

Trademarks 101

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Introduction

This article gives you an overview of trademarks and how a trademark might be infringed.

What is a Trademark?

A trademark is a distinctive word, phrase, letter, number, sound, smell, shape, logo, picture, aspect of packaging or a combination of these which is used by a someone to identify that its goods or services originate from a particular source or to distinguish their goods or services from someone else.

A trademark owner has the right to stop others from using the trademark, or any deceptively similar trademark, on or in connection with goods or services that are identical or closely related to the goods or services of the trademark owner.

How is a Trademark infringed?

Registered Trademarks

Registered trademarks usually have the symbol ® or TM immediately after the mark.

If you use an identical or similar trademark for identical or similar goods and services to a **registered** trademark - you may be infringing the registered mark if your use creates a likelihood of confusion on the part of the public.

This includes the case where because of the similarities between the marks the public is lead to the mistaken belief that the trademarks, although different, identify the goods or services originating from the source.

Where the registered mark has a significant reputation, infringement may also arise from the use of the same or a similar mark which, although not causing confusion, damages or takes unfair advantage of the reputation of the registered mark.

What about unregistered trademarks?

Some unregistered trademarks may be protected in some countries under trademark law, or alternatively under separate legal concepts like passing off or 'unfair competition'. Whether or not the unregistered trademark is protected will depend on particular circumstances like:

- Whether, and to what extent, the owner of the unregistered trademark was trading under the name at the date of commencement of the use of the later mark;
- Whether the two marks are sufficiently similar, having regard to their fields of trade, so as to be likely to confuse and deceive (whether or not intentionally) a substantial number of persons into thinking that the goods and services are those of another;
- The extent of the damage that such confusion would cause to the goodwill in the first user's business.

Additional References

Here are some useful links to sites for further reading about trademarks and other intellectual property in various countries:

- [Australia](#)
- [United Kingdom](#)
- [United States Trademark](#)

And for some important detail about what to think about when it comes to trademarks and your Marketplaces item, refer to [Trademark Use and Real World Products](#) article.