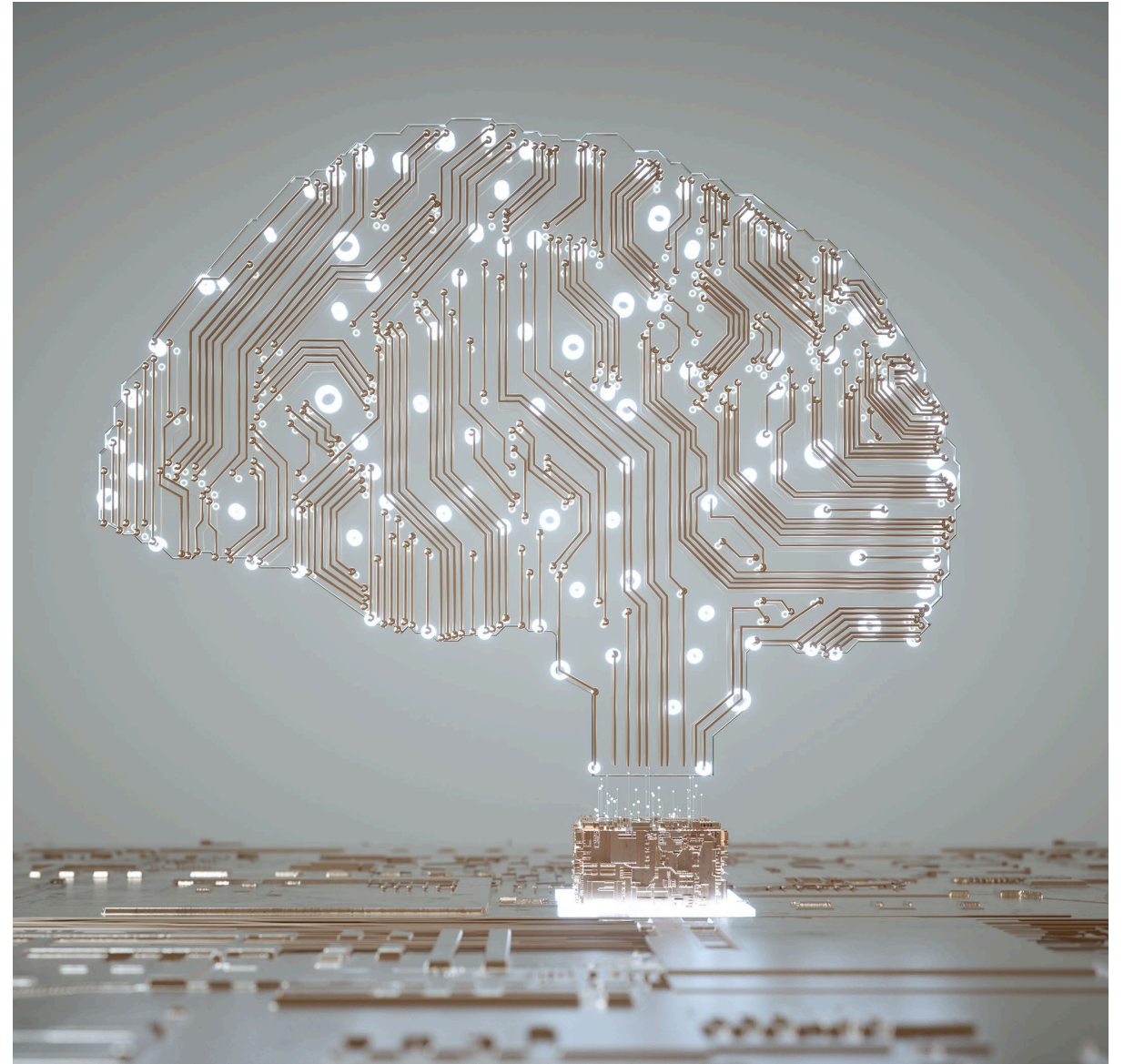


ChatGPT for Lawyers

Leveraging your practice with AI

Kate Ritchie, Principal Lawyer & Trade Marks Attorney





Acknowledgment of Country

Ethikate acknowledges Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures and to Elders past and present.





