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MOVED???

We would appreciate it if you could let us know so that you can continue to receive Bradley & Bray in Brief. Please advise us of your new address by sending us a letter; forwarding an email to info@bradleybray.com.au or simply giving us a call.

DO YOUR HOMEWORK ON GYMS BEFORE SIGNING



Fair Trading advises Queenslanders searching for the best gym or weight loss deal to take careful note of:

- the initial joining fee;
- the fee for membership;
- the method and timeframe for cancelling direct debit authorities;
- the administration fee, which applies if the contract is terminated during the cooling-off period; and
- the termination fee

"If you have signed a contract for a gym membership, remember under the Fair Trading (Code of Practice – Fitness Industry) Regulation 2003, you can cancel the contract within the 48-hour cooling-off period if you have second thoughts," the spokesman said. For expert advice on contracts, contact Bradley & Bray Solicitors.

WELCOME!!!

Welcome to another jam packed issue of Bradley & Bray in Brief. Hopefully by the time you are reading this the weather has cooled and become much more pleasant than earlier this year.

As always, any suggestions as to the content of our newsletter are always welcome, feel free to contact Debbie with those suggestions at any time.

If you would like to receive our newsletter by email (in PDF format) or other information that we feel may be of interest to you from time

to time, please send an email to Debbie on ddavis@bradleybray.com.au with a subject line of "newsletter", your name and address and we will be happy to forward all future issues to you by email.

If you do not wish to receive the newsletter any longer, simply contact us and we will remove you from our mailing list.

Should you receive your newsletter at the incorrect address or more than once, please let us know so that we can amend our records accordingly.

A CASE IN POINT... Ugg Boots & Trade Marks

Who would have thought the humble ugg boot could be the subject of such scrutiny? A recent decision by Australia's trade mark regulatory body has removed the term 'ugg boot' from the register of trademarks and will allow Australian manufacturers and retailers the right to call sheepskin boots 'ugg boots'.

Background

The term 'ugh-boots' was registered as a trade mark in Australia in 1971. 'Ugh' was registered by the same owner in 1982. Both of these trade marks were sold to Ugg Holdings Inc in 1996. In 1999, Ugg Holdings registered the Ugg logo.

The issue first attracted media interest when American-based company Ugg Holdings Inc (a subsidiary of Deckers Outdoor Corporation) allegedly threatened to take legal action against Australian exporters and United States importers of sheepskin boots using the terms 'ugg' or 'ugh' as descriptions of their products.

In December 2003, Perth retailers Bruce and Bronwyn McDougall (the applicants) filed an application under s92 of the Trade Marks Act 1995 with IP Australia – the Federal Government agency responsible for granting rights in patents, trade marks and designs – requesting the removal of the trade mark, claiming that the registered trade mark was not used during the period from 30 November 2000 until 30 November 2003.

Ugg Holdings Inc (the opponent) filed a notice opposing the removal of the trade mark in May 2004, contending as the sole ground for opposition that the trade mark had been used within the period in question.

The case

Section 92 of the Trade Marks Act 1995, relates to the application for removal of a trade mark from the Register of Trade Marks.

The applicants submitted that in using the terms 'ugh', 'ugh boots' (with no hyphen), 'ugg', 'Ugg Australia', or 'ugg boots', the opponent had not used its registered trade mark in Australia within the required three-year period under the Act. They also contended the opponent had only used a generic term (prior to registering a trade mark, the Register of Trade Marks determines whether a trade mark has any descriptive or generic meaning that may make it unsuitable for registration).

A central piece of evidence in the case was an advertisement appearing in the Sydney Morning Herald in November 2003. The applicants claimed the advertisement did

not display the registered trade mark 'ugh-boot'. The opponents countered that even though the hyphen in the trade mark 'ugh-boot' was missing in the advertisement, it was an alteration or addition which did not substantially affect the identity of the trade mark.

Decision

Trade mark hearings officer Ian Thompson ruled that the trade mark 'ugh-boots' had not been used in Australia within the three-year period. Mr Thompson said: "The evidence overwhelmingly supports the proposition that the terms 'ugh boot(s)', 'ug boot(s)' and 'ugg boot(s)' are interchangeably used to describe a specific style of sheepskin boot and are the first and most natural way in which to describe these goods." He also concluded the terms are required by other traders without any improper motive to describe the boots.

Mr Thompson also found that the trade mark 'ugh-boots' was registered and the hyphen was essential to its identity as a trade mark. He concluded that the advertisement included as evidence did not use that particular registered trade mark and as such the opponent had not demonstrated any use of the trade mark before, during or after the three-year period.

Subject to an appeal to the Federal Court by the opponent, the trade mark will be removed from the Register of Trade Marks.

Implications

This is a significant development for Australian manufacturers and retailers of sheepskin boots and means they may now have the right to call the boots 'uggs', if there is no appeal. Deckers Outdoor Corporation still owns the trade mark in other jurisdictions, such as the United States, as trade mark laws are national laws and each country registers and protects trade marks within their own jurisdiction.

