

Flying Solo podcast - Lauren Stokoe

Trademark triumphs: How to protect your business from copycats

*Automated transcript

Cec Busby ([00:01](#)):

Hi, everybody. I'm Cec Busby, editor of Flying Solo. Welcome to our weekly podcast where we step inside the minds and lives of soloists and small business owners.

([00:11](#)):

Today's guest is Lauren Stokoe. Lauren is a director at IP Australia. She's an experienced product manager working across public and private sectors, and a digital transformation and implementation expert. She's also the venture manager for Trademark Checker. Now, if you've ever considered trademarking your business, IP Trademark Checker is an AI assisted tool created by IP Australia that makes it simple for small businesses to check trademark availability and complete their application process in literally minutes. So I'm completely fired up to chat with Lauren about all things trademarks and IP because she has so much expertise to share with our audience. Because really, trademarking is something small business owners really need to know about.

([01:03](#)):

Welcome, Lauren. Thank you so much for joining me on the show today.

Lauren Stokoe ([01:07](#)):

Hello. Thank you for having me. It's great to be here.

Cec Busby ([01:11](#)):

Excellent. Now, I'm very keen to dive into your area of expertise, which is around IP and trademarking. That's probably something that not a lot of business owners really think about when they're starting up, but it's really important to protect your intellectual property, isn't it?

Lauren Stokoe ([01:27](#)):

Yeah. It's certainly something important for all businesses, especially those small businesses or sole traders to consider when you're starting up. It's actually, so I'm from IP Australia, which is the Australian Government Agency responsible for administering intellectual property rights that are registered. And the research that we've undertaken has actually found that it's less than 4% of Australian small businesses that own any kind of intellectual property right. And it's slightly less than that for registered trademarks, which is actually the lowest of all OECD countries, so our developed countries, which is interesting, and was something that was quite surprising to me when we undertook that research.

Cec Busby ([02:11](#)):

Yeah, that's a little alarming as well, considering a lot of fantastic innovations have come out of Australia. I mean, think things like wifi and the cochlear implant and stuff like that. Imagine where we'd be if they didn't have their patents and their IP protected, it would be pretty different world <laugh>. So, what exactly do we mean by IP? Give us the layman's rundown of what IP is for our listeners.

Lauren Stokoe ([02:43](#)):

So, intellectual property, it refers to creations of the mind is the base level explanation for a description, and there's a number of different types of intellectual property. We, IP Australia, the Australian Government agency that I mentioned, we look after registered intellectual property, which is basically IP that's formally recognised and registered with an office. That involves filing an application and paying a fee. So there's different types there. The example that I like to use, there's a business that's selling coffee. So there's a new plant variety, such as the variety of your coffee plant, your coffee bean, and that's protected under what's called a plant breeder's right. Then you might have a coffee machine, and the way that that works, so the invention, how that invention works is protected by patent. Then you might have the visual appearance of a coffee pod or your visual coffee cup.

([03:43](#)):

It might be a different way of having a takeaway coffee cup, and that would be protected by a design right. And then finally, you have your trademark or a registered trademark, which protects your brand. So, for instance, the logo that helps identify this brand of coffee over another brand. So they are your four registered intellectual property rights. And then you might have copyright rights through, for instance, something that you've put in material form. So that's like a brochure, for instance, a one-off promotional material. And copyright is automatically granted when you put something out there in its material form. Same with a trade secret, which you might wanna protect through a non-disclosure agreement. So, you know, a secret blend of coffee beans, for instance. So they're sort of some of the intellectual property rights, and what we mean by each of those.

Cec Busby ([04:35](#)):

Mm-hmm. So if I've got like, quite a spectacular new invention that is percolating away in the back of my head and I've kind of drawn up the schematics or whatever, I need to not only think about protecting it with a patent, I also need to kind of keep hush hush about it before I get it out into the world, don't I? Because otherwise, someone else might decide to replicate my idea before I've patented it.

