

1 PATENTS

Manner of new manufacture – section 18(a)
 NRDC – artificial economically useful result
 Keeping fresh flowers fresh for longer

Novelty – prior art anywhere in world – section 18(b)(i)
Advanced Systems v Ramset – disclose all essential integers
3M v Beiersdorf – cannot mosaic
 French film and Japanese study part of prior art but cannot combine them

Obvious – not obvious to person skilled in art – section 18(b)(ii)
 Not obvious to combine helium, boron and heavy water

Not secretly used except for trial – section 9, section 18(c)
Azuko v Old Digger
 Brian and Shona have used for commercial purposes publicly at Eveleigh market

Utility – works as intended – section 7A, section 18(c)
Rehm v Webster
 Invention does not work because needs heavy water not water

Is ASF entitled to be registered
 Brian is the inventor and is the person entitled to be registered– section 15
 Is there an assignment of rights in his employment agreement
 Otherwise, Brian is the only person entitled to register

2A TRADE MARK

41 – Trade mark not distinguish goods and services
 -not inherently adapted because geographic name – *Blount v Registrar TM*
 Chelsea is a London suburb
 - not become distinctive because of use because Ian never used before

44 – Applicant's trade mark substantially identical with / deceptively similar to registered mark for similar services
 Esso - substantially identical
Effem Foods - deceptively similar –imperfect recollection
 similar services- whether sold through same trade channels – *Southern Cross Refrigeration*

58 – Applicant not owner of mark – *Aston Harlee*

60 – Trade mark similar to mark with reputation in Australia / well known mark – *McCormack*
 ASF reputation from ASF extensive use and marketing over 20 years

62A – Application made in bad faith – *Fry Consulting*
 ex-employee knowing of employer's plans registers the mark

2B PASSING OFF / ACL

Con.Agra v McCain Foods
 - reputation in the relevant market
 - misrepresentation
 - damage

reputation in the relevant market

- ASF has reputation in the relevant market
20 years, promoted and arrange activities

Relevant market – florists

- ASF has reputation in the indicia of reputation the word “Chelsea”
Only issue is whether ASF has the reputation or the English florists do

misrepresentation – use of word Chelsea in the context of florists suggest ASF

ACL

- corporation or person – Ian is a person but ASFA is association and is not a person
- trade or commerce
- section 18 – misleading and deceptive conduct in course of trade
- section 29 – false representation of association, sponsorship, endorsement

misleading and deceptive – led into error, deceived – *Parkdale v Puxu*

3 CONFIDENTIAL INFORMATION

Contractual obligation of confidence

implied into contract of employment

Three types – general know-how, confidential during time, confidential after – Not general know-how but specific – *Blue Scope Steel v Kelly*

equitable obligation of confidence

- specifically identified – Jamie Durie to give oration
- confidential – what steps were taken to keep confidential - *Wright v Gasweld; Del Casale*
- circumstances importing obligation of confidence
surreptitious *Asbburton v Pape; Franklin v Giddins*, document labeled board minutes
- unauthorized use

4 DESIGN

“design”, in relation to a product, means the overall appearance of the product resulting from one or more visual features of the product – s5

“Visual feature” in relation to a product, includes the shape, configuration, pattern and ornamentation of the product – section 7

Section 71 - identical to, or substantially similar in overall impression to, the registered design
Assessed by “informed user” – standard of person familiar with product – *Redberry v Review*

More weight to similarities than differences – s17

One thick, two thin metal rather than one thick, one thin metal

Compare to design not product – *Foggins v Lacey* (Orgasmatron)

Silver/aluminium not relevant because visual appearance not feel/material

factors – section 17

- State of development of prior art base
- Whether statement of newness and distinctiveness identifying visual features as new and distinctive
- If only part, amount, quality and importance of that part in the context of the design as a whole; and regard to freedom of creator to innovate