For more information on trade marks, seek legal advice from your solicitor.



2,000 CARS IMPOUNDED UNDER ANTI-HOONING LAWS



More than 2,000 Queensland drivers have had their vehicles confiscated since the introduction of Queensland's anti-hooning laws three years ago.

Police Minister Judy Spence said the laws were forcing dangerous drivers to realise that public roads and suburban streets were not race tracks.

"If you drive in a manner that is dangerous or causes excessive noise or smoke, then you will be caught by police and risk having your vehicle impounded," Ms Spence said.

The highest number of hoon offences were recorded in the South-East and North Coast police regions.

"Both regions combined account for more than half of Queensland's total vehicle confiscation figures," Ms Spence said.

"As of September, 702 drivers in the South-East region, which includes Logan, Beenleigh and the Gold Coast, had their vehicles confiscated since these laws took effect. In the North Coast region there have been 521 vehicle confiscations."

Far North Queensland had the lowest number of vehicle confiscations, recording 96 offences since 2002.

The anti-hooning laws give police the power to impound vehicles used for hooning for 48 hours. Repeat offenders could have their car taken off the road for three months or even forfeited to the state after a third or subsequent offence.

"By September this year, only 46 offenders had been detected committing hoon offences on a second occasion in the past three years," Ms Spence said. "Three offenders have been detected committing a third offence – one in each of the Ipswich, Bundaberg and Redcliffe districts.

"This legislation is not aimed at targeting young drivers or car enthusiasts. If you abide by the law, there is no reason why this legislation should affect you."

PIE IN THE SKY AWARDS

Do you want to make a killing on the share market? This stock is ready to explode – you can make a 280 percent return when the target price is reached (unfortunately, the stock never quite got there, closing the year at a meagre US\$0.39).

Why not turn \$10,000 into \$124,600 in a single year by trading currency and US Treasury bonds, with your capital guaranteed by the International Investment and Securities Commission? For a handling fee (and other charges to be revealed later), you can collect your winnings from a lottery supposedly set up under the will of the late Princess Diana.

We've all received the emails of investment schemes promising instant riches, but with so many scams out there, which ones are this year's award-winning investment scams?

The Australian Securities and Investment Commission (ASIC) has just released its 2006 'Pie In The Sky' awards ('the PITS'), a who's who list of the most outrageous and far-fetched financial schemes of the year. The top gong for 2006 goes to an illegal investment scheme promoted through wealth seminars throughout Australia. Operated by Mr Craig McKim, Pegasus Leveraged Options Group (Pegasus) lured around 90 unsuspecting investors and raised \$3.7 million. Over \$2.1 million of the funds raised were lost in personal gambling and other personal expenses by Mr McKim.

In the case of the Pegasus scheme, the NSW Supreme Court found investors were promised returns of up to 8 percent a week – figures described by the court as "astronomical". Investors were even issued with a Certificate of Guarantee by a fictitious 'International Investment and Securities Commission'.

Mr McKim was jailed in October 2005.

According to ANZ's 2005 Australian financial literacy research, 85 percent of Australians know that high returns mean high risk, but some 47 percent would still be willing to invest their money in something offering well above market rates of return. ASIC's acting executive director of consumer protection, Delia Rickard, said the purpose behind the awards was to warn the public.

"Pie-in-the-sky financial schemes still devastate far too many people," she said. "They frequently use sophisticated props and hard-sell techniques that lure even financially experienced people."

Deal with licensed Australian businesses, because that way your rights are better protected if something goes wrong. Businesses can be checked by visiting ASIC's investor and consumer website, FIDO, at www.fido.asic.gov.au or calling 1300 300 630. For more information on illegal schemes that ASIC has taken court action over, obtained court orders, or identified those involved in court, please visit FIDO.

2006 'Pie in the Sky' runners up;

- A firm of London solicitors is administering Princess Diana's estate which includes a lottery promotion. You've won a slice of her inheritance. Collect your winnings by contacting the writer. This is 'advance fee' fraud, having nothing to do with Princess Diana or her estate – You'll be asked to pay various 'handling' and 'administration' fees until your patience or your money runs out.

- Get into the action on the overseas share markets. 'This stock's ready to explode. It's our hot pick this week. It can easily go up to \$2.25 very fast here', says the email offering 'unparalleled investment research'. Recommended on 10 September 2005 at a price of US \$0.80, the stock topped out at US \$1.30 on 14 September, and then sank to a paltry US \$0.39 by the end of 2005 – Without a shred of protection, you could easily be taken to the cleaners. A time-honoured scam, these emails pump up interest in little-known offshore companies traded through international bulletin boards, so the promoters can dump their own shares quickly before the share price drops.

- Surprise! You own some valuable overseas shares. If you want to double check, just contact the International Asset and Compliance Centre. Just pay the fee to have these shares transferred to your name – No genuine investor protection agency exists. It's just another front set up to persuade you to pay the fees.

CRACK DOWN



ON PSEUDOEPHEDRINE MEDICATIONS

Customers purchasing over-the-counter pharmacy medicines containing pseudoephedrine will now be required to present identification or satisfy the pharmacist of their genuine need for the medication, under new state laws.

Queensland's Health (Drugs and Poisons) Regulation 1996 has been strengthened to prevent the diversion of medicines containing pseudoephedrine into the manufacture of illicit drugs.

The new laws, which came into effect from 1 January 2006, now classify all over-the-counter Schedule 2 medicines containing

pseudoephedrine as 'Pharmacist Only' Schedule 3 medicines.

Health Minister Stephen Robertson said pharmacists must not sell any Schedule 3 medicines containing pseudoephedrine unless they were satisfied the customer had a genuine, therapeutic need for the medication. "Pharmacists will be authorised to request identification from unknown customers. They will also record details about each sale of Schedule 3 medicines containing pseudoephedrine, including details such as the date, brand name, quantity and the purchaser's name and address," Mr Robertson said.

Pseudoephedrine is commonly found in medications such as nasal decongestants and cold and flu medications sold at pharmacies (note: similar products sold in supermarkets do not contain pseudoephedrine).

"We recognise the overwhelming majority of Queenslanders have a genuine therapeutic need for these medications," he said.

"However, the continued diversion of medicines containing pseudoephedrine for use as a precursor to manufacture methamphetamine (speed) is an issue of grave concern for health regulators and law enforcement agencies."

SMOKING LAWS HIT RETAILERS



Tobacco retailers now face tighter display restrictions and harsher penalties for selling cigarettes to minors under the latest phase of Queensland's anti-smoking laws.

The new legislation, which came into effect on December 31, will limit the size of cigarette product displays in retail outlets for the first time.

Under the new laws, minors who pretend to be the legal age to purchase cigarettes can also be fined.

Health Minister Stephen Robertson said that while pubs and clubs had been the most affected by smoking laws, tobacco retailers would be the focus of new laws in the New Year, with particular emphasis on the sale and supply of smoking products to children.

Under the new laws:

- Each retail outlet can show only one smoking product display. The maximum size of this display is one square metre for general retailers and three square metres for

tobacconists. Cigarette cartons cannot be on display. Currently, there are no restrictions. In addition, the purchase of smoking products cannot accumulate shopper loyalty points, such as Fly Buys or fuel discounts.

- People under the age of 18 years who falsely represent their age in order to be sold smoking products will be committing an offence and may be subject to a maximum penalty of \$1,500. Currently, no law applies. Penalties for sales to minors have also strengthened and include:

- \$10,500 fine for a first offence. Currently, the fine is \$5,250. A court can also prohibit the supplier from selling tobacco products for six months.

- \$21,000 fine for a second offence. Currently, the fine is \$10,500. A court can also prohibit the supplier from selling tobacco products for 12 months.

- \$31,500 for a third or subsequent offence. A court can also prohibit the supplier from selling tobacco products for three years. Mr Robertson said more than 3,000 tobacco retailers had been sent a "Selling Smoking Products Information Kit", including required public awareness signage.

He said tobacco retailers who had not received a kit or were unsure of their responsibilities under the new laws could contact the Tobacco Hotline on 1800 005 998.

"Enforcement of the new laws for tobacco retailing will start at the end of March 2006, after a three-month education period," Mr Robertson said. "This will give retailers time to adapt to the new changes, however, I stress to retailers that

previous laws still apply, particularly regarding sales to minors. "Tobacco retailers also need to be aware that, if the same business is found to have repeated breaches of the new tobacco laws during the 'education period', this will result in an on-the-spot fine or prosecution."

The specialist Tobacco Control Investigation Team targets the illegal supply of smoking products to minors across the state by conducting surveillance of tobacco retail outlets.

There are currently 14 prosecutions pending for the illegal supply of smoking products to a child, including those as a result of surveillance during the recent Schoolies Week.

The new restrictions add to a busy past 12-months for tobacco laws in Queensland, as reported previously in the 'Newsletter of the Law'.

Other restrictions which came into effect include a ban on smoking:

- between the flags on all patrolled beaches;
- within 10 metres of children's playground equipment;
- while standing within four metres of non-residential building entrances; and
- at all sporting venues administered by the Major Sports Facility Authority, including Suncorp Stadium, the Gabba, the Queensland Sport and Athletics Centre (formerly QEII Sports Centre and ANZ Stadium), the Sleeman Centre, the Brisbane Entertainment Centre, and Dairy Farmers Stadium, Townsville.



CHATTERBOX

Join us in welcoming Mitchell Robert Borthwick to the Bradley & Bray family. Mitchell was born to proud parents Jo and Geoffrey on 9th February, 2006 and is adored by his sister, Kirsten.

OUR OTHER OFFICE

CHANCELLOR PARK
Shop 5
Chancellor Park Retail Centre
11-19 Chancellor Village Boulevard

Phone: (07) 5445 8256

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