What's covered...

- What is ChatGPT?
- Why use it?
- Uses in legal
- What are the risks in legal?
- How do you mitigate the risks?
- Questions?



ChatGPT: What is it?

- Introduced by OpenAI on 30 Nov 2022, ChatGPT is a form of:
 - Generative artificial intelligence (AI) – generates ‘new’ content.
 - Large language model (LLM) – a type of generative AI that is trained on large amounts of text data using deep learning techniques that closely resembles human writing and their capacity to understand content and nuance in language.
- ChatGPT can generate anything from a poem, to a letter or song or source code. If it’s text-based, it can create it and it will sound compelling...even if its wrong!
- As of March 2024: approx 180.5 million users; 1.6 billion visits in January 2024; and 100 million weekly users.
- ChatGPT-3.5 – free version, current at September 2021/early 2022.
- ChatGPT-4 – paid version, current to April 2023 - though there is now an internet search function using Web Browser that can be used for Plus and Enterprise subscribers.





ChatGPT: Why use it?

- Improve efficiency and time
- Reduce costs
- Accessibility of information
- Risk and compliance management*
- Reduction in human error
- Remain competitive
 - It's happening and it's not going to go away!
 - Opportunity to innovate and be client-centred.



ChatGPT: Uses in legal

- Legal research and case analysis
 - Tracking changes in law
 - Analysing references and citations
 - Searching and analysing case law
 - Screening for new legal research matters
- Drafting and reviewing a range of documents including memos, contracts, letters, emails, policies, checklists, guidelines, pleadings
- Classification of data
- Translations
- Even in the courtroom...will AI replace judges?
- Non-legal – BD, marketing, admin tasks





ChatGPT: Risks in legal

- Inaccuracies in data
 - Finite information as at April 2023 for ChatGPT-4, September 2021 for ChatGPT-3.5 – although Plus and Enterprise users can browse the internet and Microsoft users can use Bing CoPilot.
 - Example: Counsellor Hood, Mayor of Hepburn Shire Council.
- Bias
 - Relies on data that it has been trained on.
 - Inherent bias or favours more popular content?
 - Lack of transparency.
- Hallucinations
 - Mata v Avianca



ChatGPT: Risks in legal cont.

- Confidentiality and client privilege
 - Risk of using open software
 - Data security – ChatGPT data breach 20 March 2023
 - Retention and use of chat history for training
- Copyright infringement
 - Inputting an existing works to train ChatGPT
 - The output from ChatGPT
 - Numerous cases against OpenAI in the US and UK
- Other IP issues
 - Patent, trade mark and design infringement
 - Misleading or deceptive conduct, misrepresentation, passing off



ChatGPT: Mitigating the risks

- Understand what you are using
- Independent checks and balances
- Supervision, training and education for staff
- Client Costs Agreements – provision for and against use of AI



ChatGPT: Mitigating the risks cont.

- Privacy and data security policies and measures in place to ensure compliance and prevent data breaches
- Consider using: ChatGPT Enterprise – SOC 2 compliant, higher level of security for legal data or better yet, a custom AI model with assistance from legal tech specialists
- Implement a set of ethical AI and data principles that include being transparent and open in your use and implementation of ChatGPT and other AI models





Australia's AI Ethics Principles

- **Human, societal and environmental wellbeing:** AI systems should benefit individuals, society and the environment.
- **Human-centred values:** AI systems should respect human rights, diversity, and the autonomy of individuals.
- **Fairness:** AI systems should be inclusive and accessible, and should not involve or result in unfair discrimination against individuals, communities or groups.
- **Privacy protection and security:** AI systems should respect and uphold privacy rights and data protection, and ensure the security of data.
- **Reliability and safety:** AI systems should reliably operate in accordance with their intended purpose.
- **Transparency and explainability:** There should be transparency and responsible disclosure so people can understand when they are being significantly impacted by AI, and can find out when an AI system is engaging with them.
- **Contestability:** When an AI system significantly impacts a person, community, group or environment, there should be a timely process to allow people to challenge the use or outcomes of the AI system.
- **Accountability:** People responsible for the different phases of the AI system lifecycle should be identifiable and accountable for the outcomes of the AI systems, and human oversight of AI systems should be enabled.