Lauren Stokoe ([05:02](#)):

It certainly can be a good idea to keep it quiet. It's something that, you know, a lot of the information that we put out from the office, but also that's available through IP attorneys that are able to provide advice in on these sorts of matters are around if you do have an invention or a new idea, keeping it as quiet as possible, or using instruments such as a non-disclosure agreement or a confidentiality agreement in your contracts. They're just things that protect you and that idea exactly as you mentioned from, from someone else utilising it

Cec Busby ([05:38](#)):

Mm-hmm. <affirmative>. And so if I'm a small business, what do you see as the benefits of IP protection?

Lauren Stokoe ([05:45](#)):

Yep. So the various types of intellectual property, that creation of the mind, it's all about protecting your ideas. So it's protecting you with what distinguishes you from your potential competitors. So for example, something that I look after in my everyday work is a product called TM Checker, which is a trademark checking tool. And we created that because of the importance of a trademark or a registered trademark for sole traders and for micro businesses. So, in terms of the importance, I think the value of

a brand is well understood as it differentiates you from your customers, it helps give your business an identity. But to protect your brand, one way to do that is by having a registered trademark. So that might be, you know, a jingle, your business name, your logo that you might have on your coffee cup, for example. And, and paying attention to both your branding and also to the protection of that brand is important cuz it helps you to protect your identity, maintain your reputation, and safeguard against unauthorised use, which could ultimately result in lost sales, or damage to your reputation.

Cec Busby (06:58):

Mm-hmm. <affirmative>. So is this something that we need to be thinking about from the very beginning? If I'm just starting out a business, is it, you know, when I'm registering my business name, should I also be thinking about trademark protection or registering my IP?

Lauren Stokoe (07:16):

Yeah, so I think the general process that I'd like to suggest would be that you would of course identify your brand name for instance, or your brand. So in your case, you've mentioned the business name, identify what that is, what might resonate well with your customers, what really speaks to your brand and what you're trying to create. And then check its availability. So being able to undertake a search to see what else is out there doubly protects you. First, it's checking is someone else actually using this? And if I go and choose this business name, I could actually be infringing on someone else's registered trademark. Or if no one else is using it, it allows you to then, if you choose to, to protect it through say a registered trademark.

(08:05):

So to do that, you can use search engines like Google. You can also look through social media, selling platforms, and sort of raise URLs. So typing it into your domain, so the URL at the top of your screen to see what's already in use. When you register a business name with the Australian Government, you can search existing business names through that, but a business registration, while it registers your business as that name, it doesn't actually offer you the same protection that a registered trademark. You don't have exclusive use over that name or that brand. That is only granted through common law or through a registered trademark. So we created, as I mentioned to you in our conversation previously, we've created something called Trademark Checker.

(09:01):

So TM Checker. And that is a tool that utilises artificial intelligence where a small business owner or anyone is able to come in and they can enter a brand name or a logo, match it against the goods and services, so what they're selling, and then it will undertake a search against the register. So the Australian Trademark register, for any potentially similar trademarks that might already be in existence. So you can check it before you even, you know, go through with an application and put any money to it.

Cec Busby (09:38):

So that's a free service? People can just put in, say, I wanna put Bill's coffee, <laugh>, then I put that in and 95 other business names come up if I'm checking the business name. But maybe one Bill's coffee comes up when I'm checking the trademark register and I'm like, ah, I'm gonna have to be William's Coffee then <laugh>

Lauren Stokoe (09:59):

<laugh>. Yeah, that's the intent behind it. Absolutely.

Cec Busby ([10:03](#)):

Yeah. And then say I put in my business name that I'm thinking of trading under and nothing comes up. What's the process then? How hard is it to apply for a trademark? Is it tricky or a pretty simple process?

