

3 August 2018

Lynn Bloomfield
Department of Industry, Innovation and Science
GPO Box 2013
Canberra ACT 2601

By email: IP.consultation@industry.gov.au



Dear Ms Bloomfield

CONSULTATION – HOW DO YOU COMMERCIALISE YOUR BUSINESS IDEAS?

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) supports the objective of the consultation – to gain a better understanding of small business issues in order to simplify creation and protection of intellectual property rights. Small businesses require access to affordable capital to commercialise their intellectual property together with rapid and affordable dispute resolution to protect these rights.

The inquiry into *Affordable Capital for SME Growth* (the Inquiry) completed by this office on 29 June 2018 found that small businesses require access to funding sources that are reasonably priced and also committed to long term funding. Access to capital is an essential element to allow businesses to create and utilise their innovations. Affordable capital sources must also allow for unsecured loans or loans secured by assets apart from traditional real property such as the family home. In the case of intellectual property rights, there is scope for alternative security in these rights.

Furthermore, the Inquiry found that small businesses require support so they are 'finance ready' at the point of their loan application. This includes assistance preparing a business case and financial records together with ensuring their intellectual property rights have legal protections. Once commercialised, the small businesses require access to capital for ongoing protection of their rights in cases of breach.

ASBFEO, through its mediator role, has managed 16 requests involving intellectual property disputes between January 2017 and June 2018. Common themes from these cases are the lack of access to rapid and non-legalistic dispute resolution processes, and the adverse impacts of legal costs on enforcement of small business intellectual property rights. In most cases, the small businesses had no option but to retain lawyers. Many of them reported some level of financial or emotional stress associated with the intellectual property dispute.

In particular, trademark cases were mostly disputes with larger businesses and their associated pressures on small business to relinquish registered business names, Google AdWords and domain names. In one particular case, a large business sought to secure intellectual property from a small business by leveraging the time and costs of legal proceedings, rather than making an offer to purchase the intellectual property from the small business. In three cases, the dispute was resolved following a 'cease and desist letter' sent by my office.

The costs associated with legal proceedings and the time and stress of long disputes are burdensome to small business. They can create unintended results where a small business does not protect intellectual property rights. Changes are needed to require rapid and affordable dispute resolution to enable small businesses to protect their intellectual property rights.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Jill Lawrence on 02 6263 1558 or at jill.lawrence@asbfeo.gov.au.

Yours sincerely,

A handwritten signature in blue ink that reads "Kate Carnell". The signature is written in a cursive, flowing style.

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman