



Jane Butler
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Middle Park 3206

11 March 2003

Jeff Roberts
ACIP
PO Box 200
WODEN ACT 2606

Dear Jeff

RE: "Review of the relationship between Trade Marks, Business Names, Company and Domain Names".

Its hoped the Review will conclude:

- a) Tourism Talk TM fully registered in Class 35 & 39.
- b) uphold the protection of Trade Marks as a prerequisite to all other registrations (A.C.N., Internet Domain names and ABN)
- c) that current business registration format by changed to a National system.
- d) duplication reduced.
- e) Protection of Australian businesses owned by Australian citizens.

The Comments and Issues Paper attached is not exhaustive but can leave the most highly motivated person exasperated.

Yours faithfully,

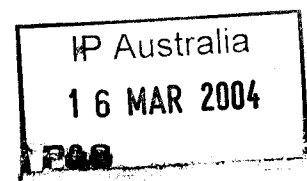
A handwritten signature in cursive script that reads "Jane R Butler".

Jane Butler

RESPONSE TO ACIP PUBLIC INQUIRY AND THE RELATIONSHIP BETWEEN TRADE MARKS, BUSINESS
NAMES, COMPANY NAMES AND DOMAIN NAMES - 11 March 2004

COMMENTS AND ISSUES PAPER

Tourism Talk TM to ®



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COMMENTS AND ISSUES PAPER

Tourism Talk TM to ®

The details below predominantly relate to my personal experience and current issues in registering Tourism Talk TM through IPAustralia ; Consumer and Business Affairs and further briefly mentions topical issues in connection with other registry authorities in Victoria.

1.0 Background

I have deep concerns about IPAustralia's Trade Marks office supporting any emerging Australian business ownership or related applications given my experience. In addition provide an example as to where an A.C.N. has been pursued by another proprietor within months of my trade mark description and application being filed.

The public inquiry is welcomed in order to lift Australia's competitive edge and fairness as the current environment is almost unworkable. For example: TM and A.C.N duplications are counteractive, seven business registry offices collectively help stymie processes, processes are long - giving rise to potential misrepresentation; and notably to many errors or misjudgements.

2.0 Tourism Talk TM Trade Mark

Actual and Discrepancies are discussed concurrently in relation to

- 1) IP Australia – Melbourne & Canberra
- 2) Consumer and Business Affairs - Melbourne

See next page ...

2.0 Actual and Discrepancies relating to 1) IP Australia 2) Consumer and Business Affairs Records.

Registry Office Process	ACTUAL	RECORDS DISCREPANCY	Taking Issue
Consumer & Business Affairs Business Registration Receipt \$70 B1520978Y (no. on top left)	4 July 2000	Date omitted from public database	
IP Australia paid in person and was received for one Class.	4 July 2000	Error 24 Nov 2000	The brisk walk between two Melbourne Business Registry Offices is not unusual given their proximity. ABN details for Tourism Talk added to Port Phillip Tourism Talk® as principle also in July 2000 Received
Consumer & Business Affairs B1520978Y (no. on top left of certificate) Reproduced with new date.	Notified change of address 21 Nov 2000	Treated as new certificate.	The owner holds two certificates. The original and the update, however no address shows on this certificate. I remember this receipt process taking an extremely long time and required the attendant to follow up in back office before printing from front desk - issuing an almost identical Business Certification.
Adverse Report Approved		Report No. 1 7 May 2001	If this was approved why did I need to give another description 2 Nov 01 ?
Correspondence on description was provided verbally and in writing by Jane Butler.	In discussion with Chrissie Norman - 2.11.01	Report No. 2 not on IP Australia records.	The numerous phone discussions and class descriptions related to business activities was comprehensive.
Registration Fee Reminder Notice		Not on record?	Assumed issued in March 2002
IP Australia Receipt 73019282 \$150.00	Additional Class added 24 Nov 2000	Record shows as "New Trade Mark application"	The additional class was added to the Trade Mark to bring into line with Port Phillip Tourism Talk @ business description.
IP Australia 15 March 2002 Amend Tm Application particulars.	Final Payment was made in person at the Melbourne office.	Omitted	15 March 2002 is the likely date that Sealing Fee was paid
IP Australia TM Registered Advert	Tourism Talk's TM application did lapse or withdraw.	Lapsed and withdrawn 12 September 2002	Totally Disagree
1 st Report within 12 months	Insubstantiated given Report No. 1 - 7 May 2001 Report No. 2 - 2 Nov 01	7 Jun 2002	This item is inaccurate given that the class applied for were exact to a former successful registration and the substantial personal importance of this application and brand name in relation to both my expertise and future. Very few people in Australia have the skills required for establishing such an environment nor the inclination that is directly implied by the name.
Trade Mark History Record		Amend Status from Under Examination 7 -23 Aug 2002	At no time was I advised that there was any outstanding issue with this application after confirming with Chrissie Norman of the business intent