Lauren Stokoe ([10:20](#)):

I mean, like anything, it always depends on how many different classes, what you're selling, what sort of intellectual property you're looking at. In the case of trademarks, part of the reason we created TM Tracker was to make it as easy as possible for small businesses, noting what a small percentage are currently getting trademark currently. So we were really looking at how we could simplify the process as much as possible. So, in the case of, you know, if I was coming in and the example I always use, I liked your example, it made me laugh cuz I always use Lauren's cupcakes <laugh> if I came in and typed in Lauren's cupcakes and, you know, selected goods and services, which is basically what you're selling to your customer or what you might sell in the future, in the near future.

([11:09](#)):

So those are the classes that you would select to register a trademark. So I'm entering, say, a cupcake or biscuits or scones. And then it comes through and it will identify if there's any issues. Noting this is a preliminary check, it's still, you know, it's artificial intelligence. We're working on making it as accurate as possible, but it'll continue being a work in progress and we're continuing to make it as strong as possible. Then you would, if you choose, you find it's clear or you assess the similar trademarks or the distinctiveness issues that TM Checker's raised and said, Nope, I'm gonna apply anyway. That's when you would hit the apply button. You login to IP Australia's online services, which you just need a name and an email address for, and then you can enter a few different screens.

([12:02](#)):

But the process is quite simple to get that application off to IP Australia, which is when one of our examiners, our qualified trademark examiners will pick it up to review. And they would do an assessment against the entirety of the considerations under the Trademark Act. So TM Checker does the most common issues that we see, which are around distinctiveness, which is things like, I couldn't trademark the word cupcakes alone, just have cupcakes there and then sell cupcakes cuz it sort of excludes others from the market potentially. And it looks at similarity, whereas there's a few other things, a few other considerations for trademarks. And that is what an examination would look at. If there's no issues, you'll get a clear report and then you need to wait for, it's seven months from application. And there's a few other steps in there like offering an opposition period for others in the market who don't believe that I should register Lauren's Cupcakes, they can raise an opposition to IP Australia in that period for instance. Otherwise if there are any issues, they get raised as what's called a citation and sent back to the applicant so that small business can then consider that, and see if there's a way that they can work through it.

Cec Busby ([13:22](#)):

So if Laurie's Cupcakes popped up, would the trademark people go, Hmm, that's a little similar? <laugh> Or would it not flag that?

Lauren Stokoe ([13:34](#)):

<laugh> Laurie's cupcakes. It's basically based on that sort of reasonable person's test with, you know, your average Australian, or average person. It doesn't matter if they're Australian or not, of course, but would your average person potentially get confused between two?

Cec Busby ([13:53](#)):

Oh, I might - Lauren cupcakes, Laurie's cupcakes,

Lauren Stokoe ([13:57](#)):

<laugh>. Yeah. Examples like that can be a bit difficult. Absolutely. <laugh>.

Cec Busby ([14:04](#)):

Yeah. So why do you think, you mentioned so few small businesses, micro-businesses, sole traders are actually going down the route of trademarking or or registering their IP. Why do you think they aren't doing it? What do you think is holding them back?

Lauren Stokoe ([14:25](#)):

It's a great question and it's one before we created TM Checker that we were really looking into to investigate, and our research, we did quite a bit of user research with small business owners here in Australia, and asked that very question - why? <laugh> We know that there's value for having that registered trademark, so why don't you own one? And the three key themes that came back in that research were, number one, a lack of awareness. And that was a lack of awareness of what intellectual property is, what's a registered trademark, and why you might want to have one, what the benefits are. Number two is if there was an understanding of what a trademark is, there was largely a held belief that it was a big business thing, that was very cost exhaustive, that you needed, you know, a whole team of lawyers behind you to be able to get a trademark. And finally, when someone, as many small businesses did choose to go down that path and apply for a registered trademark, they found it was too late. And what I mean by too late is basically that someone else was already using it, was already using that brand. But meanwhile they've gone and they've, you know, set up their business name, they've put all their branding out there, they're selling their product, and they find that they're actually infringing on another person's trademark.

Cec Busby ([15:50](#)):

That's pretty tricky, isn't it? That brings you into the courts and a lot of heartache so really we should be checking that trademark and that intellectual property right from the start.

Lauren Stokoe ([16:03](#)):

It's certainly a good thing. Something that we talk about at IP Australia is about education and being informed. You don't have to have a registered trademark. There might be instances where a trademark's not right for you, or other forms of intellectual property, not just trademarks, but it's all about making sure that you're making an educated decision, so that you have the information and the research behind you to be able to make that informed decision.

Cec Busby ([16:29](#)):

So what would make you go, yep, I need to trademark this business?

Lauren Stokoe ([16:34](#)):

Ooh, that's a tricky one. Basically how I would think about it is around whether or not your brand is something that is going to be known or that you want to be known. So for instance, if I was a sole trader that was operating just under my, in my personal name, Lauren Stokoe, that might not be something

that I want to trademark. It's not something that I need a trademark for, it's just my name. Whereas if I, for instance, wanted to set up, you know, Lauren Stokoe's school of blah, blah, <laugh> School of Dance, for instance, I teach ballet, so there you go. <laugh>, Lauren Stoker's School of Dance, but then wanted other people to teach for me, wanted potential franchising opportunities under that brand name, I might actually consider registering that trademark. Because then I've got broader protection because the name is really important in my branding. I can't just turn it off and change it to something else. So that's where I really, to me, that's really a big trigger point of what's the risk of not having the trademark.

Cec Busby ([17:45](#)):

Yeah. You don't want other people hijacking it, do you?

Lauren Stokoe ([17:48](#)):

Yeah, absolutely. And you know, if you could turn around tomorrow and rebrand and no one would bat an eyelid, that would be a very different story, personally for me.

Cec Busby ([17:59](#)):

Mm-hmm. <affirmative>. And what about patents? Because you also deal with patents as well. In that process, when would you suggest someone gets in contact with you?

Lauren Stokoe ([18:12](#)):

The same, quite early, quite early <laugh>. There is a process for that where you can put in a type of application for a patent where you are able to basically signal your intent and then you get those 12 months to be able to put together the entire patent application. So that might be something where you have your own idea for instance, or, you know, you've got a new way that this particular item or invention works, and then you have and you put it in almost as that sort of placeholder. It's a priority date. It's saying that, Nope, I was the first person to come up with this idea on this date. And you signal that intent and then you have 12 months to complete your application.

Cec Busby ([18:57](#)):

You don't have to hurry it through <laugh>, you've got plenty of time.

Lauren Stokoe ([19:01](#)):

Yeah. It's to help mitigate the risk of, you know, waiting until something's perfect to put your application in. And meanwhile, you know, someone else has come up with that idea in that time. So that's, that's basically why that process exists.

Cec Busby ([19:15](#)):

And what about some examples from the small business space? Do you often have people contacting the trademarks office going, I've got this business, it's, you know, I don't know, Blah Blah Cakes or whatever. And now down the road, Blah Blah Cakes has opened up under exactly the same name as me. Like, how useful is the IP and the trademark for settling those disputes?

Lauren Stokoe ([19:48](#)):

Yeah. So enforcement of a trademark doesn't come to IP Australia too much. We don't hear too much about it, as that is something that, as the administrator of the rights, we're not allowed to get too involved in. However, that's something where an IP attorney, so an intellectual property attorney, might come in use and might come into the fold. But instances where that does happen, it certainly has happened, one of the example that we often use at IP Australia is the Fat Duck <laugh>. So there was a cafe that in Sydney that was successfully trading under that name for years, but they'd never registered a trademark. And then, Heston, the celebrity chef came in and filed an application for trademark protection. And as an international well-known brand, this actually resulted in the Sydney Fat Duck needing to change their brand, which they did, and it cost them thousands.

(20:48):

And this is one of those examples where, because that registered trademark wasn't there in the first place, that basically demonstrates that you have that exclusive right. That is what a trademark gives you, it gives you exclusive right to that brand. But when there's instances like a really well known brand name, you know, McDonald's would probably be an example. There are some considerations where it's a really famous brand name where it could cause difficulties for a registered trademark owner if they're a lot smaller. But in those sorts of instances, it can be best to go and talk to an IP attorney.

