

BRAND SPANKING

JMC Academy of Music

John Kenny
Kenny & Co, Solicitors
john@entrelaw.com



Hells Angels v Mambo

The former owner of clothing maker Mambo has been forced to apologise to the Hells Angels over two trademark breaches.

The case, which started in the Federal Magistrates Court late last year, centred on a children's hooded sweatshirt in black and pink bearing a design with the words "Heavens Angels" and a skull with wings, as well as a sugar pink mini-skirt.

As part of a confidential settlement in favour of the motorcycle club, Michael Gazal, managing director of Gazal Corp, wrote an apology for making and selling the garments.

"Gazal would like to publicly acknowledge the Hells Angels' intellectual property rights in its trademarks and artistic works, and the considerable reputation it has in those trademarks and artistic works, a reputation which stems from a long history of use both in Australia and internationally," the apology, published on the internet, says.

"In selling and manufacturing the disputed clothing items, Gazal did not intend to infringe the Hells Angels' intellectual property rights or diminish its reputation, and expresses regret for any offence taken by the Hells Angels as a result of that conduct."



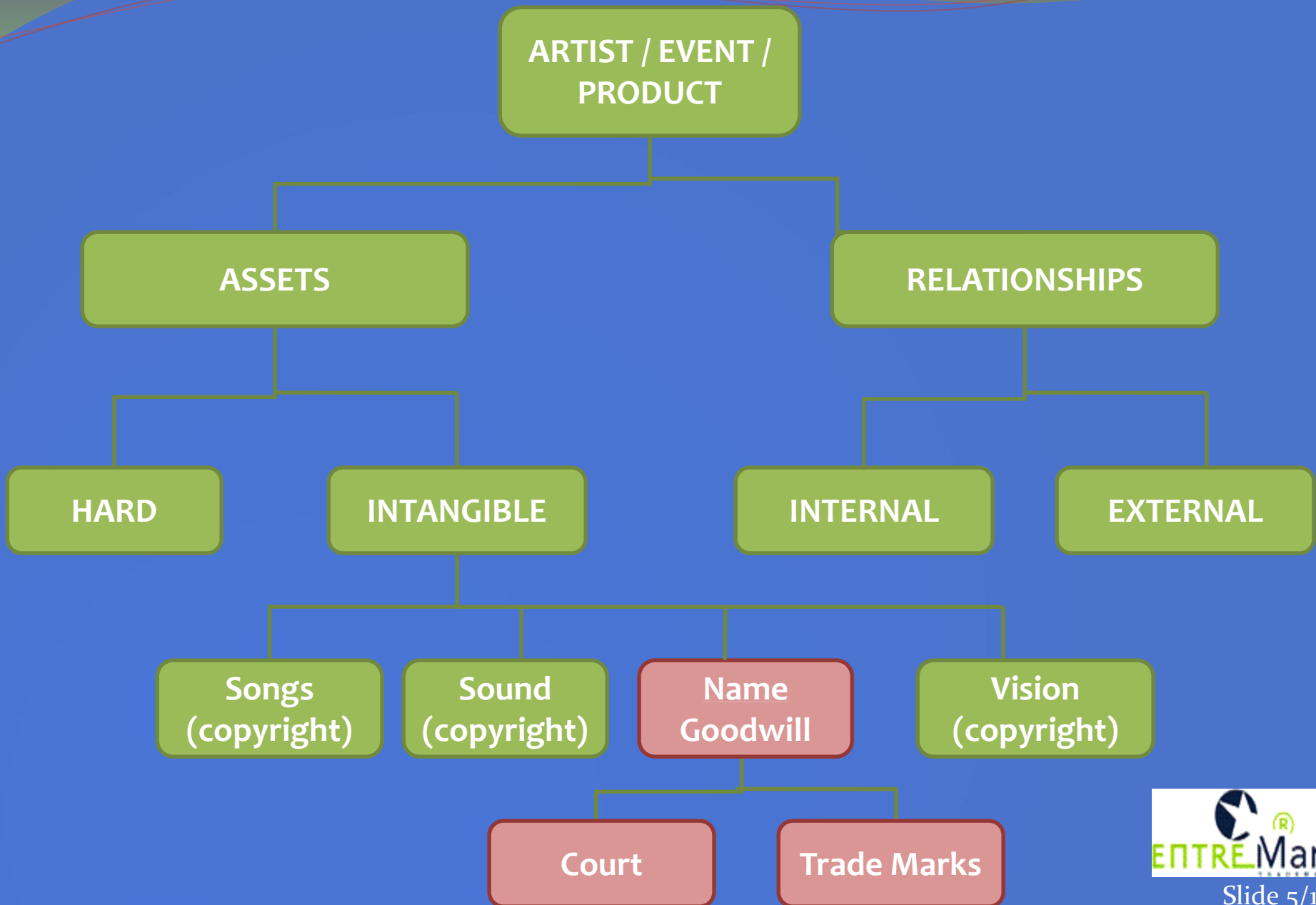
Artists in the Aria Top 20 Singles and Albums (Major)