Source: [Australia's AI Ethics Principles | Australia's Artificial Intelligence Ethics Framework | Department of Industry Science and Resources](#)



Examples

KR You

create a list of the top 10 landmark cases in Australian trade mark law

ChatGPT

Creating a list of the top 10 landmark cases in Australian trademark law involves identifying legal disputes that have significantly impacted the interpretation, enforcement, and development of trademark law in Australia. These cases often set precedents in how trademarks are registered, protected, and litigated within the Australian legal system. Here's a list of some landmark cases that have played pivotal roles in shaping Australian trademark law:

1. **Shell Co. of Australia Ltd v Esso Standard Oil (Australia) Ltd (1963) 109 CLR 407** - This case is foundational in Australian trademark law for understanding the concept of distinctiveness in trademarks and the likelihood of confusion or deception among the consuming public.
2. **Coca-Cola Company v All-Fect Distributors Ltd (1999) 96 FCR 107** - This case dealt with the issue of parallel imports and the exhaustion of trademark rights, clarifying the extent to which trademark owners can control the importation and resale of genuine goods bearing their marks.
3. **Campomar Sociedad, Limitada v Nike International Ltd (2000) 202 CLR 45** - A significant case in the High Court of Australia that examined the scope of protection offered to well-known trademarks and the concept of dilution.
4. **Kenman Kandy Australia Pty Ltd v Registrar of Trade Marks (2002) 122 FCR 494** - This case is important for understanding the requirements for trademark registration, particularly the concept of distinctiveness and the use of descriptive terms.
5. **Woolworths Ltd v BP plc (2006) 154 FCR 97** - Known for addressing the issue of trademark similarity and the likelihood of confusion, including the importance of considering the visual, phonetic, and conceptual similarities between trademarks.
6. **Budějovický Budvar, národní podnik v Anheuser-Busch, Inc (2002) 56 IPR 182** - This case involved a dispute between two companies over the right to use the trademark "Budweiser" and

dealt with issues of international trademark protection and prior use.

7. **Google Inc v Australian Competition and Consumer Commission (2013) 249 CLR 435** - A landmark case in which the High Court ruled on the liability of search engines for misleading or deceptive conduct in sponsored links and advertisements.
8. **Accor Australia & New Zealand Hospitality Pty Ltd v Liv Pty Ltd (2017) 125 IPR 1** - This case clarified the application of the "good faith" use requirement in trademark law, particularly in relation to the use of a trademark in the course of trade.
9. **Pham Global Pty Ltd v Insight Clinical Imaging Pty Ltd (2017) 253 FCR 561** - This case is notable for its discussion on the ownership of a trademark at the time of application and the implications for registration and enforcement.
10. **Trident Seafoods Corporation v Trident Foods Pty Ltd (2019) 372 ALR 478** - A recent case that highlights the issues surrounding non-use of trademarks and the requirements for maintaining trademark registrations over time.

These cases collectively cover a broad spectrum of trademark law, including registration, protection, infringement, and the intersection of trademark rights with other legal principles. They have been selected for their impact and the precedent they set in interpreting and applying trademark law in Australia.

Only 6 out of 10 correctly cited!



Examples

KR You

Draft an email to a client notifying them that their Australian trade mark application has been examined and, as expected it has received a formal objection on grounds of descriptiveness. Give them their options to overcome the objection noting that the recommendation as previously discussed is to make legal submissions with supporting evidence in response.