Cec Busby (21:32):

Though, I think on the flip side of that, wasn't there an Aussie burger joint called Burger King? And that's why we've got Hungry Jacks in Australia, not Burger King, because they had trademarked their name and had been around for years and years before Burger King decided to make the great Aussie takeover <laugh>. So now that's why we've got Hungry Jacks.

Lauren Stokoe (21:57):

That's it. That's a great example. Yeah. And it's one of those things where if someone is making unauthorised use of your registered trademark, you can take legal action against that infringer. So that is where you'd contact your IP attorney. But otherwise there are alternative dispute resolution opportunities, which IP Australia does offer. There's quite a bit of information on the IP australia.gov.au website about it. Otherwise there's, you know, you are able to send what's called a cease and desist letter to basically ask or demand that that person stop using the mark with your registered trademark.

Cec Busby (22:38):

And so, you also spoke about things like your logo and your branding and stuff. Is that also things that we should be looking at trademarking?

Lauren Stokoe (22:50):

Mm-hmm. <affirmative> So there's lots of different things that you can trademark. So you've got your more common known around your brand name and your logo, but you can also trademark things like a colour, a sound. You can trademark a colour, a sound, an aspect of your packaging. You can trademark a smell, which there's not many smell trademarks out there, but it is possible,

Cec Busby (23:19):

Well, probably some great perfumery <laugh>

Lauren Stokoe (23:23):

<laugh>. Yeah. There's a very, very interesting eucalyptus smell that is currently trademarked here in Australia.

Cec Busby ([23:31](#)):

You'd uncover some quite interesting things in your day job when you're not being a ballet teacher.
<laugh> <laugh>.

Lauren Stokoe ([23:41](#)):

Yeah, certainly. It's certainly fascinating getting, it's very rewarding getting to see just the innovations that come out of Australia and, you know, how creative people are and what people are able to come up with. It's quite, it's quite fabulous.

Cec Busby ([23:55](#)):

Hmm. So what are some key takeaways, from your point of view, that a business should be considering when they're thinking about investing in IP protection?

Lauren Stokoe ([24:08](#)):

So I think the, the first thing is to identify what intellectual property you do own, or may want to own. So your strategy behind your intellectual property, it should fit in or could fit in with your business strategy. So that might be in the case of wanting to develop, if you want to develop a strong brand identity, to focus on creating that clear and consistent messaging, that might be something where you want to, you know, choose a distinctive trademark and before adopting that trademark to have a look at making sure that that mark's not already in use by another competitor. And also not in use through, you know, your domain names, your business names, your social media handles, and the like. Then if you also identify other intellectual property rights, it's about seeing what your strategy is for number one, gaining that protection.

([25:01](#)):

So do I need to register it with Intellectual Property Australia or with another office overseas, if you do sell overseas or wish to export in the future. And then it's all about enforcing that right. So it's about making sure that you are consistently using, if it's in the case of a trademark, consistent use of the trademark to reinforce that brand identity. And also, it helps with your ownership of that intellectual property. And then basically keeping an eye out on there, continuing to do your research. You know, you can use tools like TM Checker, otherwise there's, you know, Australian patent search, for instance, for inventions to check if anyone is potentially infringing on your right.

Cec Busby ([25:47](#)):

Because it's all well and good to put these protections in place, but that doesn't kind of stop people from trying to do the sneaky <laugh> <laugh>.

([25:58](#)):

I was just gonna ask, you mentioned overseas trademarks. So does an Australian trademark not protect you overseas? You have to register an overseas trademark as well?

