

15th January 2004

The Hon Dr D A Kemp
368 Centre Road
BENTLEIGH VIC 3204

Dear Dr Kemp,

Re: Cross checking of Company Names with Trade Marks Office

It has come to our attention that when an individual seeks to register a company name with the Australian Securities and Investments Commission (ASIC) that Federal Agency does not check with the Trade Marks office, which is another Federal Agency, to determine if the sought after name already has a Trade Mark attached to it.

The issue that arises here is that an applicant can apply for and be granted a name which is acceptable to and registered by ASIC and can start using that name Australia wide but subsequently find that a Trade Mark exists with the same words as have been authorized by ASIC to be used by the applicant. The converse is also true.

This seems to be an anomalous position as it is rare for the applicant for a company name to search the register of Trade Marks to see if a mark exists that uses similar or identical words to the words in the company name and vice versa. Our supplier of companies has advised us, that such a check is never done by it.

I would think and can I suggest that in today's computer age it should be mandatory for ASIC and the Trade Mark office to cross check the other's files for evidence of conflicting names and to report to any company name or Trade Mark applicant that a Trade Mark or company name exists using identical or similar words to those for which the application has been received. The applicant is then in a position to assess the position in relation to proceeding with the application for the name or Trade Mark or rethinking the position.

Yours faithfully

SMITH TAGGART

Anthony L Taggart
Partner

CC ICAA (Urgent Issues Group)