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Double *trouble*

K&L Gates' **Savannah Hardingham** and **Zara Lim** discuss supply chain rights.

MANY AUSTRALIAN FASHION businesses engage overseas manufacturers, fabric and textile suppliers, agents or distributors as part of their label's supply chain from product creation to customer delivery. In the April issue, we reported on the importance of accurately declaring the value of goods and paying customs duty and taxes when importing stock into Australia. This month, we look at practical considerations that businesses should take into account when engaging product or service suppliers in markets outside of Australia.

Trade mark protection

The first step is to consider which markets will be a part of your business' supply chain. You may want to source fabric from a supplier in the United States, buy leather from an agent in Italy and engage a manufacturer in China. Wherever you plan to conduct business, you should consider whether trade mark protection should be obtained prior to entering such markets.

Even if you do not intend to supply goods in those countries, it is essential to consider whether trade mark protection is required to operate in these countries. For example, if someone else registers your brand's trade mark in China (which has a first to file trade mark system) before you do, this can create issues in terms of being able to have goods manufactured within China.

While developing businesses may have limited budgets to allocate to intellectual property protection, Australian lawyers can register trade marks in numerous countries at once using the cost effective international "Madrid Protocol" system. Further, taking these steps early can avoid costly legal issues later, such as having to rebrand because you were unable to secure the necessary trade mark protection in all countries where your products are sold.

Due diligence on suppliers

Before agreeing to engage a supplier, it is essential that you conduct due diligence on that party. It is also prudent to ask for a certificate of incorporation.

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If the supplier is a manufacturer, consider sending a staff member or agent to conduct an on-site visit to the factory. Visiting a potential manufacturer in person will help you to determine the integrity of the factory and its staff. A useful indicator will be the manufacturer's response when you ask to see examples of the factory's work in order to get an idea of the quality of the garments the factory produces and its capabilities. If the manufacturer only shows you examples of collections from prior years, then this is a good indication of the factory's integrity. However, if the manufacturer is willing to show you examples of new items in development for upcoming collections and is open to you ordering copies of those garments, reconsider whether you want to engage that factory.

Written agreements

Once you have decided on a supplier, it is important to ensure that your rights and their obligations are clearly documented in a written contract. A cost effective way to do this can be to engage a lawyer to create template agreements that you can use with other service or product suppliers in the future. It is important to always have an agreement in place, even if a long term business relationship exists, as you never know when a dispute or disagreement will arise.

Using the example of a manufacturer again, some key considerations for appropriate contracts include:

- Ensure that your business has the right to carry out inspections and audits while garments are under production.
- Set out key performance criteria to ensure that garments are consistently made to a quality standard.
- Clarify that your business, and not the manufacturer, owns the intellectual property comprised in the goods and whether the same products can be made for third parties.
- If moulds, patterns or software are provided to the manufacturer as part of the production process, ensure that the factory is required to return these articles at the end of the manufacturing process and clarify that your business owns the intellectual property in these items.
- Specify what the factory is to do with any overruns and excess product that is made including in the case of defects. Ensure that the factory cannot sell overruns to outside markets.

These points will help minimise risks when engaging overseas suppliers. ■

For more information please contact Savannah Hardingham, Special Counsel at K&L Gates (savannah.hardingham@klgates.com). This article is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.