MLB
LAWYERS & ASSOCIATES

QUARTERLY NEWSLETTER

JUNE 2013

SPECIAL OFFER: 20% off Legal Fees for application of trademark registration. Conditions apply*.

**Only to subscribers of our newsletters who quote QN000613. Valid from 1 June to 31 July 2013 for one standard trademark in one class where there is no opposition of the mark. Offer does not apply to government fees and any office expenses.*

Changes to Trademark opposition

Amendments to Australian trademark legislation commenced operation on 15 April 2013. The purpose is to reduce delays in resolving substantive oppositions to applications for registration and oppositions to non-use removal applications.

The period for opposing a trademark application has been reduced from 3 months to 2 months. An extension may be granted in limited circumstances, namely when there is an error or omission, or circumstances beyond the control of the person opposing the trademark application.

If an applicant wishes to defend its application and challenge the opposition, it must file a Notice of Intention to Defend within 1 month of being given the opponent's Statement of Grounds and Particulars. Otherwise, their trademark application will lapse or the removal application will fail.

The period for filing evidence has also been changed. An extension will only be available in cases where the requesting party has made all reasonable efforts and cannot file evidence within the time frame or there are exceptional circumstances that warrant the extension.

The parties cannot seek ongoing extensions for the purpose of negotiations. However, the parties can agree to a cooling off period at any time after the opposition documents have been filed. Proceedings may be suspended for an initial period of 6 months up to a maximum of 12 months. Each party involved in the opposition must consent to this cooling off period. The Registrar may only allow one cooling-off period.

After the evidence is filed, either party may request a hearing. The Registrar may also call for a hearing and has discretion whether to hold an oral hearing or hear the matter by written submissions. In cases where the register decides to hear the matter, stringent deadlines apply.

We recommend that trademark owners discuss with their legal advisors how the new regime will affect them.

Changes to Food Labeling & Advertising Law

The new Food Standard (Standard 1.2.7 - Nutrition, Health and Related Claims of the Australia New Zealand Food Standards Code) came into force on 18 January 2013. The new Food Standard regulates nutrition content claims and health claims on food labels and in advertisements.

Businesses in Australia and New Zealand have 3 years to comply with the requirements of the new Food Standard. During this period, businesses may follow either the new Food Standard or the old Food Standard 1.1A.2 but not both.

Businesses involved in the supply and sale of food products should ensure their food products comply with new requirements involving labeling, advertising and correct product representations.

Liability of Directors & Officers

On 14 March 2013 the *Statute Law Amendment (Directors' Liability) Act 2013* (Vic) commenced operation. The Act deals with the liability of directors and managers in the event a company or corporation commits a crime.

There are 3 different types of new provisions plus accessorial liability provisions under which directors and managers will be personally liable.

These provisions all apply to officers. An "Officer" means a person who is an officer (as defined in section 9 of the *Corporations Act 2001* (Cth)) of the organisation, or a person who is concerned in, or takes part in the management of the organisation. However, a person who does not make or participate in making decisions that affect the whole or a substantial part of the business of an organisation may still be concerned in the management of an organisation and hence, be considered an "officer".

Type 1, 2 and 3 provisions all provide that if an organisation commits a specified offence, an officer of the organisation also commits the same offence if the officer failed to exercise due diligence to prevent the organisation from committing the offence. The differences between these provisions is who must prove the failure to exercise due diligence.

A Type 1 provision requires the prosecution to prove beyond reasonable doubt that the officer failed to exercise due diligence to prevent the organisation from committing the offence.

A Type 2 provision requires the officer to present or show evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the organisation from committing the offence and the contrary is not proved (beyond reasonable doubt) by the prosecution.

A Type 3 provision requires the officer to prove on the balance of probability that the officer exercised due diligence to prevent the organisation from committing the offence.

The courts have held that to demonstrate the exercise of due diligence in order to prevent something being done means to take all reasonable steps to prevent such an event from happening together with exercising reasonable care and skill.

An accessorial liability provision means that if an organisation commits an offence, an officer of the organisation also commits the offence if the officer authorised or allowed the commission of the offence by the organisation or was knowingly concerned in any way (whether by act or omission) in the commission of the offence.

Directors and managers should take careful note of these provisions. MLB Lawyers & Associates can provide training to directors and managers to prevent potential breaches of the Act.

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