Artists without Trade Marks		Artists with Trade Marks
Vanessa Amarasie	Art vs Science	Jet
Guy Sebastian	Bag Raiders	BlueJuice
Kate Miller - Heidke	Jimmy Barnes	Hilltop Hoods
Jessica Mauboy	John Farnham	Eskimo Joe
Lisa Mitchell	Adam Harvey	Wolfmother
MKF	Damien Leith	Empire of the Sun
Wes Carr	Sarah Blasko	Grinspoon
The McClymonts	Mark Vincent	
Cassie Davis	Confession	

Artists in the Air Charts Top 20 (Independent)

Artists without Trade Marks		Artists with Trade Marks
Confession	The Kill Devil Hills	British India
Sia	Birds of Tokyo	The John Butler Trio
Geoffrey Gurrumul Yunupingu	Thundamentals	
Philadelphia Grand Jury	Decoder Ring	
Adam Brand	Dappled Cities	
Bertie Blackman	Illy	
Urthboy	Ash Grunwald	
Horrorshow		
Oh Mercy		

Musician's Assets



TRADEMARKS

- What do you register?
- Why bother?
- How do you apply?
- By whom?

WHAT TO REGISTER

- Names & Symbols/Colours
- Artist – domain names
- Event Names
- Product Names
 - Albums
 - Services
 - Merchandise
- Song Titles?

Branding – Trade marking – legal terms of merchandising

QUALITIES OF REGISTRATION

Not

- Laudatory
- Geographical
- Descriptive

First To

- Use
 - Register
- In particular class

Rock 'n' Roll
names generally
unique

WHY BOTHER

BENEFITS	RISKS
<ul style="list-style-type: none">• Own name + goodwill = monopoly; indefinitely!	<ul style="list-style-type: none">• Complicated protection and ownership
<ul style="list-style-type: none">• Simpler, cheaper remedies + damages	
<ul style="list-style-type: none">• Control Domain Name	<ul style="list-style-type: none">• Alternative protection of goodwill by the Court is:<ul style="list-style-type: none">○ Expensive○ Unpredictable○ Risky
<ul style="list-style-type: none">• Create an “negotiable intellectual an asset”	<ul style="list-style-type: none">• Delltones / Redcliffe Dolphins
<ul style="list-style-type: none">• Formulate relationship with stakeholders<ul style="list-style-type: none">○ Band members○ Audience / Customers○ Record company○ Publishing company	

HOW TO TRADEMARK

Classes

Class 9 - audio, video, downloadable music files, computer games

Class 16 - books, music magazines, posters and sheet music

Class 25 - T-shirts, clothing, footwear and headgear

Class 38 - delivery of digital music by telecommunications

Class 41 - entertainment, films, live entertainment, concerts and music production.

