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**Don't let trade mark woes take the shine off the launch of your product.**

**Q. My company is planning to launch a potentially important product with a new name that I really like. However, I have heard a rumour that another company might have thought of this name before. Could this be a problem for the launch of my product?**

A. The writer is right to be wary. It is a risky strategy to begin using a new product or brand name without first checking as to whether someone else owns a registered trade mark for the same or a very similar name for the same or similar goods or services. If someone else did have such a registered trade mark, then the writer would be vulnerable to being sued for trade mark infringement when he started using the mark.

Therefore, the writer would be well advised to obtain a clearance search to determine if the chosen name is available both to use and to register in the territories in which he intends to trade. This would involve searches of all of the relevant trade mark registers; a mere company name check and perhaps a search on a search engine such as Google™ alone would not be a sufficient precaution.

It may also be advisable to have some back-up names in mind, in case the preferred name is not free to use.

Once the writer has established that he is free to use a particular product name, he would be strongly advised to seek to apply for registered trade marks in the territories in which he does business and intends to use the mark. Having a registration would give the writer the exclusive right to use the trade mark for the specified goods and services and would provide him with the means to most effectively assert his rights against others.

It is important to take these steps before marketing and sales of the product begin. Failure to do so could result in being on the wrong end of a trade mark infringement action, which would quite possibly require the

writer to go to the considerable expense and inconvenience of withdrawing the infringing products from the marketplace and re-branding before re-commencing sales. As recent coverage of Fujitsu's having earlier rights in the name "iPad" illustrates, these issues can sometimes be problematic even for larger companies such as Apple.

A registered trade mark attorney can help with conducting clearance searches and advising on branding and product launches. Such an attorney can also provide guidance as to the sorts of trade marks which are likely to be registerable.

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