



Corporate Alert August 2007

Rules for use of company names, business names and logos

“The *Corporations Act 2001* (The Act) sets out the manner in which a registered company must use its company name, its Australian Company Number (ACN) or its Australian Business Number (ABN) when issuing certain types of documents.”

Introductions

While the requirements of the Corporations Act appear straightforward, there are special meanings for the terms “name”, “public documents” and “negotiable instruments”.

As well as the company name it is also important to understand the legislation dealing with business names and trademarks, which may encompass what are generally referred to as brands or logos.

What does The Act require?

A company must set out its Name on all its Public Documents and Negotiable Instruments.

What is a “Name”?

Any of the following will constitute a Name:

1. if the company’s registered name **includes** the company’s ACN, then the company’s registered name; or
2. if the company’s registered name **does not** include the company’s ACN, then the company’s registered name plus either the expression “Australian Company Number”; or “ACN” followed by the company’s ACN; or
3. if the company’s registered name **does not** include the company’s ACN, **and** the last 9 digits of the company’s ABN are identical to and in the same order as the company’s ACN, then the company’s registered name plus either the expression, “Australian Business Number”; or “ABN”, followed by the company’s ABN.

So, for the majority of companies, their Name will be their company name and their ABN.

What is a “Public Document”?

A **Public Document** is defined in section 88A of the Act as:

1. an instrument signed, issued or published by the company, which is required by either The Act, the *ASIC Act*, or any other Australian law; or
2. an instrument signed or issued on behalf of the company in relation to any transaction or dealing; or
3. any of the following which is signed or issued on behalf of the company: a business letter, a statement of account, an invoice, a receipt, an order for goods, an order for services, or an official notice.

Clearly the full Name is not required on documents such as business cards or flyers. In an electronic context, where a website permits or facilitates the entering into of transactions, the Name should appear on the website.

Speaking of websites, while a website is not a document as such, similar rules apply. In order to register a “.au” domain name you need to register with .au Domain Administration Limited. Domain names for a trading entity can be obtained in relation to acronyms or abbreviations of the name and also for the name of products or services they provide.



What is a “Negotiable Instrument”?

Negotiable Instruments are a recognised class of legal document. **Negotiable Instruments** include the following: bills of exchange (including cheques), promissory notes, bearer bonds, bearer debentures and warehouse certificates.

What about business names?

The state based fair trading regimes require business names to be registered by persons, or entities carrying on business under a name other than their individual or company name.

So, if business is carried on under a business name, the business name must be registered in each state and territory where business is carried on.

If business is carried on under a company name and distinctive logos are used as product or service names only, then those names do not need to be registered.

When can a brand or logo be used?

Brands and logos are special signs used to identify a company known as trade marks. Other than as specified above there is no requirement to register a trade mark, but to do so may assist you to protect your rights.

There are essentially two regimes for protecting trade marks. The first is under the Commonwealth *Trade Marks Act*. This applies only if your trade mark is registered under the *Trade Marks Act* with IP Australia, the Commonwealth body that administers trade marks, patents and designs.

Registration is not automatic. But if you achieve registration, the *Trade Marks Act* gives you the ability to take action against someone using a similar trade mark in relation to goods or services similar to yours. Owners of well known trade marks have additional rights under the Act.

The second regime applies to trade marks that are not registered under the *Trade Marks Act*, such as business names, company names, domain names and general trading names and brands. The second regime involves bringing proceedings against persons who engage in misleading or deceptive conduct, damaging your trade mark. The actions are known as “passing off” and the statutory protections against “misleading or deceptive conduct” (eg under the *Trade Practices Act*).

Contact Details

For advice on names, logos and broader intellectual property issues, please contact:

John Martin – Partner

T: +61 2 8248 3415

E: jmartin@thomsonplayford.com.au

Adrian Tembel – Partner

T: +61 8 8236 1312

E: atembel@thomsonplayford.com.au

Loretta Reynolds – Partner

T: +61 8 8236 1406

E: lreynolds@thomsonplayford.com.au

David Zwi – Partner

T: +61 2 8248 3417

E: dzwi@thomsonplayford.com.au



Adelaide
101 Pirie Street . Adelaide . SA 5000
T: +61 8 8236 1300 . F: +61 8 8232 1961

Melbourne
Level 40 . 140 William Street
Melbourne . VIC 3000
T: +61 3 8608 7000 . F: +61 3 8608 7199

Sydney
Australia Square Tower
264 George Street . Sydney . NSW 2000
T: +61 2 8248 5800 . F: +61 2 8248 5899

info@thomsonplayford.com.au
www.thomsonplayford.com.au

