



Lessons from Victoria Beckham's trademark battle - and how this is relevant to your business

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WITH GRACE YI



The Talking Law Podcast

Episode 115 - Lessons from Victoria Beckham's trademark battle - and how this is relevant to your business

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Transcript

Joanna: Hi, it's Joanna Oakey here and welcome back to Talking Law, a podcast proudly brought to you by our commercial legal practice, Aspect Legal. Now today we have on the show the fabulous grace, he from our very own Aspect, Legal talking today all about the lessons from the Victoria Beckham trademark battle and how it relates to your business. So you may not draw obvious conclusions immediately between Victoria Beckham and your business. But in this episode, we explain why they might be more connected than you think. So buckle in. Here we go for our episode with Grace.

Joanna: All right, Grace, I just want to say a massive thank you for joining us again on Talking Law.

Grace: Hi, Jo. Nice to be here.

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Joanna: Yeah, fabulous. Look, it's always good to have you grace, we we always traverse some really interesting areas. Well, we think it's interesting in relation to trademarks, we covering today's topic for the same reason that we record most of our podcasts about trademarks. It's because we keep seeing people make these mistakes again, and again and again and again. And we just want to ensure that people have the information and the education to avoid the mistakes.

Grace: That's right. Absolutely.

Joanna: And today is absolutely the same, because today we're talking about Victoria Beckham's trademark battle. Now I hear you, the listener say, Well, how the hell is this relevant to me? But the point is, it is incredibly relevant to many businesses who come to us. And in fact, we were just talking before you were saying Grace that in fact, you were thinking about this topic about the Victoria Beckham case, in direct response to a question that you've had recently about trademarks. And you said to me, Hey, I get this question all the time. It's this misapprehension. And look here is a case that so clearly demonstrates it. So what was that Grace, maybe just walk us through the ambit of what the mistake is that people are making. And then we'll talk about Victoria Beckham's case and why that demonstrates that but let's just, you know, for once, let's get let's get into the chase, and then we'll tell the story. So we'll give the answer first lucky you as a listener, you can just listen to the answer and then hear the story behind it.

Grace: There is a very common misunderstanding that, when it comes to trademarks, you can rely simply on your use, the use of your brand. So we're really talking about very fundamental issues when it comes to the use of your brand, versus the registration of your brand. And it's so click hard, but we just need to keep harping on about this same remaining issue.

Joanna: I find some businesses get it and usually want to get it because they've been burned in the past, actually, if truth be told, some businesses get it. And as they creating a new brand, they they build thinking about protection into that creation of a brand. And so they create a brand that's capable of protecting and then they get registered and, and there's no issues because they're first on the register. And and life is easy from the trademark perspective. And they're then able to take action against businesses who were incorrectly using the the mark, blah, blah, blah, blah, blah. But then there's what I will call the majority that fall after them the majority of well, SMEs, at least, you know, larger businesses obviously have the resources on hand to always understand the importance of these when they're creating a brand. But the majority of SMEs, when they're starting the business, they launching a new brand under their business or whatever the case may be, they don't tend to think of trademark registration. First off, and so they have a long period of use quite often. And in that long period of use. At some point, they suddenly realize that just using the name isn't protecting the name. And we then have to go and go through this laborious process that is a lot harder than had they've done it right at the beginning. But what we are trying to explain I guess is why it's not enough at that point. And why it is that you know, you really need that trademark registration in place rather than thinking you can just rely on the name so can you hit us with it, Grace tell us about Victoria Beckham and how they help Anything to do with Victoria Beckham could be relevant to us.

Grace: Yeah, I thought this would be fun to talk about because everyone knows Victoria Beckham, or maybe not everybody, but Spice Girl days she was she was popular in the 90s. And now she's become a fashion designer. She's branching out into cosmetics. And she's actually been using a brand for her cosmetic products called Victoria Beckham beauty. So you can have a look at her website, if you're so inclined. And you might see there that she uses her initials VB,

Joanna: right? Well, similar to a big beer brand,

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Grace: Yes, similar to a very famous beer brand in Australia. So she actually used her name. And that the initial in Australia for a little while in 2016 and 2017. What she didn't realize was that in 2018, an Australian company lodged a trademark application for VB in relation to cosmetics and beauty services. So, by the time she caught on to this, this Australian application was already on foot. So as you and I know, in the application process, there's something called an opposition. So this is where we might have to stop for a second, just talk about what this procedural aspect of an application is, because that's what she did, she lodged an opposition.

So it might be worth just pausing for a second there, because you and I know what an opposition is, our listeners might not know. So just to put that little insertion there as to what it is during a trademark application process. And it's surprising to a lot of our clients, that process takes a minimum of seven and a half months, it's not instantaneous. During that process, there's a two month period, which is called the opposition period, when the acceptance of your application of the trademark is advertised. And I explain it to clients as being a little bit like when you put in a property development application and the DA is published, or it's put on the front of the property literally.

So this opposition period is a little bit like that. And what happened is, these two VB trademarks were accepted for registration by IP Australia. And during that two month window, Victoria Beckham lodged an opposition. So she had the resources to do that because opposition's, as you know, are very expensive. And it went all the way to a hearing. The hearing officer initially rejected her opposition on the basis that Victoria Beckham's reputation, specifically in relation to cosmetics and beauty services weren't strong enough.

Joanna: Wow.

