

Making your mark

Sharon Givoni lays down the law on branding and shows how some retailers have thwarted copycats.



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||| **B**rands represent the personality of retail stores and form an important part of their selling power. It is this unique personality and investment wrapped up in a brand – its goodwill and reputation – that the law protects when trade marks are registered.

Registering trade marks guards against misunderstandings by preventing others from using a brand that is confusingly similar. This article looks at four case studies of established retailers who have successfully protected their brands with trade marks.

Brands come in all shapes, colours and sizes – and the retail world is no exception. Australian trade mark law recognises this, and the Trade Marks Office has allowed the registration of innovative retail trade marks such as slogans, colours, shapes and sounds.

Boost is the word

Boost Juice has 'boosted' protection of its brand by registering several trade marks including: Boost; Boost Juice Bars; Boost Berrylicious; Boost Health Bars; Protector Boost; Skinny Boost; Love Life Boost; Vita Boost; and Bone Boost.

According to Janine Allis, Boost CEO, "Boost has spent millions of dollars on protecting and growing the word Boost in all the various forms that we use the brand. Boost is very much our language."

Her statements are backed up by numerous



branding initiatives that Boost has taken, the most recent being its forthcoming launch of 'Boost Me'.

Green means BP

Oil company BP is well-known for using a specific shade of green as part of its image to identify its petrol service stations.

BP Australia has used the colour green as part of its corporate brand and petrol station designs since 1927, and adopted green and yellow as its corporate colours in 1956.

In early 1989, it was decided that green would become the predominant colour applied to the buildings, canopies, petrol pumps and other components of

BP's service stations, and BP applied to register the colour as a trade mark in Australia.

When the Trade Marks Hearing Officer refused to accept the registration, the matter went all the way to the Federal Court.

The court found although other major companies that sell fuel also used the colour green, none of these companies used green as a main part of their get-up. It no doubt helped that BP also submitted survey evidence commissioned for the case which showed the colour green was strongly associated with the BP brand.

On October 25 2004, the court allowed the trade mark registration and with respect to various aspects of BP's service stations. This means BP has a monopoly on green when used as a trade mark in respect of the registered goods and services.

Distinctly Pink

Eagle Boys Dial-A-Pizza has

Left: Eagle Boy's Pizza has registered its glowing pink branding
Below left: Boost Juice has spent millions on trade marks

protected the distinctive features of its shop frontage as a registered trade mark.

The mark, which covers "the retail of food and beverages; restaurant services including the preparation, supply and sale of foods and beverages", is described as a "pink glow created by a row of pink coloured lights extending along a fascia of a building, or a pink glow created by pink coloured lights mounted on the exterior or interior walls of a building".

According to Eagle Boys founder and MD Tom Potter, everyone recognises the Eagle Boys pink glow. "Customers love the fun and upbeat feel it creates in our stores. We take great pride in our brand and corporate look, and the pink glow is a very important part of this."

Sweet sounds

Sounds can be registered as trade marks as well.

For example, Mr Whippy has

registered musical notation for retailing and provision of food and drink, and Pizza Hut International has registered a sound that consists of notes played on an electric guitar (the notes are represented graphically on the trade mark application form) for restaurant and takeaway restaurant services.

Trade mark tips

There are numerous benefits from obtaining trade mark registration, but perhaps most importantly, in most cases it grants exclusive rights to use the trade mark for the goods and services covered by the registration.

There are also other benefits. For example, you can display the symbol ® beside your trade mark; a registered trade mark is an asset that can be brought and sold; and they are generally protected across Australia.

Non-conventional trade marks, such as colours, elements of a get-

up and sounds, can be registered as trade marks for retail goods and services so long as they perform the trade mark function of uniquely identifying the commercial origin of products or services.

For example, you know you are at an Eagle Boys pizza shop because of the pink lighting – which no other pizza shop has. And children get excited at the recognisable music of a Mr Whippy truck approaching before they even see it.

The initial trade mark registration period lasts for ten years, so long as you use it throughout that time.

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