

TRADEMARK AVAILABILITY REPORT

TRADEMARK HEAVEN™

Contents

1. This report
 - 1.1 Potential trademark and classification
2. The application
3. The trademark
4. Website search
5. Global brand database search
6. The trademark classification
7. Potential to register
8. Trademark sub-class categories
9. Recommendations
10. Your next step
11. Indemnity
12. Conclusion

Schedule 1.

Schedule 2.

Schedule 3.

SAMPLE ONLY - NOT FOR USE

Trademark Heaven (ABN 97 410 738 743) trades as Trademark Heaven



Mark Davis LLM
CEO/Founder



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https://trademarkheaven.au

<Client details>

<Date>

TRADEMARK AVAILABILITY REPORT <WORD/LOGO>

1. This report

Thank you for requesting Trademark Heaven to provide you with a **Trademark Availability Report**. This report is designed to offer you data from IP Australia, the WIPO Global Brand Database and other interesting data gathered from internet searches. Our mission is to offer you as much information as possible to make your decision easier to proceed to the next step, the Application for Trademark Registration. We do not require any further information from you for the Trademark Registration, unless requested by us.

If you engage Trademark Heaven to apply for the trademark the AU\$90 fee paid for this **Trademark Availability Report** will be deducted from the overall cost (AU\$690 to AU\$600) of the trademark application as an incentive for you to do business with Trademark Heaven. If you have been discussing this trademark directly with our CEO, Mark Davis, it is best if you continue to discuss this directly with him rather than use our website to complete the fee arrangements.

It is important to understand the Registration Fees + Service fees of \$690 is for **10 years**, which can be renewed every 10 years.

1.1 Potential trademark and classification

This **Trademark Availability Report** focusses on the potential trademark/s <trademark> and the trademark classification for a particular industry, <example: construction/building>, and the use of <plastic building materials>. This will be discussed further in 6. The trademark classifications.

2. The application

At Trademark Heaven our aim is to save you time and money. The Trademark Examiner (Australian Federal Government, IP Australia) (the "Examiner"), has two options for your Trademark Registration Application. The Examiner may approve the application or issue an Examiners Adverse Report with reasons for the Adverse Report. You may oppose the Adverse Report at a cost. Trademark Heaven can provide this service, or you may wish to refer your matter to another trademark advocate. We conduct all the interactions with IP Australia on your behalf.

We work with trademarks. We save you time and money.

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3. The trademark

Your preferred trademark <word/logo> is <example>.

<image>

The proposed logo search <example> across the IP AU database offers the following results, see **Schedule 1**. In point form they are:

- Of the 25 IP AU Applications for <example>, TM# 1 to 6, 9 to 11 and 13 have been Protected, Registered or Accepted and are **relevant**. (TM# 7, 8 and 12 relate to <example> as the Company/Owners name and not the TM Word/s.)
- TM # 14 to 25 have been Removed, Lapsed or Withdrawn and are **irrelevant**.
- Regarding TM classifications, the relevant TM are linked to the subsequent classifications (Class). See **Table 1**.

Table 1. Registered classifications

TM#	Word/s	Status	Class
<u>1</u>	<example 1>	Protected	20
<u>2</u>	<example 2>	Protected	12
<u>3</u>	<example 3>	Protected	7
<u>4</u>	<example 4>	Registered	11
<u>5</u>	<example 4>	Registered	28
<u>6</u>	<example 5>	Registered	3, 8, 21
<u>9</u>	<example 6>	Registered	9
<u>10</u>	<example 7>	Registered	12
<u>11</u>	<example 8>	Accepted	33
<u>13</u>	<example 9>	Accepted	9 & 28

This report will comment on the critical element of Trademark classifications. As a precursor to that discussion, TM# 2 & 10 are registered in the same class – 12, and TM# 5 and 13 are registered in the same class – 28. The general rule is the same word/s cannot be registered in the same class, which is the case here. That is, TM# 10 words are <example> and TM# 5 is <example>. There are no other class duplications where the Word/s are exactly the same.

