



Public Hearing for the Productivity Commission Inquiry into Australia's Intellectual Property system

Organisation: Australian Design Alliance

Time and Date: 3.55pm to 4.25pm, Thursday 23rd June 2016

Where: Level 12, 530 Collins Street Melbourne VIC 3000, Australia

Appearing:

Jo-Ann Kellock – Executive Director, Australian Design Alliance - is a not for profit representing 14 peak bodies with a stake in Australia's creative industries. Jo will highlight the different copyright and design registration needs across the creative sector and introduce the industry representatives that have also agreed to appear to provide their experiences of where the current regime is and isn't working for the design sector. <http://australiandesignalliance.com/>

Industry Representatives

Steve Martinuzzo - Managing Director, Cobalt Design - an award winning Australian based, creative product development group, operating locally and in Asia, Europe and North America. Steve will discuss examples of where the current copyright and design regime is prejudicial, and what happens to their rights in the commercialisation process. <http://www.cobaltniche.com/>

John Hoogerdoorn - Creative Design Manager, Phoenix Tapware – designer and producer of tapware, showers and bathroom accessories, Phoenix is a leader in the Australian bathroom industry. John will provide examples of the commercial implications of multiple design registration of whole ranges and customs role in identifying infringements. <http://www.phoenixtapware.com.au/>

Mal McKechnie - COO & Co-Founder, Knog is an award winning global lighting and cycling accessories brand, based in Australia and currently selling to 46 different countries. Mal will discuss the experiences Knog has had in registering designs in different countries and how this has impacted the business. <https://www.knog.com.au/>

Jo-Ann Kellock

Appendix 1

Jo-Ann Kellock – Executive Director, Australian Design Alliance [AdA] and CEO Design Institute Australia (DIA)

The different copyright and design registration needs across the creative sector.

See Table – [AdA] Design IP Regime Impact attached

Appendix 2

Steve Martinuzzo - Managing Director, Cobalt Design

Summary

- Large sections of Australian business are not sufficiently 'design aware'. (I'm sure multiple studies show this. I know of at least 2 commissioned by Vic Govt over recent years)
- This retards Australia's ability to innovate and apply creative thinking across businesses, especially in relation to global competitors which generally are far more design-aware and design-integrated.
- For example, European manufacturers regularly and proudly acknowledge external designers who co-develop their products. In our experience this is the exception in Australia
- Australia needs stronger IP laws in relation to Design to create a framework that will underpin a change in culture and design-awareness
- Stronger and fairer IP laws would be a critical base on which others (design firms, industry and design profession associations and governments etc) can build business culture and awareness in using and valuing design.

Casestudy 1: *

- We developed this significant project over an 18mth period. This represented a significant body of work from concept strategy, design, engineering, prototyping, tooling management. Our work totals \$160K+ (or 1500hrs). It also includes some overrun/loss of fees in getting the project done to the client's satisfaction.
- At the end of the project;
 - Product is completed. Client is happy.
 - Client asks/pays us to arrange and art-direct a professional commercial photographer to take product picture. (Photographer's work is 2hrs work)
 - Client releases a media release which appears in a trade magazine
 - Article makes no mention of us. But photographer's name is acknowledged next to the image
 - Result: As designers of the actual product Cobalt gets no acknowledgement. Whereas photographer name is acknowledged
 - **Conclusion:** Client and magazine publisher were very aware of appropriateness of photographer of being acknowledged. **BUT** Client was totally unaware (and slightly reticent) in acknowledging Cobalt as the product designers.

Casestudy 2: *

- We designed and CAD modelled a subtle styling detail into this product. Whilst subtle, we deliberately use this detail to add perception of precision/quality to the form in order to reflect with the precision/quality of the instrument itself.
- Unbeknown to us, toolmaker removes this detail as its simpler for him to not create this shape
- Client is informed and doesn't object
- When we find out, we ask this should be rectified to retain the design intent. Even though this would have been done at the toolmaker's expense, the Client couldn't see the point and didn't request/approve the change as it would have delayed launch.
- Confidentially, a newly employed engineer, originally from a northern European country, commented that he was surprised that this could occur, and "that in Europe the designer would be consulted and to try resolve so that all parties were satisfied"
- Result: Our design intent and the product was compromised against our preferences
- **Conclusion:** Client did not understand the significance of allowing the design to be modified by the toolmaker, and whilst very happy with our work etc, did not value our design advice/recommendation about this detail.

