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Trademark Infringed

AN EXPENSIVE OVERSIGHT

A small chocolatier based outside of Adelaide, **Chocolate @ No. 5**, has been forced to redesign its logo after multinational fashion giant **Chanel** claimed a trademark infringement of its perfume, **Chanel No. 5**.

Chanel disputed the use of 'No. 5' in the chocolatier's logo when the chocolatier recently applied for a trademark registration. The chocolatier maintains that the number five in the logo refers to the number of its street address and is not used because of any potential connection to Chanel.

Chanel's lawyers sent the chocolatier a 'cease and desist' letter demanding that the chocolatier withdraw its registration, ditch its logo and to rename the business if it was to move from its current address. The chocolatier has since spent thousands of dollars changing the

branding of the business in order to avoid a legal battle with the luxury retailer.

Amidst the many challenges entrepreneurs face when starting a business, it is not hard to see how many overlook the need to register their business name and branding as trademarks. However, they can pay a high price for the oversight.

To ensure a new business has the best chance of success, entrepreneurs must be aware of what is involved. As a starting point, they need to consider which business structure best suits their needs, apply for their Australian Business Number, check that their chosen business name is available and register their business name and branding as trademarks, preferably before the business commences trading to ensure interests of the enterprise are covered.

Large companies are often vigorous in protecting their trademarks and intellectual

property and Chocolate @ No. 5 is not the only one to pay the price. There have been many instances of small companies being forced to relinquish their logos, business names and web domain names on the basis that they potentially infringe a large company's trademark rights.

While it takes forethought and planning to address these risks from the beginning, the eventual payout is sweet. ■



Bushfire Risk to Domestic Property

NEW RATING SYSTEM LAUNCHED

Following the 'Black Saturday' and 'Blue Mountains' bushfires in recent years, the Australian Government in conjunction with local councils and fire services, has amended the requirements set out in Australian Standard 3959 – Construction of Buildings in Bushfire Prone Areas.

A Bushfire Attack Level (commonly known as BAL) Rating has now been applied to all domestic buildings located within 100 metres of bushland vegetation.

The BAL Ratings that have been assigned (from lowest to highest) are:

1. BAL – LOW
2. BAL – 12.5
3. BAL – 19

4. BAL – 29
5. BAL – 40
6. BAL – FZ (Flame Zone)

These ratings are based on factors such as the region where you live, the vegetation type around your property, the distance from your home to individual vegetation types, and the slope of the property.

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This means that if your property now has a BAL Rating applied to it, then the costs to repair or rebuild your property have increased, sometimes dramatically, to now comply with the new amended Australia Standard laws. The additional costs are not strictly limited to fire damage only, but also apply to all claims affecting the external components of the building such as roof, walls, gutters, eaves, windows, doors, decks etc. So if your property suffers damage through events such storm, hail, impact, accidental damage etc. then the repair costs will be impacted by the BAL Rating.

So what does this mean for insurance? Depending on the BAL Rating applicable to your property, the additional costs associated with the rectification of damage caused to your property, be it by fire, storm, impact, etc. need to be included within your Building Sum Insured and not be exhausted under your insurance policy.

The Building Sum Insured nominated on your insurance policy now needs to be increased to include these additional costs otherwise it will result in under-insurance leaving you with either an unfinished home or personal financial contribution (outside insurance) to complete the repair or rebuild of your property.

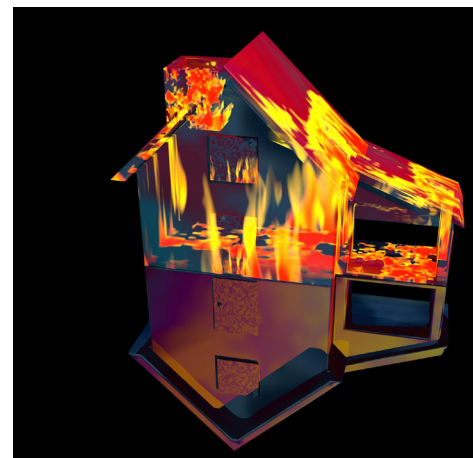
The recommended additional costs have been set at:

1. BAL – LOW
No additional cost
2. BAL – 12.5
Additional \$5,000 – \$15,000
3. BAL – 19
Additional \$20,000 – \$30,000
4. BAL – 29
Additional \$30,000 – \$50,000
5. BAL – 40
Additional \$50,000 – \$80,000
6. BAL – FZ (Flame Zone)
Additional \$100,000 – \$120,000

In order to determine the BAL Rating applicable to your property, please

contact your local council who will be able to provide you with this information. Once obtained, a calculation can be provided for the average additional costs that should be included in your building sum insured and added to your insurance policy to ensure you are adequately protected in the event of a loss.

If you would like more information regarding BAL Ratings, please contact your CQIB broker. ■



Employee Separation



MADE REDUNDANT OR FIRED?

When contemplating firing an employee, proper process must be followed otherwise there is the real risk of the employer facing an unfair dismissal claim.

To avoid the risk, some employers use 'redundancy' as an alternative to firing. It's quicker, sounds nicer and is

less painful to all concerned but often has a very poor outcome as happened in a recent Federal Court case.

The employer had sought to argue to the court that their principal motivation for making the employee redundant was financial, in that the Division in which the employee worked was running at a loss. It was claimed that they needed to make the employee redundant to cut costs.

Previously, the employee had had an 'impressive' career, but there had been some tension between the employee and their supervisor. A number of written complaints, including two accusations of bullying, had been made by the employee about the supervisor's management practices.

Unfortunately for the employer, there was some evidence of animosity and

information was found on the supervisor's computer confirming that he had already begun making preparations for the redundancy of the employee.

The Federal Court found the employer had breached the Fair Work Act, fined them \$37,000 and ordered them to reinstate the employee. The Court's conclusion was the employee had unfairly been made redundant..."at least partly because they had been prepared to exercise their workplace rights by making complaints about the behaviour of their immediate supervisor".

In a final observation, the Court warned the employer that the employee could have been entitled to compensation of up to almost \$2million if she wasn't reinstated. ■



Work Experience

DIFFERENCES IN LIABILITY

When employers provide work experience to school age students and unemployed people there are distinct differences with liability issues between the two groups.

With school students the employer is normally indemnified by the school that the student attends, together with relevant State Government authorities indemnification, in respect of any injury sustained by the student during the course of work experience.

That situation isn't the same when it comes to providing work experience to unemployed persons to help them gain future employment in the workforce. Authorities such as WorkCover Queensland specifically exclude coverage for 'non paid' employees, other than full

time school students, under the employers normal WorkCover Queensland Policy.

Employers should advise their insurance broker of their work experience engagement practices so that the existing Broadform Liability Insurers are made aware of the circumstances and can extend their Policies accordingly to note the inclusion of unpaid labour.

Employers should also advise the 'unpaid worker' of the potential exposures should they suffer a workplace accident or incident that results in their own injury. Consideration should be given to other policy coverage.

Policies such as Personal Accident & Illness or a similar product may then indemnify the 'unpaid worker' against injury or illness.



In all cases it's prudent for any insured person or business to advise their insurance broker of any material changes to their business operation so that the Insurers are made fully aware and coverage can then be tailored accordingly. ■

Across the Claims Desk

OFFBEAT, UNUSUAL CLAIMS THAT CROSS INSURERS DESK'S EVERYDAY!

SPLASH OF PAINT

Unrestrained items in the back of a vehicle can cause more damage than a collision. The claimant driver of a car had a minor collision resulting in tins of paint on the back seat moving freely around the inside of the vehicle, flipping their lids and coating the upholstery with an attractive but unwanted colour scheme. The cost of replacement of the interior resulted in the car being uneconomical to repair.

Outcome: Car written off. Claim accepted.

PLASTERED!

Dinner at home was an interesting occasion for one family when parts of the ceiling fell in on them. It seems that the glue holding the plasterboard ceilings in their older home did not have a lifetime serviceability.