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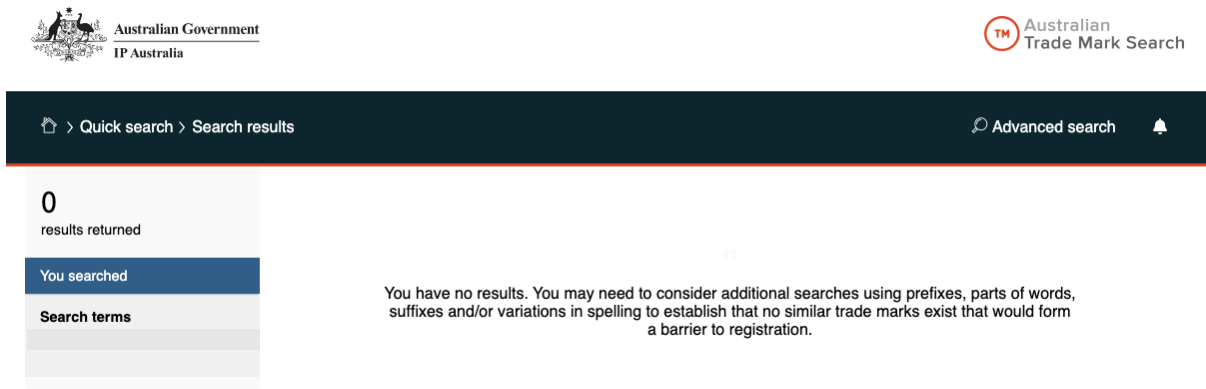


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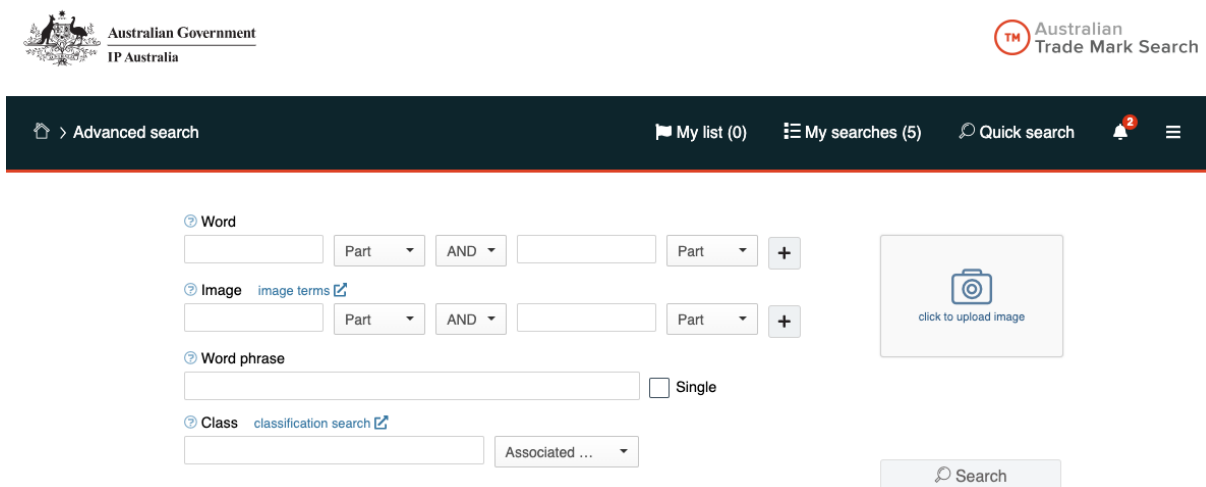


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As for the word/s (logo) <example> the results are



An Ai image search (see below) of the preferred **logos** provided no benefit whatsoever to the decision-making task. The search instrument below (blank fields) is simply to show the parameters of an Ai search. The results for <example> and <example> provided 1000's of search returns with <example> which does not provide any value in this matter.



4. Website search


A Google® search of <example> and <example> offered no significant results in this matter for TM purposes. Basically, the search for <example> focussed on “bikes and bicycles” and with <example> computer games.


5. Global brand database search


A search <example> of the World Intellectual Property Organisation (WIPO) Global Brand database has no effect on the application for registration in Australia (see [Schedule 2.](#)), regarding <plastic building materials> (class 19).

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6. The trademark classification

Your preferred (industry) trademark classification is described by you as **<plastic reinforcing bar chairs>** or similar. Classification 19 (Class 19) appears to be the most appropriate class at this stage.

