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SPECIAL OFFER!
FREE ADVERTISING
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AUSTRALIAN DISTRIBUTORS

BEWARE

Are you an Australian distributor for a product that you source from overseas? Are you manufacturing overseas and selling in Australia? If so, this information applies to you and should be carefully considered. How would you feel if another person in Australia stopped you from distributing the product that you believed you were well within your rights to be sourcing and selling? How would you feel if you poured your blood, sweat and tears into developing a business overseas and then your Australian distributor stole that away from you? We bet the answer is, not very good!

Recently, we have found ourselves looking after matters where an Australian distributor has registered (or tried to) a trademark in their own name, instead of attributing ownership to the rightful, international party. The consequences of these actions are huge. By registering the trademark, that party is given the right to use and control the use of the trademark. This means:

a) If you are another distributor in Australia for the same international manufacturer, you could lose that distribution simply because you could now be prevented from using the trademarked name. ▶

You could incur huge costs in having to re-brand all the products you are receiving from overseas.

b) If you are an international manufacturer, you could lose the ability to have multiple Australian distributors, because any other distributor could be told to cease and desist use of the trademarked name.

How to avoid this happening to you

First and foremost – if you are the manufacturer and supplier of a product, always seek to register the trademarks in the countries where you want control.

If you don't want to register it – ensure that your Distribution Agreements clearly state that the distributor cannot register the trademarks (or any other intellectual property) in their own name.

If you are a distributor and are being told by a fellow distributor that you need to cease use of the trademark, review your distribution agreement and report it immediately to the supplier. They will then be able to peruse each agreement they have entered to determine whether the other person should have registered the trademark, and they can take the necessary action in rectifying the situation.

Article continued page 2 ▶

When word gets out...

"Thanks again for your sensible and clear advice in an area I find seriously mind boggling ;) You've given me great peace of mind to know I have commenced the first critical step in the trade mark process. Attached is my application for "go gorgeous". I know she's in good hands."

Michela D'Addario, Director & Principal Consultant, Creative Evolution Consultancies.

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IT HAPPENED TO ME

Our clients share their experiences

The Australian Distributor who has been affected by another's registration...

Jeff Xanthos – Owner, JMX Distributors

"Like many businesses in start-up, our knowledge of rights and intellectual property was limited, our intentions were genuine and we had a business plan. We took steps to ensure that our supplier did not have exclusive distribution licensing arrangements in place, however were not prepared for what was to come. Almost immediately we were taken down by a "mark" owner that had systematically registered a number of brand names, which originated from the very suppliers they were importing from. In doing so they successfully carved out a little monopoly over a number years, squashing us and its competitors at will, all without the permission of the manufacturer.

Our experience alerted us to the common misconception that a local mark was presumed to offer protection abroad, several of our suppliers are now faced with the realisation that their brand expansion abroad is limited to one distributor. Although re-branding and challenging the ownership of what is "rightfully theirs" are now options, one must wonder why the "commercial significance" of international protection was not advised and applied in the first place.

As the "new" distributor, our options were limited and strategic compromises needed to be made, although frustrating for us, the real dilemma now sits with the supplier."

The International Manufacturer who thought their name was safe...

Ena Horton – Owner, Rejuvx International, Inc

"Our company developed a product in the United States and protected our trademark in the US. We did not realise that once we started discussions with an Australian distributor, they would try and register our name in Australia. We thought we would be protected, as we registered the US Trademark years ago. The Australian distributor did this behind our backs, whilst still placing orders with us, not realising we had found their trademark application. So we must now spend time, money and effort trying to resolve the situation with them.

These same distributors have also tried registering a trademark that belongs to a Manufacturer in Denmark, luckily they also became aware of the application and are taking steps to resolve the issue. It seems that it's too easy for people to be able to get away with doing this, and we feel that perhaps some heavier penalties and consequences should be applied to distributors that are 'stealing' other people's names. I will certainly be telling anyone and everyone of what has happened to us when trying to start trade in Australia and will also ensure that any future products and brands we develop are registered before we begin distribution."

WANT MORE info?

If you would like any extra information about this issue's articles or any services Complete IP provides, call us on 1300 365 715 or [email us](mailto:office@completeip.com.au).



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