When their house was built, ceilings were held in place by both screws and glue and if there was a shortage of screws, the ceiling fixing would rely on the glue, which can deteriorate over time.

Generally, unless there has been a contributing factor e.g. water ingress, these repairs tend to be excluded under 'wear and tear' gradual deterioration exclusions.

Outcome: Claim rejected.

UNBROKEN... BUT REPLACED ANYWAY

With the recent replacement of many hail damaged roofs in the Brisbane area, it is interesting to note that whilst many solar panels survived the impact of the hail, some had to be replaced anyway because were not fire rated.

Outcome: Claim accepted. ■



House of Straw

HIGH RISK OF SUB STANDARD PRODUCTS

In recent weeks the news media in Australia has reported many examples of inferior products being used in the building industry. The reports document the use of non-compliant products, such as cladding, cabling, wiring and lighting being installed in domestic and commercial buildings. Some suspect installations have resulted in serious damage with ongoing fire investigations but all products reviewed by authorities have been exposed as potential risks to either cause fire or act as an accelerant.

Trends in consumerism is to make a product cheaply for a shorter shelf life knowing it can be replaced cheaply in a 'buy and replace' purchase cycle. For building products however, we also want the assurance that our houses are long term secure in their construction and internal fit-out.

The cause of these building material risks can be traced back in some cases to inferior products being imported that are not meeting Australian Quality Control measures. An added problem is that designs are specified with materials which are then replaced with a replication of the intended original material or product. In a lean economy the temptation exists to look for cheaper alternatives to combat narrow profit margins.

This may also muddy the water with the rating of insurance premiums. Property risks are calculated on the materials of

construction so it does have a bearing if the materials are combustible, mixed or of inferior construction. This must be assessed, declared accurately and obviously, if a fire risk is increased, it must be addressed.

Australia's reliance on offshore manufacturing has caused the transfer of responsibility to manufacturers with various importers and distributors proving difficult to supervise and monitor to appropriate standards.

The manufacturer / importer has a responsibility not only as a measure to sustain a reputable business, but also as a community responsibility to put stringent measures in place which would prevent property loss and worst case scenarios.

Industry and Australian Standards exist and have individual rating codes for applicable products. The importer must have a testing protocol and recall procedure that can be demonstrated. Associations such as Master Builders, Master Electricians, Housing Industry Association etc., also provide a forum for the members and the public to highlight issues and all are proactive in raising concerns and bringing problem cases to light.

The risk exposure would also be assisted by having adequate Product Recall insurance to cover incurred costs which are not limited to the product, but may also include advertising, recall notifications, repairs, loss of profits and rehabilitation. ■

Be sure. Before you insure!

Ask your CQIB broker about...

Commercial and Retail Insurance

- Business Property
- Business Interruption incl Loss of Rent
- Liability
- Burglary and Money
- Glass Breakage
- Machinery Breakdown
- Computer
- Goods in Transit
- Tax Audit
- Motor
- Contract Works
- Commercial Strata

Liability

- Public and Products Liability
- Professional Indemnity
- Management Liability
- Directors and Officers
- Employment Practices Liability
- Statutory Liability
- Cyber Risk

Private and Domestic Insurance

- Home and Contents
- Car, Caravan, Boat and Trailer
- Travel
- Residential Strata

Life, Disability and Partnership

- Life / Accident and Illness
- Term Life
- Long Term Disability / Income Protection
- Key Man
- Superannuation

The CQIB represents over 60 Queensland firms employing nearly 400 staff and placing in excess of \$500,000,000 in annual premiums. The CQIB charter is to maintain the level of professionalism of its members by the sharing of knowledge, information and ideas.



For more information visit
www.cqib.org.au

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Wise.words

"A business absolutely devoted to service will have only one worry about profits. They will be embarrassingly large."

— Henry Ford

"Never burn bridges. Today's junior jerk, tomorrow's senior partner." — Sigourney Weaver

"By working faithfully eight hours a day you may eventually get to be boss and work twelve hours a day." — Robert Frost

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