

PRESENTED BY
K&L GATESDrawing
*parallels*K&L Gates' Simon Casinader
and Olivia Coburn report on new
changes to parallel import laws.

MANY INTERNATIONAL FASHION brands have long experienced issues with the importation of genuine goods into Australia through unauthorised channels. Upcoming changes to the Trade Marks Act will make it easier for third parties to import genuine products. This article explores the issue of parallel importation and what you can do to ensure your business is prepared. So what is parallel importation?

"Parallel importation" occurs where genuine goods, marked with a registered trade mark with the authorisation of the trade mark owner outside Australia, are purchased by a third party – the "parallel importer" – who imports and sells them in Australia. Clothing and fashion accessories sold via social media is a common form of parallel importation.

What is the problem?

The price and quality of goods across jurisdictions can vary depending on the marketing strategy of an international brand. Brands often make changes to products to meet local standards and consumer ex-

pectations in different countries as well as to meet different regulatory requirements. In fashion, garments are usually released in the Northern Hemisphere one season before the Southern Hemisphere so parallel importers are well placed to purchase stock at the end of the season in the Northern Hemisphere at discounted prices and compete with distributors in the Southern Hemisphere that are selling the same stock.

A common problem faced by Australian fashion distributors is that they invest heavily in marketing and promotional activity for the relevant brand. Once marketing, regulatory, wages and other costs are incurred the price of the goods is not as competitive as those goods that are purchased overseas and then sold in Australia by third parties. Parallel importers are able to leverage the brand's reputation in Australia without incurring the associated marketing costs. As a result the parallel importer is well placed to compete with the local distributor on price.

Further, local distributors are often forced to field enquiries and complaints from disgruntled customers who have

purchased parallel imported goods, which they often do simply to avoid any reputational damage.

What is the current position?

In Australia, trade mark owners have been able to strategically use trade mark law to prevent parallel imports, by assigning registered Australian trade marks to local licensees, distributors or subsidiaries. This has allowed the Australian distributors to effectively control the price, marketing and sales channels of the products in Australia.

What is changing?

The proposed amendments to the Trade Marks Act will prevent trade mark owners from being able to use trade mark law to stop parallel importation.

The flow on effect is that fashion goods can be purchased overseas and sold within the Australian market by third parties outside authorised distribution channels agreed between the international brand and Australian distributor. The result is that in the near future local distributors will need to compete with the importation of genuine products by third parties.

What can you do to be prepared?

Although the legislation is still being finalised by parliament, local distributors of international brands are encouraged to be proactive and revisit supply and distribution contracts now to ensure the interests of both the international brand and local distributor are sufficiently protected.

Brands may also look to their distribution contracts to restrain the re-sale of their products thereby assisting to stop products being available for parallel importation.

In addition to considerations of price and quality, local distributors should also ask questions about who will be responsible for compliance with warranties and Australian Consumer Law where complaints are brought by consumers who purchased parallel imported products. Exclusive distributors, in particular, should consider whether it is possible to renegotiate terms to ensure they are able to compete with parallel imports in the international market. ■

For more information please contact Simon Casinader at K&L Gates (Simon.Casinader@klgates.com) or Olivia Coburn (Olivia.Coburn@klgates.com). This article is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.