

Do I own the trade mark if I buy the business?

Use our online trade mark search tools to ensure it is not already registered.

If you are purchasing a business and want to use the existing brand, it's important to ensure the brand is available for use and sale. It may not automatically come with the acquisition of business assets.

This happened to poor Mr Carroll who purchased a pallet racking, shelving and storage solutions business from the Griffiths in Queensland in 2009, called Rack'N Stack*. Unbeknown to Mr Carroll, the Griffiths had already sold the Rack'N Stack business to someone else in 2008. Under the original sale, the Griffiths retained a limited licence to trade in an agreed geographical location. Mr Carroll was unaware of this until he tried to register the trade mark Rack'N Stack and found out that the purchaser of the business in 2008 had already registered it as a trade mark in Australia. This registration was cited against Mr Carroll's application, and the owners also opposed the registration of Mr Carroll's Rack'N Stack trade mark.

In a hearing, the Australian Trade Marks Office found that Mr Carroll could not be the owner of the Rack'N Stack trade mark because it was already sold by the Griffiths to the Opponent. The Griffiths were not entitled to sell the trade mark to Mr Carroll as they only retained a licence to use it, and retained no proprietary rights to on-sell it. Mr Carroll lost the trade mark Opposition proceedings and his application was rejected. The end result was that he could not use Rack'N Stack for the name of his business.

What could Mr Carroll have done to avoid this?

If Mr Carroll had conducted a search of the Trade Marks Register prior to purchasing the Rack'N Stack business from the Griffiths, he would have discovered that the trade mark was already registered by the people who initially purchased it. With this knowledge, Mr Carroll may not have purchased the business, or could have negotiated a lower purchase price due to the omission of the brand name.

It's easy to conduct a search of the Trade Marks Register. At Sladen Legal, we have created an [online tool](#) that can search the availability of a trade mark in Australia.

Visit www.sladen.com.au/intellectual-property-store, select the Knockout Trade Mark Search and complete the form, and one of our intellectual property specialist lawyers will confirm with you by email if your trade mark is already registered. It's a wholly online service, so no need to pick up the phone if that's your preference. We guarantee a reply within 24 hours.

Our [trade mark services brochure](#) outlines further information on trade mark registration, or contact Michelle Dowdle to find out how we can help ensure your business is protected.

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* The Rack'N Stack Warehouse (ADMIN) Pty Ltd v The Rack'N Stack Warehouse SEQLD Pty Ltd [2014] ATMO 122