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Happy New Year. This newsletter deals with developments in both property and intellectual property law and contains a timely reminder of the importance of identifying the correct legal entity.

PROPERTY

As a result of the passing of the *Property Stock & Business Agents Act 2002*, which will commence as soon as the regulation contemplated by the Act has been prepared and gazetted, there are some new and important changes in the law relating to agents, in respect of residential and rural agency agreements. These are set out below:

(a) *New cooling-off period in relation to agency agreements*

- There is to be a cooling-off period for every agency agreement in respect of the sale of residential property or rural land. This commences when the agency agreement is signed, and ends at 5.00 p.m. on the next business day or Saturday.
- This cooling-off period can be waived if there is informed consent of the principal.
- The agency agreement can be rescinded during the cooling-off period provided certain procedures are followed.
- The agent must refund to the client any money paid to the agent under a rescinded agency agreement.

(b) *Rescission of contracts for sale*

In the event of rescission of a contract for sale or an option for the purchase of

residential property, a procedure is set out for the refund of deposits held by agents.

(c) *Auction sales for residential property or rural land*

- The conditions of sale must include a notification of the right of the seller, or any person acting on behalf of the seller or auctioneer, to make one bid (*and only one bid*).
- The auctioneer is obliged as soon as such a bid is taken to clearly state that the bid is a bid on behalf of the seller or the auctioneer.
- Bids may only be taken from a registered bidder. There is a procedure for registration of bidders prior to the auction.
- The agent is also obliged to make a record (the Bidders Record) of the persons entitled to bid at the auction and to establish the identity of the registered bidders.

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INTELLECTUAL PROPERTY

Domain Name Registration in Australia

On 1 July 2002, .au Domain Administration Ltd (**auDA**) introduced a new domain name regime, which includes changes to policies governing the licensing of .au domain names.

If you are thinking about registering a .com.au or .net.au domain name for your business, you should be aware of the following registration policies:

- Your business is only eligible to register for a .com.au or .net.au domain name if it is:
 1. an Australian registered company;
 2. trading under a registered business name in any Australian State or Territory;
 3. an Australian partnership or sole trader;
 4. a foreign company licensed to trade in Australia;
 5. an owner of an Australian Registered Trade Mark;
 6. an applicant for an Australian Registered Trade Mark;
 7. an association incorporated in any Australian State or Territory; or
 8. an Australian commercial statutory body.
- The domain name that you are seeking to register for your business must:
 1. be an *exact match* or be an *acronym* or *abbreviation* of your company business, trading, association or statutory body name;
 2. be an *exact match* or be an *acronym* or *abbreviation* of the words comprising the registrant's Australian Registered Trade Mark or application for an Australian Registered Trade Mark; or

3. be *closely and substantially connected* to your business, in that the domain name refers to:

- (a) a product that your business manufactures or sells;
 - (b) a service that your business provides;
 - (c) an event that your business organises or sponsors;
 - (d) an activity that your business facilitates, teaches or trains;
 - (e) a venue that your business operates; or
 - (f) a profession that your employees practise.
- Your business may register any number of .com.au or .net.au domain names, provided your business and the domain name you seek to register satisfy all the registration eligibility criteria.

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COMMERCIAL

Failure to properly identify the correct legal entity

It is important to identify the legal entity you are dealing with. Unnecessary, and often expensive, legal problems arise from confusion over the identity of the parties involved in a commercial transaction.

In *Electroboard Administration Pty Ltd v O'Brien*¹ the Electroboard group of companies comprised four separate companies. Mrs O'Brien was employed by Electroboard Pty Limited (**Electroboard**),

¹ [1999] NSWCA 452 (10 December 1999)

however all the administrative details pertaining to her employment were dealt with by Electroboard Administration Pty Limited (**Electroboard Administration**). After some time Ms O'Brien was asked to sign a restraint of trade agreement with Electroboard Administration. She initially refused to do so, but eventually succumbed to significant pressure and signed the agreement. Ms O'Brien then left Electroboard and went to work for Sony.

Electroboard and Electroboard Administration brought an action against Mrs O'Brien and Sony in order to enforce the covenant in restraint of trade. The NSW Court of Appeal held that there had been no breach of contract, as Ms O'Brien had signed a document that had been printed on letterhead signifying an agreement with Electroboard Administration, who carried on the business of engaging personnel. Mrs O'Brien was actually employed by Electroboard, who carried on the business of

electrical sales and distribution. In moving to Sony therefore, Mrs O'Brien committed no breach of contract with Electroboard Administration.

If you are dealing with a company, you can identify the correct current name of the company, its ACN (and if its ACN is contained in its ABN, its ABN as well) by visiting the ASIC website, www.asic.gov.au, clicking *Searching and Lodging* and then clicking *National Names Index*.

If you are writing a letter on "group" letterhead, you should sign the letter above your printed name, position, the relevant company and its ACN.

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