

Whiskers Purple given the Green Light

Whiskers, a cat food manufacturer, have won an action in the Federal Court to register their purple colour trademark.

This is a surprise to many as to date, Cadbury has famously failed in its attempts to protect the Cadbury shade of purple for confectionary from a similar shade used by Darrell Lee.

The protection of colour trademarks in Australia has not yet been utilised to its full extent and still remains a relatively new type of trademark protection.

How did Whiskers do it?

Owned by Mars Australia Pty Ltd (Mars), Whiskers has developed a particular shade of purple that it uses on all of its cat food products in order to identify its brand. The Whiskers purple has been applied to all packaging, and marketing materials used to promote the Whiskers product.

Nestle lodged an opposition to the registration of this particular shade of purple, however in the final stages of the Federal Court appeal, Nestle elected to drop its the opposition to the trade mark.

Whiskers were able to demonstrate that:

- The Whiskers purple was a colour, invented by Mars, for specific use on the Whiskers range of cat food;
- The Whiskers products have been extensively marketed, and promoted using the Whiskers purple prior to, and after the trade mark application had been lodged; and
- The Whiskers purple did function as a trade mark, as it is the colour that is used on all of the Whiskers cat food products, packaging, and marketing material, not just one type of cat food within the Whiskers range.

The Federal Court found that the Whiskers purple was capable of distinguishing Whiskers products from other brands of cat food and therefore functioned as a trademark.

What does this mean for businesses?

The protection of a colour trademark may add significant value to a business if that business uses a particular colour as a trademark, and if their customers associate their products exclusively with that particular colour.

A business lodging a colour trademark needs to ensure they have a strong strategy in place when lodging a colour trademark in order to be successful.

If you believe a colour, or an aspect of your branding and/or packaging is unique, identifiable and valuable to your corporate identity, email us at info@msslawyers.com.au or visit our website <http://www.msslawyers.com.au>. Alternatively, contact our professional team at our Gold Coast or Brisbane office.



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