Class 19 >

Materials, not of metal, for building and construction; rigid pipes, not of metal, for building; asphalt, pitch, tar and bitumen; transportable buildings, not of metal; monuments, not of metal.

The selection of trademark/s classifications is/are a difficult proposition at the best of times and one of the most important aspects of trademarking **to get right**. The over-rider or primary descriptors to class 19 <example> or <example> are

Class 19 >

plastic building materials
building materials of plastic
building materials made of plastic
plastic construction materials
construction materials of plastic
construction materials made of plastic
building materials of plastics
building materials made of plastics
building materials made from plastics
construction materials of plastics
construction materials made of plastics
construction materials made from plastics

Schedule 3 offers the complete range in class 19 which is worthwhile reading and marking up the appropriate industry categories for registration.

Why is it important to get this right? The trademark must represent the business service/product for it to have 'real worth' or the probability of attaining 'real worth'.

7. Potential to register

The following metric offers a guide (only) as to the potential success of your trademark logo.

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- (1) **Highly Unlikely** - 0% to 24%
- (2) **Unlikely** - 25% to 49%
- (3) **Unable To Say** - 50% to 79%
- (4) **Likely** - 80% to 89%
- (5) **Highly Likely** - 90% to 100%

The likelihood of success for the trademark registration logo of <example> in class 19 is (4) **Likely**. Key to establishing potential trademark availability, at law, is that the potential trademark “is not substantially identical with or deceptively similar to existing registered trademarks”. The potential logo, <example> creates an environment whereby it may not be substantially identical to or deceptively similar in **Class 19** with another and may pass the test, although the test is subjective, and the Govt. Examiner has the final say. The Examiner will assess the application based on, will your application for the trademark confuse the market or is it likely to confuse the market.

Although for reasons described going forward in this report, <example> applied for in class 19 is more likely to be registered than <example>.

8. Trademark sub-class categories


This section is not to confuse the client but attempts to explain the impact of associated or sub-class categories relative to trademark classifications. At this stage the proposal is to apply for trademark registration for <example> or <example> in class 19. Class 19 has several linked associated or sub-categories to other classifications (see below) in which <example> has already been registered.




The screenshot shows the IP Australia search interface. At the top, there is a navigation bar with 'Advanced search', 'My list (0)', and 'My search'. Below this, there are four search filter sections: 'Word' with two input fields and 'Part' and 'AND' dropdowns; 'Image' with a link to 'image terms', two input fields, and 'Part' and 'AND' dropdowns; 'Word phrase' with one input field and a 'Single' checkbox; and 'Class' with a dropdown menu showing '19' and a link to 'classification search'. Below the filters, it says 'Associated classes: 6, 11, 17, 19, 20, 22, 27, 37'.

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The advanced search of associated classes for **Class 19** gives the following associated classes to **Class 19** as Class 6, 11, 17, 19, 20, 27 and 37. We know from Table 1 that the word/s <example> is registered to another in classes 11 <example> and <example>.

9. Recommendations

- 9.1 Register <example> in Class 19 rather than <example>, or
- 9.2 Register <example> and <example> in Class 19.

10. Your next step

Your next step is to keep working through the nuances of trademark classifications with our CEO Mark Davis directly until you are confident that the most appropriate trademark classification is selected. Mark will deal with this matter off-line, in that, it will not be necessary to provide a payment electronically via the website, however Mark will send you an invoice by email when you are comfortable that class 19 is the most appropriate class for your logo.

11. Indemnity

This Trademark Examiner, Australia Federal Government, IP Australia has the final say about trademark registrations unless you decide to Oppose/Appeal the examiner's decision. You can do this through Trademark Heaven or another advocacy of your choice.

By using Trademark Heaven to register your trademark/s you hereby undertake to indemnify and hold harmless Trademark Heaven from all actions, causes of action, suits, debts, duties, accounts, bonds, contracts, claims and demands whatsoever resulting from any action or omission.

12. Conclusion

If you require any further explanation about this **Trademark Availability Report** do not hesitate to contact the CEO, Mark Davis (LLM), directly on (+61) 0414 060 044.

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CEO/Jurist
Trademark Heaven

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