ChatGPT

Subject: Update on Your Australian Trade Mark Application: Action Required

Dear [Client's Name],

I hope this message finds you well. I am writing to provide you with an important update regarding your Australian trade mark application.

As part of the examination process, the Australian Trade Marks Office has completed its review of your application. As anticipated, we have received a formal objection on the grounds that the mark is considered to be descriptive. This is a common challenge in the trade mark registration process, especially for marks that closely describe the goods or services they are associated with.

Please rest assured, this does not mark the end of our journey. There are several avenues we can explore to overcome this objection and continue forward with your application. Our recommended course of action, as previously discussed, involves making robust legal submissions to the Trade Marks Office. This approach will allow us to present a strong case for why your mark should be considered distinctive, thereby overcoming the descriptiveness objection.

To strengthen our submissions, we will need to gather and present supporting evidence. This evidence could include information on how your mark has been used in the market, any distinctiveness it has acquired through use, and any other factors that contribute to its recognition as a brand by your target audience.

Our options include:

1. **Legal Submissions with Supporting Evidence:** As recommended, we draft and submit a comprehensive response to the objection, incorporating evidence of use, distinctiveness, and any other relevant factors that support our argument for registration.
2. **Amendment of the Application:** Another option could involve amending the application, such as by narrowing the scope of goods or services covered, to sidestep the objection. This approach might be considered if it aligns with your business objectives.
3. **Pre-Registration Declaration of Use:** In some cases, submitting evidence of use of the mark in commerce prior to registration can help in demonstrating its distinctiveness.

We believe that the first option—making legal submissions with supporting evidence—is the most viable and strategic approach to addressing the objection raised. This path aligns with our initial discussions and strategy for securing your trade mark registration in Australia.

Your input and cooperation will be crucial as we prepare our response. We may reach out to you shortly to discuss the specifics of the evidence we plan to gather and to outline the next steps in more detail.



Examples



You

Put together a checklist for a wholesale agreement in Australia.



ChatGPT

1. **Parties involved:** Clearly state the names and details of the wholesaler and the buyer.
2. **Agreement details:** Include the date of the agreement, its duration, and any renewal terms.
3. **Products or services:** Specify the goods or services being supplied, including detailed descriptions, quantities, and specifications.
4. **Pricing and payment terms:** Outline the pricing structure, payment terms, and any applicable taxes or fees. Be clear about currency and payment methods.
5. **Delivery terms:** Define shipping terms, responsibilities, and costs. Include information on delivery times, locations, and any penalties for delays.
6. **Quality standards:** Specify the quality standards that the products must meet, including any testing procedures or certifications required.
7. **Returns and warranties:** Clearly outline the process for handling returns, defective products, and any warranties provided.
8. **Intellectual property rights:** Clarify ownership of any intellectual property related to the products and address any licensing or usage rights.
9. **Confidentiality:** Include provisions regarding the confidentiality of business information shared during the course of the agreement.
10. **Minimum order requirements:** If applicable, state any minimum order quantities or values that the buyer must meet.
11. **Termination clauses:** Define conditions under which either party can terminate the agreement, including any notice periods and consequences.
12. **Dispute resolution:** Outline a process for resolving disputes, whether through negotiation, mediation, or legal action.



13. **Force majeure:** Include provisions for unforeseen circumstances, such as natural disasters or political events, that may affect the fulfillment of the agreement.
14. **Compliance with laws:** Ensure that both parties agree to comply with all relevant laws and regulations governing the sale and distribution of the products.
15. **Insurance:** Specify any insurance requirements, such as liability or product liability insurance, and who is responsible for obtaining and maintaining coverage.
16. **Governing law:** Indicate the jurisdiction and governing law that will apply in case of any legal disputes.
17. **Amendments:** Include a clause outlining how and when the agreement can be amended, and the process for obtaining mutual consent.
18. **Notices:** Provide details on how official notices should be delivered and received by both parties.

It's advisable to seek legal advice to ensure that the wholesale agreement complies with Australian laws and meets the specific needs of the parties involved.