Final quote

"Design is to Innovation as what Engineering is to science. Both take 'pure' principals and turn them into practical and user-centred tangible products or outcomes.

Governments, in particular at the Federal level, need to do more than pay lip service to design, and treat it as a proven and professional business process, and not a by-product of the arts or crafts, or a poor cousin of other critical business operations such as marketing or IT"

Appendix 2

Overview

Phoenix Tapware has been focussed on innovative, design led products in the kitchen and bath-ware industry for the last 11 years.

We have grown from a \$4,000,000 company 10 years ago to \$50,000,000 this year. We see this growth continuing for the foreseeable future and intend to be a \$70,000,000 company in 3 years.

We will support our growth by expanding into export markets like the US and NZ this year. KBIS

All of our growth and especially margin growth comes from new products and our profits are very strong because we provide a desirable, designer product for every price point.

Like my fellow speakers we have won major international product design awards and we use these to effectively market the desirability of our products. It isn't cheap to do what we do. We employ around 60 people and of those, 7 work in my design department. We spend around \$ 650,000 a year on running the department and last financial year we spent in excess of \$ 150,000 to protect our intellectual property.

Some Detail

Our product is regularly copied by others and sold into our own and overseas markets. Our strategy when we started was to protect the 2 major products in a range, a basin mixer and a shower mixer represent about 70% of total sales in a range. The theory being if you protect these items there is no commercially viable reason to copy the rest of the range. We did this to minimise the cost of IP protection.

Unfortunately, we found that companies would copy our entire range verbatim and wait for us to send out a cease and desist letter. They would then marginally change the design of the 2 protected items but leave the rest of the range alone.

What We Need

Providing a mechanism for us to protect entire ranges economically is unquestionably necessary and will substantially reduce our IP costs, not only at the application stage but also at the enforcement stage.

Ultimately to provide Australian companies like Phoenix adequate legislative protection, we need to stop these products from entering the country in the first place. There is still a large cost and man-hours involved in chasing down copied products when we find them. Once we do, it would be desirable for us to provide Australian Customs with the name of the company and copies of our IP protection in order that they may deal with future shipments. As they do currently with Copyright or Trademark infringing products.

Appendix 3

Intro

We (Knog) are a design based brand. We compete in a growing market in 50 countries. An industry that each year sees more and more brands appear and Chinese-based manufacturers copying others ideas and designs and competing on price. While Knog wishes not to compete on price, we are left with our only weapon; IP. Since its inception in 2002, Knog has developed hundreds of products and registered a total of 276 designs across more than 35 markets.

The battle field of product copies extends beyond the aesthetic, we see product internals and construction methods being copied. Online, we see Knog product images, brand elements and photography being used to promote copy products produced in China, being promoted on eCommerce sites such as Alibaba and TaoBao.

The IP system of protection needs to be nimble and flexible in order to keep up with the ever-changing world of manufacturing and consumerism. In recent years we have seen eCommerce sites introduce IP rights policies and in the case of Knog, we have had great success in stopping promoters and sellers of copy products through these policies. However, this is too far down the food chain. We need to build IP protection that is effective at stopping these activities at the source.

Cases

Innovation patent to protect construction method of Knog's overmoulded silicone rubber and plastic LED bicycle lights. While we have registered IP rights, we were able to stop a copy product being sold in Australia through multiple retail chains and online.

Design registration to protect design of Knog's award winning Blinder LED bicycle light range. While we have IP rights through multiple designs registered in the global market, we are able to take court action - a process that is happening right now - to stop a Chinese copy product that is being promoted to many of Knog's key distributors, from hitting the global market next month.

Changes

We ought to have a system that is effective in identifying IP infringement suspects before they enter the country.

We are working on a case right now that seeks to work with the Chinese customs department, to stop a Knog copy product before being exported to the global market. We ask the government to assist with raising the level of support in fast tracking this process... currently taking up to 3months to expedite.

In order to protect its trademarks, designs and patents, Knog has spent in excess of \$1mil in the past 5yrs, this is a significant budget for a small Australian company. We ought to have a smoother, swifter and more cost economical IP registration system.

Copy products all too often hit the market and gain a strong foot-hold before registered designs have been approved to enable Knog to stop them. We need a faster approvals process.