Directors may be held personally liable for infringement of trade marks or copyright

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Where a company has infringed a trade mark or copyright, both the company and the director(s) of that company in their personal capacity are at risk of being held liable for the breach. This liability arises under tort (the legal term for a civil wrong or wrongful act) where a director may be held jointly liable for the copyright or trade mark infringement.

In determining whether a director will be held personally liable, the court will consider the following principles which were established in the Federal Court case of *Keller v LED Technologies Pty Ltd* (2010) 185 FCR 449:

- Did the director have the necessary knowledge of the breach being committed by the company?
- Did the director use the company as an instrument of his/her own breach?
- Did the director make the tort their own?
- Did the director have a close personal involvement in the infringing act(s)?

In this situation, the owner of the intellectual property may be able to make a claim against the company as well as the director(s) in their personal capacity.

The commercial and contract lawyers at Matthews Folbigg Lawyers in Parramatta can provide legal information on commercial issues including director liability, trade mark and copyright infringement and business disputes. Call us today on 9635 7966.

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