

The colour purple IP

By Melissa Corbutt

Whiskas, a cat food manufacturer, has won an action in the Federal Court to register its purple colour trade mark.

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

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

How did Whiskas trade mark the colour purple?

Owned by Mars Australia Pty Ltd (Mars), Whiskas has developed a particular shade of purple that it uses on all of its cat food products in order to identify the brand.

The Whiskas purple has been applied to all packaging, and marketing materials used to promote the Whiskas 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 decided to drop the opposition to the trade mark.



Whiskas won the colour purple.

Whiskas was able to demonstrate that:

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

food within the Whiskas range.

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

WHAT DOES THIS MEAN?

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

A business lodging a colour trade mark needs to ensure it has a strong strategy in place when lodging a colour trade mark 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, you may also be eligible to trademark it.

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• The author, Melissa Corbutt of msl-Michael Sing Lawyers, has been working in commercial litigation and intellectual property for many years and is experienced in identifying, protecting and enforcing clients' rights.



IN BRIEF >>>

SLATER & GORDON BUYS TRILBY MISSO



The Trilby Misso team took out a Telstra Business Award in 2009.

SLATER & GORDON THIS MONTH completed a \$57million acquisition of leading Queensland personal injury specialists, Trilby Misso. The acquisition, which was announced on June 28, 2010, had been subject to

capital raising and due diligence. It was approved at a meeting of Slater & Gordon shareholders in early August. Slater & Gordon executive director, Ken Fowlie said Trilby Misso had a well established reputation in Queensland for delivering high levels of client satisfaction and positive results. Trilby Misso chief executive officer, Graeme McFadyen said the change would bring about new opportunities for staff and management. "For the 150 staff members working in South East Queensland, the acquisition will not mean a change to their current working life, but it will mean that they are now part of a national law firm and all of the expertise and resources that includes," Mr McFadyen said. "This is a very exciting time for Trilby Misso and we look forward to building

our business under this arrangement. We are proud of the work that we have performed and our achievements and we look forward to building on that good work."

Slater & Gordon's Mr Fowlie said Trilby Misso, which will continue to run as a standalone business under its own name, was a good fit with his firm's core work and values.

"Both Slater & Gordon and Trilby Misso have a long history of assisting people in need of legal advice and then fighting hard for the best possible outcome," Mr Fowlie said.

"We have admired the work and reputation that Trilby Misso has developed in Queensland and we are pleased that we're now joining forces with a law firm that has the same commitment to quality client care and strong results." Trilby Misso has five offices in South East Queensland. ■