Trade Marks

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A trade mark acts as a shortcut to allow consumers to efficiently identify the nature, quality, and source of a product or service. It is a sign that identifies and distinguishes the goods or services of one trader from those of another. In this way, trade marks are valuable assets that can act as a 'badge of origin', and that can help to build a business's profile, develop its reputation, and achieve its commercialisation objectives. Some of the most familiar trade marks worldwide are Apple, Microsoft and Google. In the context of quantum and biotechnologies, recognisable trade marks include IBM, Q-CTRL and SQC. In Australia, trade marks are registered under the *Trade Marks Act 1995* (Cth).

Trade marks typically consist of names and/or logos that are applied to goods, or used in relation to services, but they can also be a letter, number, phrase, sound, smell, shape, picture, movement, aspects of packaging, or a combination of these. To receive protection under the Trade Marks Act, the trade mark must be registered under the Act. In Australia, a trade mark registration lasts for 10 years and can generally be renewed indefinitely for further 10 year periods. Protection for unregistered trade marks is available under the law of "passing off" or consumer protection legislation.

In addition to standard trade marks there are several other categories of marks. These include:

- Collective trade marks may be granted to an association or collective group, and used by members of that group to distinguish their goods or services based on their association with that group;
- Certification trade marks show that a trader's goods or services are certified as meeting particular standards. Certification marks may be granted to anyone who can verify that his or her goods or services meet established standards related to quality, origin, or some other characteristic; and
- Well-known trade marks are marks that have a high degree of consumer recognition. Significantly, well-known marks do not need to be registered in a particular class of goods or services to receive protection in that class.

Criteria for Trade Mark Protection

When a trade mark is registered under the Act there is a presumption of registrability. This means that if the application was made in accordance with the *Trade Marks Act*, the mark will be accepted unless there are grounds to reject it.

Grounds for refusing or rejecting a trade mark application include:

- Lack of distinctiveness – that the average consumer would not understand the mark as indicating the trade origin of the goods.
- The mark applied for is likely to mislead, deceive or confuse consumers; and
- The mark applied for is substantially identical with or deceptively similar to an earlier registered trade mark or trade mark application for identical or similar goods or services.

Why is it relevant?

Trade marks are relevant to researchers and research institutions primarily in the context of commercialisation and industry partnerships. While trade marks do not protect scientific discoveries or technologies themselves, they protect the brands used to identify products or services in the marketplace. Universities, research institutes, and spin-out companies may use trade marks to distinguish products, services, programs, or platforms that emerge from research. Understanding trade marks can therefore be useful when research is translated into commercial applications, when institutions develop branded research initiatives or services, or when collaborating with industry partners who rely on trade marks to identify their goods and services.

Practical Steps

1. **Be mindful when naming projects or tools**
   If you are developing a research tool or product with a public-facing name, check whether similar names are already being used or have been registered as trade marks.
2. **Avoid using trade marks owned by others in ways that may cause confusion**
   When referring to commercial products, software, or technologies in publications, presentations, or outreach materials, use trade marks accurately to avoid any suggestion of endorsement or affiliation where none exists.

3. **Discuss branding and commercialisation early**
   If research outputs are likely to be commercialised, trade marks may be relevant for branding. Early discussions with your institution's commercialisation office can help identify the appropriate avenues.

4. **Check institutional policies and seek advice when needed**
   Universities and research organisations often manage trade marks associated with institutional research. If a project name or brand is intended for broader use, consult your institution's legal or commercialisation team.

Case Study

Meta successfully opposed an Australian startup's attempt to register the trade mark "ReelStar" for services including social media marketing and video transmission. The Registrar of Trade Marks found that the name was too similar to Meta's short-form video feature "Reels", and that its use could be likely to deceive or cause confusion. As a result, the trade mark registration was refused. [1]

This case highlights the importance of conducting thorough trade mark searches before launching a new brand. Failing to consider existing trade marks can lead to legal challenges, delayed launches, or the need to rebrand.

References

1. Hollander, H. (n.d.) *IP case study: Meta Platforms, Inc. v Reel Star Pty Ltd*.
2. IP Australia (n.d.) *What are trade marks?* Available at: https://www.ipaustralia.gov.au/trade-marks/what-are-trade-marks
3. *Times Higher Education* (n.d.) 'When should scientists think about trademarks?'. Available at: https://www.timeshighereducation.com/campus/when-should-scientists-think-about-trademarks