Review of business information	TM Number 858248 has no Oppositions 9 July 2003 on verbal notice of being too generic.	7 July 2003 General Correspondence acceptance 9.3.04 for Class 35	IP Australia responded with a phone call, no internal administration correction has been made. The IP Australia Office in instead taking an each way option to avoid completing the registration, when all records should be well documented in the Melbourne office. Consumer Office and Business Affairs - did not respond to my letter. Please let me know if further evidence is required.
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3.0 Duplication

3.1 Trade Mark / A.C.N.

On registering a Trade Mark an instant competitor can emerge through A.C.N. without any due consideration to existing business name, the preparation time invested in establishing a new business and the administration time of registration follow up details.

In this instance being subjected to a counteractive A.C.N. duplication filed in Nov 2002, whose initial web-site layout showed uncanny likeness to that of my "Goods and Service ?

The ability for this to occur suggests that all Trade Marks are doing exactly the opposite to what was intended. Creating enormous disparity between 1) an innovator and individual intellectual property TM owners emerging and 2) financial investors who can duplicate new trade mark registrations at whim.

This places enormous unnecessary stress on all new business opportunities and energy misdirected into endless realms of registration changes, fees, paper documentation, over extensive feedback requirements and the following up on misguided records, only to find someone else is using my business name.

3.2 Domain Names

Verification method to registering "tourismtalk.com.au and tourism-talk.com.au

While verification of a trade mark was a prerequisite for securing the tourismtalk.com.au domain, this rule obviously did not apply for who ever established the tourism-talk.com.au site? Presumed linked to Tourism Talk, Australia Ltd A.C.N.

No follow-up on earlier request for tourismtalk.info.com.au registration

4.0 Internet Services / ISP

Statement of Ownership – Proof of the Trade Mark was necessary when registering tourismtalk.com.au domain names with Melbourne IT and this should make it impossible for tourism-talk.com.au to enter the market.

IT companies should stick with IT and not be compromised with other expertise.

Internet Services have failed to be a reliable source of forwarding business information at times of forwarding critical or urgent documents for tenders or other important messages. Whether paid or free an email page may expire midway through writing cover note.

Tourism Talk was turned away by a very well established ISP in Melbourne as a conflict of interest, when I range to order the use of an advertised ISP service – the company saw Tourism Talk as an emerging business threat. The web advertisement is therefore misrepresentative to the public and business (in promoting access to storage space at a fee and failed to advise that this was for selective clients only. IT companies are creating unfair competition immediately on pursuing a service order and in effect given the IT free intellectual knowledge.

5.0 Business and Company Names

5.1 "Business name system should be substantially reformed as a Federal system."

Second Duplication - State Business Name Registration is required by IPAustralia in order to register a Trade Mark, creating a second duplication requiring all candidates to register with both aspects ASAP.

An Outdated System - State Business Name Registration requests for address location and associated fees is largely outdated and not in keeping with spatial integrity, off site locations, central use of mobile phones and P.O. Boxes rather than fixed addresses.

"Australian Company Names applications should be refused if they are identical to pre-existing trade mark, applications or registrations." I agree with the statement.

5.2 Proprietorship

"Some trade mark applicants do not recognise the issue of copyright in the trade mark. Would it be possible to include a statement regarding copyright ownership in the trade mark applications? For example, the applicant ticks a box to indicate that it either owns the copyright or has the consent of the copyright owner to apply for the trade mark registration."

I agree with the statement. An extra step in the A.C.N. process will prevent applications from proceeding and /or falling into administrative and legal debacles.

5.3 Examination and Registration

"There is a high level of inconsistencies in the administration side of the reporting procedure.

