific written permission of the copyright owner. Neither may information be stored electronically in any form whatsoever without such permission.

Printed in Australia © 2018 Reed International Books Australia Pty Limited trading as LexisNexis