Cost

Process

Locally

Internationally

CLASSES

Example: John Butler Trio Registration

Trade Mark : 913898

Word: John Butler Trio

Lodgement Date: 23-MAY-2002

Registered From: 23-MAY-2002

Owner/s: John Wiltshire-Butler c/- Phil Stevens Jarrah Records, PO Box 1609, FREMANTLE WA 6959
AUST

Address for Service: Kenny & Co Solicitors GPO Box 2811, BRISBANE QLD 4001 , AUST

Goods & Services

Class: 41 Entertainer and entertainment services in this class including entertainment information; presentation of live performances; music composition services; production of shows; video tape film production; production of radio and television programs; radio entertainment; recording studio services; rental of sound recordings; television entertainment; publication of text; video taping

John Butler Trio Registration

Trade Mark : 1089588

Word: JOHN BUTLER TRIO

Lodgement Date: 08-DEC-2005

Registered From: 08-DEC-2005

Owner/s: John Wiltshire-Butler C/- Phil Stevens Jarrah Records, PO Box 1609, FREMANTLE WA 6959 AUST.

Address for Service: Kenny & Co Solicitors GPO Box 2811, BRISBANE QLD 4001, AUST

Goods & Services

Class 9: Apparatus for recording, transmission or reproduction of sound or images including musical sound recordings, audiovisual recordings and downloadable audiovisual recordings in the fields of entertainment and music, compact discs, pre-recorded audio tapes, pre-recorded digital audio and audiovisual tapes, phonograph records featuring music, pre-recorded video tapes, pre-recorded video discs and digital video discs (DVDs); MP3's; computer games; computer software; magnetic data carriers; publications in electronic form; digital music (downloadable)

Class 16: Paper goods; printed matter; stationery; instructional and teaching material; photographs; flyers; circulars; printed hand-outs; touring books; song books; sheet music books; picture books; paper banners; notebooks; lithographs; posters; stickers; calendars; fan club newsletters

Class 25: Clothing, footwear and headgear

Trade Mark Process - Local

- Application lodged
- Examination stage
 - Headstart – five (5) business days
 - Standard – four (4) months
- Opposition period
 - Three (3) months – third parties (registered or unregistered rights) can oppose the registration of Application
- Registration of Trade Mark
 - Trade Mark registration is indefinite with payment of a renewal fees every ten (10) years
- Trade Mark Process - International