It is common for a first report to raise a general section 41 (5) objection against a multi-application and a phone call to the examiner then reveals that the objection is only against one or some of the classes.

All discussions were fully entered into and exhausted on two occasions with Chrissie Norman who very competently covered in depth all issues, topics and process about the business function and aspects in relation to the TM applications. The application was followed up with a written descriptive account of the business interests and at least two other phone calls with Chrissie including discussions on fees, final payments and business activities. At no time was there any indication or doubt relayed about potential refusal or that there were any pending concerns, about either Tourism Talk TM's.

Also during our 2.11.01 conversation reference was also made to earlier information that had been provided. Plus, advice was received including assignments take 1 to 2 months; 2 years for registration; Require Action – wait 10 to 15 months for acceptance.

No letter to the contrary was ever received and final payment took place.

"some examiners question the correct classes for specifications but do not explain the possible correct but others provide very helpful examples of the possible correct classification."

Concurrently TM applications 858 248 and 821 142 discussions and advice were extensive with Chrissie Norman and on more than one occasion. An IPAustralia and Victorian Business Registry website mistake were first noticed when checking my administration status in 2003, whereby a letter of concerned was forwarded to both offices and later followed with an unconfirmed phone call and outcome and IPAustralia followed up with an ambiguous outcome

I do not understand why my application for Tourism Talk trade mark has not been honoured and believe this should be completed. There has also been ample lead time given to addressing this application.

4.4. Restricted searching by class

Tourism Talk TM has paid for classes 35 & 39 and it seems unfair that class 39 details excluded from registration without notice coupled with delays and lead time given to trade mark registrations can result in the encroachment of an A.C.N. competitor.

To safeguard an emerging business from immediate competition it makes sense to be able to gradually add classes as new aspects arise.

4.5 Rights under Common Law

Correct dates of Business Registration and Trade Mark acknowledgements on data records would help to reduce discrepancies and follow up administration needs by all parties.

ABN 39 356 652 029 covers :

- 1) Tourism Talk TM July 2000
- 2) Port Phillip Tourism Talk ® 1997
- 3) Hillside Tourism Talk TM 1998 (currently in doubt)

Following a discussion with Malcolm Lomasney of IPAustralia it was resolved that an additional payment of \$150 was made to IPAustralia 30 Nov 2001 for Hillside Tourism Talk TM and was later returned deemed unnecessary. A clear report forwarded to PO Box 5111 Middle Park 3206 on 21 December 2001.

This does not explain why all further correspondence was supposedly forwarded to a street address when the PO Box 5111 Middle Park 3206 has been and remains a stable PO Box address, since 1997.

Copyright – All copyright relating to the above remains the property of Jane Butler as principle. Any potential partnerships and services operating under these names will be negotiated as an independent business arrangement and may include a fee for service.

5.6 Proof of use

A proof of use upon renewal would be of benefit. Presumably the time period within which use must be shown should be the same as the required under.

Tourism Talk is also synonymous with Jane Butler in a tourism professional capacity from 1987 in various regional areas, as well as in a business capacity since 1997. Sustaining the Trade Mark prerequisite stand point. Principles trained and experienced in the field should have favourable high proportionate weighting as opposed to an investor/s with no experience or who have followed someone else's lead.

Definition of 'Use' – Seed Ideas, Innovation, Tender and Grant candidates potentially versus adhoc Marketing. There are instances where proposals and response submissions have sat idle for some time within departments and agencies anywhere from three months to seven years before making a response or due to deferral. The above 1c. statement subjects candidates to selective misrepresentation and vulnerable to emerging government interests or large corporate bullies.

Some aspect of the 'proof of use' are difficult to measure in terms of 1) forward vision 2) long term benefits or 3) short term exploits.

Why Tourism Talk belongs to Jane Butler

The move to use Tourism Talk firstly as part of Port Phillip Tourism Talk in 1997 as a business name is consequent of the 1995 reform process and various restructures requiring tourism specialists to adjust to outsourcing opportunities. IP Australia advised me when visiting the premises in 1997 that it would be very difficult for anyone to register Tourism Talk with Port Phillip Tourism Talk already in place. To be doubly sure Tourism Talk in its own right was registered as a Trade Mark 4 July 2000 – the same day as the Business Affairs Registration. No trade mark opposition has occurred on three occasions.