Examples

KR You
Prepare a checklist of top 10 legals required for a start up ecommerce business?

KR You
Make the list Australian

KR You
Put the checklist into a table

Legal Requirement	Description
Business Structure	Choose a legal structure for your business (e.g., sole trader, partnership, company) and register with the ABR.
Australian Business Number (ABN)	Obtain an ABN for tax and business dealings.
Business Name	Register your business name with ASIC, ensuring it's unique and doesn't infringe on trademarks.
Business Licenses and Permits	Determine and obtain any necessary licenses or permits for your specific business activities.
Privacy and Data Protection	Comply with the Privacy Act 1988 (Cth) by having a privacy policy and handling customer data appropriately.
Taxation	Register for the Goods and Services Tax (GST) if applicable and understand Australian tax requirements.
Contracts and Terms	Draft and implement clear terms and conditions, return and refund policies, and vendor agreements.
Intellectual Property	Protect your brand with trademarks and ensure your website content respects copyright laws.
Payment Processing	Set up secure and compliant payment processing methods following PCI DSS requirements.
Product Compliance	Ensure your products meet Australian safety standards and regulations, particularly for controlled items.

Please note that this is a simplified checklist, and you should consult with legal professionals to ensure complete compliance with Australian laws and regulations for your specific e-commerce business.





Examples

KR You

Prepare a list of the top 10 hashtags for commercial law

ChatGPT

Certainly! Here are ten hashtags relevant to commercial law:

1. #CommercialLaw
2. #BusinessLaw
3. #CorporateLaw
4. #LegalAdvice
5. #ContractLaw
6. #CorporateGovernance
7. #MergersAndAcquisitions
8. #IntellectualPropertyLaw
9. #Litigation
10. #LegalCompliance

These hashtags cover a range of topics and areas within commercial law and can help increase the visibility of posts related to this field on social media platforms like Twitter, LinkedIn, and Instagram.



Conclusion

1. ChatGPT is a powerful tool that can assist in various legal and admin tasks.
2. As solicitors, it is important to be mindful of your ethical and legal obligations when using ChatGPT.
3. There is a real risk of inaccuracies, bias, hallucinations and copyright infringement.
4. Treat it like a tool (or a very junior law clerk) and apply your own review and edits to the outputs.
5. AI won't replace lawyers but lawyers who use AI will replace those who don't.





Questions?

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ChatGPT and Generative AI Systems

Please note these are not recommendations, simply resources for you to consider.

- ChatGPT: <https://openai.com> (also available as an app for IOS and Android devices). Not specifically for law. See Enterprise Model for greater security - <https://openai.com/chatgpt/enterprise>
- CoCounsel Core by Thomson Reuters: https://www.thomsonreuters.com.au/en-au/c/artificial-intelligence.html?cid=3987417&chl=eb&utm_source=insight&utm_medium=banner&utm_campaign=TR-AI:%20AU:%20Legal%20AEM:%20DEM
- Lexis+ AI by LexisNexis: <https://www.lexisnexis.com.au/en/products-and-services/lexis-plus>



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Potential Australian defamation case (did not proceed):

- Australian politician sues ChatGPT for defamation in landmark case (5 April 2023), Forbes Australia, by Anastasia Santoreneos available online at: <https://www.forbes.com.au/news/innovation/australian-politician-sues-chatgpt-defamation-landmark-case/>
- Hepburn mayor may sue for OpenAI for defamation over false ChatGPT claims (6 April 2023), ABC Ballarat, Laura Mayers, Stephen Martin and Debbie Rynicki. Available online at: <https://www.abc.net.au/news/2023-04-06/hepburn-mayor-flags-legal-action-over-false-chatgpt-claims/102195610>
- Australian mayor abandons world-first ChatGPT lawsuit 12 February 2024 The Sydney Morning Herald By David Swan, available online at: <https://www.smh.com.au/technology/australian-mayor-abandons-world-first-chatgpt-lawsuit-20240209-p5f3nf.html>



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