

30 November 2015

Australian Government – Productivity Commission Intellectual Property Arrangements

Submission by: **Nomadic Solutions Pty Ltd**

Nomadic Solutions Pty Ltd are the owners, manufacturers and IP owners of the Lifestyleable™. A slim-line fold down table that can be fitted onto the outside wall of a caravan or motorhome (otherwise known as a Recreational Vehicle, or a RV for short)

IP area of concern: Registered Designs.

Nomadic Solutions Pty Ltd designed, developed and continues to manufacture a fold-down table here in Australia. The Design was registered here in Australia, as a Design Patent in the USA and as a Registered Community Design in Europe.

We invested heavily in advertising and in doing caravan shows around the country creating a demand for a product that did not exist in the market prior to us.

The table was well accepted into the Australian market and significant growth was achieved during the first 3 years with sales to most caravan manufacturers, caravan dealers and direct to retail.

After 3 years, several exact copies of the table appeared in market place and suddenly our wholesale sales to caravan manufacturers in Melbourne dropped 75% within the one month.

We have proceeded with civil legal action against a total of 8 different importers over the last 4 years at great financial cost to our company. We found that even though the copies of our table were exact, that the legal process is both drawn out and totally unfair in its operation.

For example, we found ourselves in the third case to be basically blackmailed by the Federal Court Registrar stating that unless we settled for a reduced claim amount during a mediation (to which the defendant did not even turn up for) that we would be up for hundreds of thousands of dollars in legal fees that the Court could not even force the defendant to pay.

We have found out that even with a Court Judgement for costs, that it is up to us to try to get the money, and that the defendant has no obligation to pay, and that the Court is not interested in even issuing Contempt charges against defendants and their lawyers for lying in the court even in the presence of documented evidence. Any contempt charges would have to be instigated by us!?

With Trademark cases, Australian Customs can raid and seize counterfeit goods. With Registered Designs, Australian Customs does not get involved. The Registered Design owner has to fund a raid (starting at \$50,000) to seize counterfeit goods.

Bottom line is that Nomadic Solutions had several other products ready to launch and after having experienced the wholly unsatisfactory Australian IP enforcement process decided not to proceed. The estimated turnover of these additional Australian made products would be in the region of \$3-4 million per year.

Our legal costs to date have exceeded \$350,000. Whilst we have won the battle, we have lost the war. There is no compensation for our loss of time and/or damage to our products name. We even have the ongoing misfortune of having several calls each week relating to warranty claims against defective illegal copies of our products. Each of these calls costs us time and seriously enrages the customer who in most cases had unknowingly purchased an infringing copy.

The legal costs involved in protecting and enforcing IP here in Australia for a small to medium business totally overwhelm the research, design, development and tooling costs combined.

Conclusions:

1. Copying of a Registered Design should be a criminal matter. Not a civil one. It is theft. Pure and simple.
2. The amount of money that a lawyer, court or Judge can charge should be capped by legislation and be kept to a reasonable comparative figure to the average citizen.
3. Contempt charges should be made by the Court against all those who are proven to have lied to court. Lawyers, Barristers, Plaintiffs and Defendants.
4. Australian Customs and/or Police should have the powers to seize and destroy illegal copies of Registered Designs.
5. If the Australian Government is serious about us being the Smart and Innovative country who can create ideas to be produced by Australia and the world then our IP system needs to be majorly upgraded so that innovation is encouraged. New product development in Australia is discouraged by the enforcement of IP being totally paid for by the innocent party.

6. A simple and practical solution would be that the person granting the Design Registration should be the one who makes the first decision as to whether there is a legitimate claim of infringement of the design when lodged by the plaintiff. They should have the ability to decide on restrictions and compensation. Disputes over Registered Design should be settled by the person who registered the Design in the first place. Their decision should be final. If the decision of the Design Registrar is to be disputed then the costs should be borne by the perpetrator.

If anyone wishes to contact me for further information or regarding any of the above, please contact me via info@nomadicsolutions.com.au

Yours Sincerely,

Andrew Stolp
Nomadic Solutions Pty Ltd