Grace: Yeah. So she's famous for all of these other things, but not specifically for beauty and cosmetic products. So there you go. It's that specific, if you're relying on use, you can't just rely on any old use, it has to be specific, and there's the risk. And there's the costs. And there's the uncertainty. And Victoria Beckham's got resources she had the fame she had all of those things, and it still wasn't enough,

Joanna: and that there's a point isn't there? What she could have done to protect yourself here was to get that trademark registration in early.

Grace: Exactly. So if back in 2016, and 17, when she was having a little bit of a flutter into cosmetics. All she needed to do was get on the register. And we know how cheap that is.

Joanna: I know. I just I mean it always and the thing about trademarks that, you know, always occurs to me as I'm looking at these issues and thinking of how cheap it would have been to avoid them. The reality that you get your I mean, trademark registrations are quite inexpensive to begin with, but then they can last forever. presuming you know, you maintain them and and you continue to use the mark in the right way. And so it's just this ongoing protection for the life of the mark. And, you know, so it's it's just amazing to think that businesses put themselves through the pain that they do when it could also easily have been avoided.

Grace: It's cheaper than your car insurance. It's the only form of intellectual property that you said, as you say that can go forever, potentially. Everything else has an expiry date. Everything else is there. Actually ends and becomes common property that's available to the whole public. I was actually thinking about this the other day because I was looking at generic marks that develop a secondary meaning and then can become registered.

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Joanna: And I'm sure like many of our listeners were Grace, I'm sure. You're sitting there the other day, just thinking that pondering that question. And where did you get to grace?

Grace: Well I was thinking of Smith's, Smith's chips. Smith is a common surname that is the name of a very famous chip brand. Yeah. And can you believe the Smiths logo was registered in 1931?

Joanna: Wow.

Grace: And then they didn't get the word marked until like, 1992.

Joanna: Wow, isn't that amazing?

Grace: I don't know if they tried in the interim. But anyway, this has got nothing to do with Victoria Beckham's case.

Joanna: But hopefully, you our listener, enjoy the little diversion we've taken here. But, you know, the point is, I think a really interesting point that you have just raised though, is the difference is understanding what to register as well. And understanding the difference between the registration of a logo and the registration of a wordmark. And, you know, we have a lot of clients come to us who have actually used professionals before, and the professionals not having provided the right advice in relation to between which mark, because there's so many considerations to make. And you know, if businesses go it alone, I think the likelihood of the making a mistake in choosing what to register is incredibly high. But even many professionals don't necessarily get it right. And the problem is, you won't fully ever understand how good your protection is, until the day that you need to use it. And that, of course, is too late to remedy. And so you need to ensure this is done. Right. Yeah. And I think they're the messages today Grace, What do you think?

Grace: Yes, I think so. And I feel quite passionate about this job because I was speaking to a client the other day, he's had legal advice, not from us. And the legal advice was technically very clear. But he didn't get it. Because it was, too much jargon. With just in a 10 minute conversation with him where I just, and you and I try and simplify it in a way that a business owner will understand it because we want to help them. But just in that 10 minute conversation, he absolutely understood what the issue was. And he knew what he needed to get. And that was just coming out of just speaking it from his frame of reference, I think.

Joanna: Yeah, cutting out the jargon.

Grace: Yeah.

Joanna: And then and having a commercial overlay of how this all applies, because because trademark, the area of trademarks, you know, can look straightforward, but it's just such a complex area, but the importance is to bring it back to simplicity. Bring it back to the KISS principle. Not overcook not overcooked the registrations, but to get the right things protected in the right timeframe.

Grace: Hmm. So out of Miss beckons predicament. I think the main lessons that we got is that she lost exclusivity. Yeah, she was slow in getting him her brand protected. She had to spend money. So the outcome of all of this has been that these two Australian trademarks for VB salon and the VB skin lab, they managed to get registered. A settled outside of course, there's probably some document between them and Victoria Beckham, where they've come to some sort of agreement. So exactly the terms of how they're going to settle. They've probably been asked by Victoria not to associate with her in any way, shape, or form. So she's tried to maintain some control. And she then subsequently went and lodged her own mark, for her own VB initials.

Joanna: Which will now always sit after the other mark.

Grace: Absolutely. And it only got registered last week.

Joanna: Oh, last week. Well, there you go. This is off the press people you are hearing it first you, Grace Look, this has been really useful. I think it's really important reminders for all of our listeners. And I think what we should deliver up soon to our listeners is perhaps maybe the next component as well, where we see issues occur. And that is in the way marks are used after they are registered. Some of the mistakes that people make in that process. So how about we come back and talk about that because I think that will be really useful for our listeners to understand if that next step once they have a trademark registration.

Grace: Great.

Joanna: Well, Grace, thank you so much for coming onto the show again, any parting words for our audience?

Grace: Get your marks registered early.

Joanna: But if not early, at least at some point, I guess wonderful Grace, as always, it's been an absolute pleasure. Thanks for joining us on Talking Law.

Grace: Thank you.

Joanna: Well, that's it for this episode of Talking Law. If you'd like more information about this topic, head over to our website at talkinglaw.com.au for a free download of the transcript of this episode. If you'd love to read it in more detail. Through that website, you'll also find details of how to contact Grace or any of our other legal team at Aspect Legal if you have any issues in relation to trademarks or indeed any queries about trademarks that relates to your business that you'd like to talk to us about. And finally, if you enjoyed what you heard today, then please pop over to Apple podcasts and leave us a review. Well, that's it you've been listening to Joanna Oakey and talking law. See you next time.