

# How to differentiate + protect your brand: **Weekly video @ 13 May 2019**

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## Introduction + Overview:

# Hello!

- > Trade mark infringement cases
- > Facts
- > What to avoid
- > Benefits of protecting trade marks
- > Resources for further information.





**This week:**

# **Ikea v Stylkea** **Ugg v Ugg**

Two cases in the media this week:

- > Inter Ikea Systems BV (IKEA's holding company) opposing TM registration of Stylkea
- > US-based Deckers Outdoor—owners of UGG Australia trade mark—sues Sydney-based Australian Leather for selling their 'UGG' boots online to US customers.



# Ikea **v** Stylkea

- > Owner of 'IKEA-hack business Stylkea, Kylie Hughes, submitted TM registration in September 2017 (after business started in July 2017)
- > IKEA owner sends 'cease and desist' letter in December 2017
- > However, IP Australia accepted Hughes application in early 2018
- > IKEA opposes Hughes/Stylkea IP Australia's registration (1870737) in August 2018 and Hughes responds
- > Matter is ongoing and not yet settled.





# Ugg v Ugg

- > Ongoing battle with US-based Deckers Outdoor with Sydney-based Australian Leather's owner Eddie Oygun
- > Saga ended up in US court with a four-day trial finding Oygun wilfully infringed TM registered to Deckers and ordered to pay \$US450,000
- > Also may need to pay millions of dollars of legal fees.
- > Decker's UGG Australia brand = \$US1b annual sales
- > Original name was owned by a surfing Australia who moved to US in 70's and started the UGG brand.



# Avoid!

- > Descriptive marks or generic terms: 'Strawberry Milk' or 'Strawberry Mylk' (even if different spelling)
- > Geographic: 'Tasmanian' Apples
- > Commonly used acronyms: USB or 'AppStore'
- > Common surnames: Smith or Brown
- > Part of an existing Trade Mark: 'Olympic' Champion
- > Those subject to legislation: Use of the word 'Champagne'.

# Creating a brand identity for TM.

Start thinking about TM process when you are:

- > Creating a new business or merging with another business
- > Developing new products and services.

Aim for:

- > Fanciful, arbitrary, or suggestive marks—entirely invented think about Xerox, Kodak, and Pepsi
- > Creating a unique brand identity (logo)
- > TM checks during the design process
- > Long-term—consider future products and services
- > Annual audits—maintenance is the key.







Why TM?

## Benefits?

The benefits of registering your TM are:

- > It gives your business the exclusive rights to use the TM
- > Can licence the TM to others ie, Franchise or other licencing agreements
- > It differentiates your goods and services from your competition
- > It makes good business sense
- > Is easier to defend for infringements.



# Resources.

- > Australian Government: [business.gov.au](http://business.gov.au)
- > Brand Audits: [brandaudits.com.au](http://brandaudits.com.au) / [christinemooddy.com.au](http://christinemooddy.com.au)
- > IP Australia: [ipaustralia.gov.au](http://ipaustralia.gov.au)
- > Trade Marks Act 1995: [legislation.gov.au](http://legislation.gov.au)
- > Trade Marks Regulations 1995: [legislation.gov.au](http://legislation.gov.au)



# Further information?

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**About Christine Moody**

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Christine Moody is one of Australia's leading, multi-award-winning brand strategists, trade mark advocate, and founder of brand management consultancy Brand Audits. With more than 35 years' professional experience, Christine has helped a large number of both local and international high-profile brands with a challenging and diverse range of strategic brand projects.