



Australian Government

Department of Education, Employment and Workplace Relations

BSBIPR403A Protect and use brands and business identity

Revision Number: 1

BSBIPR403A Protect and use brands and business identity

Modification History

Not applicable.

Unit Descriptor

Unit descriptor	<p>This unit describes the performance outcomes, skills and knowledge required to protect and use brands and other business identities as trade marks. It covers identifying the need for trade mark protection, lodging a successful application, monitoring and protecting the trade mark, and using the trade mark commercially.</p> <p>No licensing, legislative, regulatory or certification requirements apply to this unit at the time of endorsement.</p>
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Application of the Unit

Application of the unit	<p>This unit applies to individuals who are involved in work with marketable applications across a variety of work environments.</p>
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Licensing/Regulatory Information

Not applicable.

Pre-Requisites

Prerequisite units		

Employability Skills Information

Employability skills	This unit contains employability skills.
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Elements and Performance Criteria Pre-Content

Elements describe the essential outcomes of a unit of competency.	Performance criteria describe the performance needed to demonstrate achievement of the element. Where bold italicised text is used, further information is detailed in the required skills and knowledge section and the range statement. Assessment of performance is to be consistent with the evidence guide.
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Elements and Performance Criteria

ELEMENT	PERFORMANCE CRITERIA
1. Identify the need for protection of brands and business identity	1.1. Research what constitutes a registrable trade mark in Australia 1.2. Identify the legislative requirements governing trade mark protection 1.3. Identify other forms of trade mark protection 1.4. Identify existing or potential trade marks within organisation or scope 1.5. Explore the benefits , costs and risks of trade mark registration and other forms of trade mark protection 1.6. Make recommendations to develop and use trade marks with commercialisation potential
2. Identify and initiate application process for trade mark protection	2.1. Identify sources of information and advice regarding protection of brands and business identify 2.2. Evaluate the role of intellectual property professionals in the trade mark application process 2.3. Search databases of existing registered and pending trade marks and investigate any use of unregistered trade marks to ensure the proposed trade mark does not infringe on another party's existing trade mark 2.4. Identify processes required for lodging a successful trade mark application 2.5. Identify process for international trade mark registration 2.6. Participate in a trade mark application and provide relevant information to the intellectual property professional for trade mark application, if applicable
3. Monitor the market and protect and use trade marks	3.1. Identify and review organisation policies and procedures to protect and use the trade mark correctly 3.2. Identify and establish processes to use own and others' trade marks for business growth 3.3. Monitor the market for possible trade mark infringements 3.4. Pursue appropriate measures to protect trade marks against infringements, if required, using appropriate professional advice 3.5. Ensure that procedures are followed to maintain the organisation's trade marks, including payment of renewal fees as required 3.6. Ensure all employees are aware of the importance to the organisation of the protection and proper use of

ELEMENT	PERFORMANCE CRITERIA
	<p><i>trade marks</i>, and implement training if required</p> <p>3.7. Identify and review organisation policies and procedures to prevent infringement of others' trade marks</p>

Required Skills and Knowledge

REQUIRED SKILLS AND KNOWLEDGE
This section describes the skills and knowledge required for this unit.
Required skills
<ul style="list-style-type: none"> • research skills to identify relevant areas of trade mark law and the common law to protect organisation's intellectual property • analytical skills to identify commercial potential of trade marks and brands • literacy skills to interpret and implement IP Australia's trade mark application procedures • problem solving skills to act on potential infringement issues
Required knowledge
<ul style="list-style-type: none"> • different ways to protect trade marks • application guidelines, including definitions of registrable trade marks • application formats and procedures • overview of relevant legislation concerning trade marks • sources of advice on trade mark protection

Evidence Guide

EVIDENCE GUIDE	
<p>The Evidence Guide provides advice on assessment and must be read in conjunction with the performance criteria, required skills and knowledge, range statement and the Assessment Guidelines for the Training Package.</p>	
Overview of assessment	
Critical aspects for assessment and evidence required to demonstrate competency in this unit	<p>Evidence of the following is essential:</p> <ul style="list-style-type: none"> • identification of issues for the use, management and protection of brands and business identity • implementation of policies and procedures for the use, management and protection of brands and business identity and legitimate use of others' trade marks
Context of and specific resources for assessment	<p>Assessment must ensure:</p> <ul style="list-style-type: none"> • access to relevant information on the individual or organisation's brands and business identity requirements and procedures • access to reliable and appropriate explanatory material and guidelines • access to appropriate computer resources for establishment and maintenance of policies and procedures
Method of assessment	<p>A range of assessment methods should be used to assess practical skills and knowledge. The following examples are appropriate for this unit:</p> <ul style="list-style-type: none"> • direct questioning combined with review of portfolio of evidence • oral or written questioning to assess knowledge of protection of brands and business identity and its implications for the organisation • development of action plans for implementation of policies and procedures for protections of brands and business identity, and commercialisation of trade marks • analysis of case studies around trade mark issues, with recommendations for action
Guidance information for assessment	<p>Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended, for example:</p> <ul style="list-style-type: none"> • other units from BSB07 including other units relating