International Applications

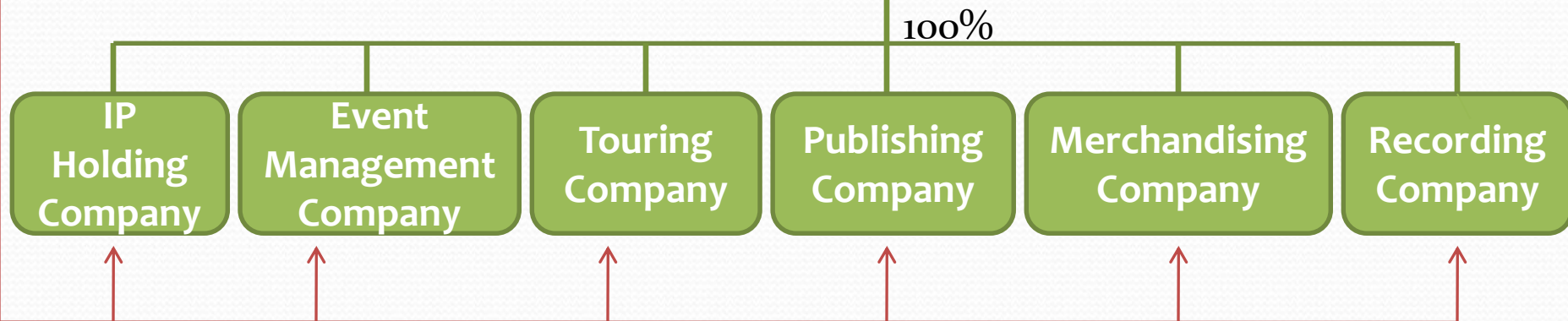
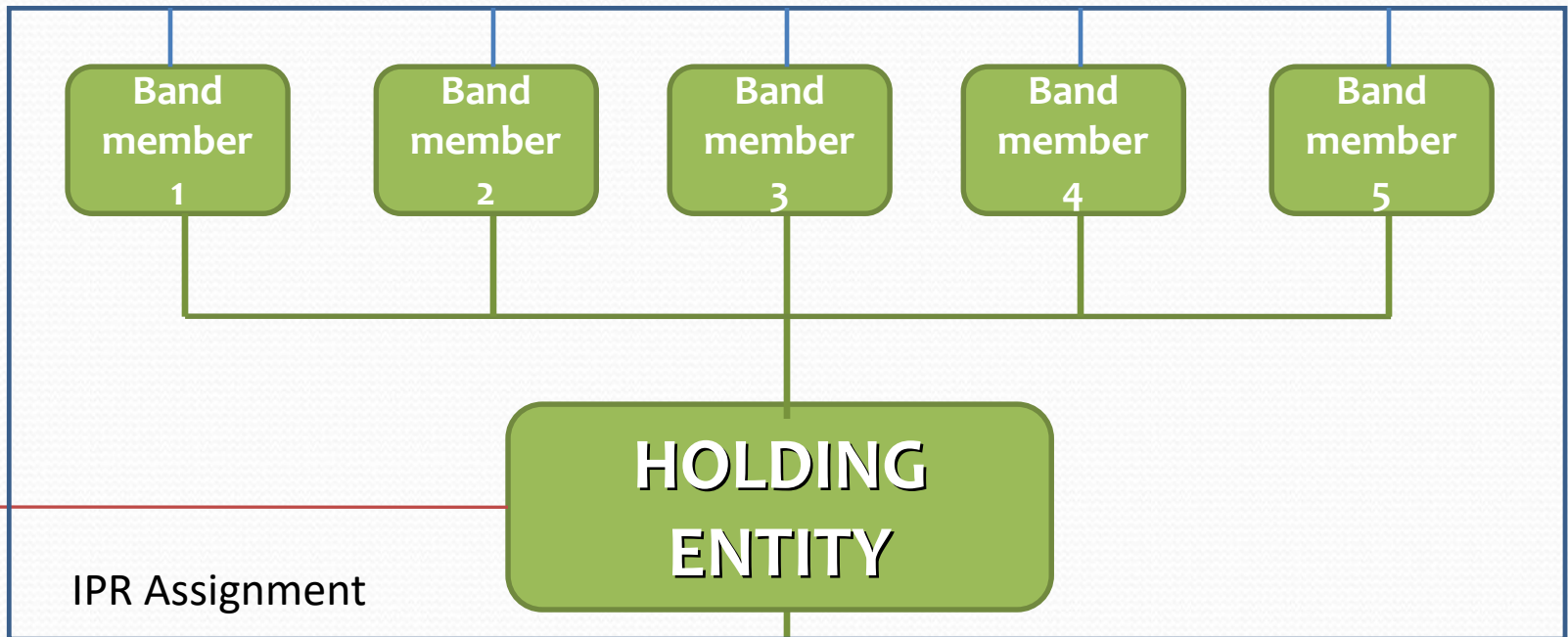
- Convention priority
 - Six months from initial filing date in Australia to lodge overseas – overseas protection will be backdated to Australia application date
- Madrid Protocol
 - An international application which can be lodged through IP Australia in countries party to Agreement, including UK, EC and US
- National filings
 - When country not party to Madrid local agent must be engaged for that country to act on your behalf
- Process
 - Follows same basic process as in Australia – some have shorter advertising periods and stricter requirements (e.g. United States claimed goods and services must be narrow and specific)

Trade Mark Official Costs - Local

- Economical
- Based on number of classes
- Govt Fee = \$330.00 per class

HOW DOES THE ARTIST HOLD INTELLECTUAL PROPERTY

Band Agreement



IPR License

CONCLUSION

- Considered Strategic approach
- Careful attention to image/name
- Careful Placement in Corporate Structure
 - lawyer and accountant
- Apply locally and internationally in likely territories
- Enforce against Infringement
- Critical Component of Independent merchandising / Major label