Lauren Stokoe ([26:08](#)):

That's right. So intellectual property, sorry, registered intellectual property applies for the country in which it's registered. So we do have agreements with other countries that make it a bit easier to apply for an intellectual property right in another country. For instance, something called the Madrid Protocol for trademarks, which you can do through the World Intellectual Property Office. We are able to put a trademark application in for multiple countries at once through the one application. But otherwise it is going to, you know, that particular country's intellectual property office and doing the application through there as well. In the instance of patents, there is priority date considerations that are taken into consideration in other countries. So by that I mean, as I mentioned before, that intent that you've put in that application that you've put in for a patent. So making sure that basically, because you've got that patent here in Australia, that priority date, so that first date that you applied here in Australia and that application went through, then that counts in another country.

Cec Busby ([27:20](#)):

That Madrid Protocol. Is that something a lot of businesses should be considering, especially now when so much of business is done online and is across borders?

Lauren Stokoe ([27:32](#)):

It's certainly something to look into when you're looking at your intellectual property strategy and thinking about what you want to do. It's also, just like you do with your business strategy and your marketing strategy, you think about, well, what borders do I want to cross? Am I a domestic product, or am I, you know, multiple countries or global? And depending on the answer to that is, what you would do with your intellectual property. So it might be that you want to consider, you know, just Australia and New Zealand for example. And so you might just put a trademark application in those two countries, but if you were wanting to go to, you know, more than those two, for example, that is something where Madrid can certainly come in and be very helpful because there's, I think around 158, last time I looked, countries that have signed onto that Madrid Protocol where you can do your application through. So it's just tossing up, you know, the benefits and where you want to to be protected, against the cost of applying for that trademark registration and then maintaining it. Cuz the good thing about intellectual property is that it lasts for multiple years, depending on the intellectual property type. So in the case of trademarks, they do last, but here in Australia they do last for 10 years, and then you can renew them indefinitely. So it's not a, it's not a yearly cost.

Cec Busby ([28:58](#)):

Mm-hmm. <affirmative>, what is the cost to start of curiosity?

Lauren Stokoe ([29:03](#)):

Here in Australia, it's measured by, or it's calculated by class. So at the moment we use something called Nice categorisation, as I mentioned, the goods and services. So each class that you select to be protected in is \$250 per class if you apply using a standard trademark. If you use Trademark Checker or TM Headstart, which is what it utilises, it's \$330 per class, but it's split into two fees. And the reason that we have that option is the first fee is your application fee. And if it's not clear and you don't proceed with a registration, you don't pay anything further. So you pay \$200 upfront per class, and then it's an extra \$130 per class if you choose to register the trademark. And we provide that service to provide you get more, you get a response back in five days and you get more time with an examiner. You can contact an examiner directly so that way you can have that conversation if you are feeling a bit uncomfortable or a bit nervous around it.

Cec Busby ([30:13](#)):

So in the grand scheme of things, it's not really a massive business expense and certainly would pay dividends should someone decide to open up shop in Australia using the same name as you <laugh>?

Lauren Stokoe ([30:30](#)):

Yeah, our research has shown that people were pleasantly surprised by the cost in general. More around, oh, I thought it would be a bit higher. <laugh>. It's quite an often a frequent statement I hear personally. And on average applicants last year filed around two classes each for each application, for a trademark. So if you think about that, it's sort of, you know, between 400 and 400 and, gosh, where's my math? \$660 <laugh>, um, 500 or \$660, depending which method of application you use. Um, you know, that they paid on average last year.

Cec Busby ([31:09](#)):

Hmm. So any kind of final parting words of wisdom for our listeners?

Lauren Stokoe ([31:15](#)):

<laugh> My words of wisdom would be around just making sure that you do your research, and really considerate intellectual property and your intellectual property strategy when you think about your business strategy. It's an important factor of the protection of your brand and of your ideas, and so it's really about being informed, and maintaining your knowledge base in there before it's too late.

Cec Busby ([31:42](#)):

Great words of advice. Thank you so much, Lauren. Thanks for joining me today. It's been a pleasure having you on the show.

Lauren Stokoe ([31:47](#)):

Thank you for your time. Greatly appreciate it.