EVIDENCE GUIDE

- to intellectual property
- design units

Range Statement

RANGE STATEMENT	
<p>The range statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. Bold italicised wording, if used in the performance criteria, is detailed below. Essential operating conditions that may be present with training and assessment (depending on the work situation, needs of the candidate, accessibility of the item, and local industry and regional contexts) may also be included.</p>	
<p>Registrable trade marks may include:</p>	<ul style="list-style-type: none"> • letters, words, names, signatures, phrases, numerals, sounds, smells, shapes, logos, pictures, aspects of packaging, or any combination of these that can be represented graphically <p>A trade mark can be difficult to register if it is:</p> <ul style="list-style-type: none"> • a generic word • a term that other traders may need to use in relation to the same kinds of goods or services • identical with or deceptively similar to a pending or registered trade mark • likely to mislead the public about the nature of the goods or services • scandalous or against the law <p>Note: registration of a business, company or domain name does not in itself give proprietary rights</p>
<p>Legislative requirements may include:</p>	<ul style="list-style-type: none"> • the Trade Marks Act 1995 • Section 52 of the Trade Practices Act 1974
<p>Other forms of trade mark protection include:</p>	<ul style="list-style-type: none"> • common law by the passing off action • consumer protection provisions of Trade Practices Act (Commonwealth) and State fair trading acts • reviewing and proliferating confidentiality agreements within organisation or among people who may need to know about the trade mark before application for registration is lodged so as to keep the trade mark secret
<p>Benefits include:</p>	<ul style="list-style-type: none"> • trader protection, e.g. protecting reputation of traders, facilitating advertising, encouraging brand loyalty, building brand value, persuading consumers to try new products under the established brand • consumer protection, e.g. to facilitate choice

RANGE STATEMENT	
	between competing goods and services
Commercialisation potential may include:	<ul style="list-style-type: none"> • considering the trade mark as an asset that can be bought, sold or licensed • utilisation of the trade mark as a marketing tool and the basis for building a brand
Sources of information and advice may include:	<ul style="list-style-type: none"> • IP Australia • Attorney-General's Department • Australian Copyright Council • State and Commonwealth government agencies • lawyers specialising in intellectual property • trade mark attorneys and patent attorneys • accountants • business advisors • marketing consultants • branding consultants • copyright collecting societies, e.g. CAL, PPCA, MIPI, APRA, AMCOS • publications • websites, Internet • databases e.g. local and international trade mark databases
Searching databases may include using the following:	<ul style="list-style-type: none"> • IP Australia's trade marks database which lists all the registered and pending trade marks • the Australian Securities and Investment Commission database, which lists all registered and reserved business names (www.asic.gov.au) • any other information source that is relevant to the goods or services provided by the applicant, e.g. trade directories, Yellow Pages
Investigating may involve:	<ul style="list-style-type: none"> • using search engines on the Internet • reviewing relevant industry journals, articles, advertising, etc. <p>Note: The purpose is to determine whether competitors have used the proposed trade mark, or a similar mark, and developed a reputation in the mark</p>
Processes include:	<ul style="list-style-type: none"> • completing an approved form prescribed by the regulations, including graphically representing the trade mark on the application • paying a specified fee • having the application approved by a trade marks

RANGE STATEMENT	
	examiner
<i>International trade mark registration</i> includes:	<ul style="list-style-type: none"> • filing for protection with the trade mark offices of overseas countries • filing for protection under the Madrid Protocol through IP Australia to seek trade mark registration in a range of countries with a single application
<i>Monitoring</i> may include:	<ul style="list-style-type: none"> • observing the activities of competitors • watching the market for potential trade mark infringements
<i>Measures</i> may include:	<ul style="list-style-type: none"> • bringing actions against an alleged infringer under: <ul style="list-style-type: none"> • the Trade Marks Act 1995 • Section 52 of the Trade Practices Act 1974 • the common law tort of passing off • bringing an opposition against, or seeking removal of, other trade marks which may infringe
<i>Payment of renewal fees</i> may refer to:	<ul style="list-style-type: none"> • ensuring that the required fees are paid to periodically renew the trade mark registration • licence fees to ensure the use of another organisation's trade mark
<i>Proper use of trade mark</i> includes:	<ul style="list-style-type: none"> • ensuring that the trade mark is used 'as a trade mark', otherwise it may become vulnerable for removal • using the mark with the correct notation (e.g. TM or (R))

Unit Sector(s)

Unit sector	
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Competency field

Competency field	Regulation, Licensing and Risk - Intellectual Property
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Co-requisite units

Co-requisite units		