Using Symbols in Art – Flags, Coats of Arms and Money

Symbols in art, such as trade marks, official coats of arms, money or flags can be used as powerful tools to convey meaning. But there can be specific areas of law that restrict use of certain symbols in art.

Things to think about – misleading and deceptive conduct

The Australian Consumer Law prohibits people from engaging in conduct in trade or commerce that is misleading or deceptive. Using symbols can fall into this category if they are used in business or professional activities in a way that gives a misleading impression.

The use of an official symbol (such as a coat of arms or a flag) may be misleading and suggest that there is official approval or endorsement. For example, if the Commonwealth coat of arms is used on a document, readers may think that it is an official government document. Artists should consider the circumstances in which they are using symbols and flags – have you created an impression that is not true?

Can I use trade marks in my art?

Trade mark law protects the symbols that are used by businesses to show that products or services are theirs. Trade marks include things like brand symbols, logos or brand names, or can even be a colour or a sound that is associated with a particular brand. Businesses can register their brand names or logos to get protection against other people using them.

Infringement happens when the trade mark, or something too similar to it, is also used “as a trade mark”. Often, using a trade mark in your art or writing will not be trade mark infringement because you will not have used it “as a trade mark”. Use “as a trade mark” means that you have used the mark as a brand, or to show a business connection between the goods or services and the person using the mark. This means that generally, if you include a logo in your art by way of comment or critique or if you refer to a brand name in your writing, this is not a trade mark infringement.

However, you need to be careful, particularly if you are selling something that includes a trade mark. For example, if you are selling t-shirts with your artwork on them, and your artwork has a brand name or logo, this might be seen as an infringement depending on how it has been used. You should ask a lawyer for advice if you are unsure. For more information on trade mark law, and how it applies to artists, see our information sheet here.

If you are designing a logo or other trade mark, you also need to think about whether you can or should include flags, coats of arms and country emblems. You cannot register a trade mark if it you would not be legally allowed to use it, or if its use would be misleading or deceptive. There are also rules about registering trade marks that contains certain symbols or words. Those include:

- The coat of arms, flags or seals of the Commonwealth, a State or Territory.
- The coat of arms or emblems of a city or town in Australia, or a public authority or institution.
- Flags of certain other countries.
- The word Anzac

IP Australia is responsible for registering trade marks in Australia. They will consider the Government’s guidance on the use of some symbols and flags. For example, you can use the Australian flag in a trade mark design as long as it complies with the Government’s guideline. For more information, see IP Australia’s Manual of Practice and Procedure.

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Can I use flags in my art?

The Australian Flag

The Australian Flag can generally be used in art. This includes commercial use.

If you are using the Australian flag commercially (for example, your artwork is being printed on products that are being sold, you may want to consider the Government guidelines. The Department of Prime Minister and Cabinet has published guidelines on commercial use of the Australian Flag. If you have any questions about the appropriate use of the Australian flag, you can contact the Department of Prime Minister and Cabinet. As long as your use is not misleading or misrepresenting authority from the Commonwealth, those guidelines are just guidelines.

The Aboriginal Flag

The Aboriginal Flag can generally be used in art. This includes commercial use.

The Aboriginal Flag is protected by copyright. The Aboriginal Flag was designed by artist Harold Thomas in 1970. In 1995, the flag was proclaimed as an official Flag of Australia.

Until 2022, copyright in the Aboriginal Flag was privately owned. This meant that the owner of copyright was the only person who could give permission to do certain things, such as make copies or put it up online. This restricted the way that the public, including Aboriginal people and organisations, could generally use the flag.

In January 2022, the Australian Government bought the copyright from Harold Thomas and made a deal with the companies that had exclusive rights to use the flag. This allowed 'the free use of the Aboriginal flag' for all Australians.

The Australian Government allows the flag to be freely reproduced by the public in all mediums, other than on flags and pennants, banners and buntings. Flagworld has an exclusive licence to manufacture the Aboriginal Flag.

Harold Thomas has moral rights in the Aboriginal flag. This means that if you use the flag in your artwork, you should credit him where it is reasonable to do so. You should also consider whether you are using the flag in a way that is derogatory.

The Torres Strait Islander Flag

If you reproduce the Torres Strait Islander flag in your art, you will need the permission of the Torres Strait Island Regional Council.

The Torres Strait Islander flag is protected by copyright. It was created by Bernard Namok of Thursday Island. Namok has moral rights as the creator of the flag. In 1995, the Torres Strait Islander flag was proclaimed as an official Flag of Australia.

The Torres Strait Island Regional Council, and the 15 communities it represents, own copyright in the flag. The Torres Strait Island Regional Council publishes information on how to seek and obtain permission to use the flag.

State and Territory Flags

Each State and Territory has their own flag.

In NSW, you are not allowed to print, issue or use the State Flag in connection to any trade or business, without permission. This also includes any symbols which resemble or could be mistaken for the NSW Flag.

If you would like to use a State or Territory flag in your artwork, get legal advice or check with the appropriate Government department.

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To find out more about State and Territory flags and their protocols, you can read the Department of the Prime Minister and Cabinet booklet on Australian Symbols.

What about Coats of Arms?

Coats of Arms are the formal symbol of the Commonwealth, States or Territories. They represent that something has official authority are officially granted by the king or queen. They are used by government and courts, or with permission, under a strict set of rules.

Because the Coat of Arms are formal symbols of authority, use without permission may be misleading. There are strict Federal, State and Territory laws restrict the use of official Coats of Arms. These generally mean that you should not use the Coat of Arms in connection with a business or any commercial activity unless you are the government, or have government permission. You should also not use the Coat of Arms in any way that suggests that you have authority from the government when you do not.

Federal, State and Territory governments have published information and guidelines on the use of their Coat of Arms:

- Federal: Guidelines on the use of the Commonwealth Coat of Arms
- NSW: NSW Coat of Arms
- Victoria: Coat of Arms and State Badge guidelines
- Queensland:
- South Australia: Using the state insignia and emblems
- Western Australia: Common badging
- Tasmania: State Symbols – Guidelines for Usage
- Northern Territory: Official Symbols and emblems
- ACT: ACT Flags and Emblems

There are also laws that restrict the use of other official symbols, such as seals, badges or other emblems. If you are considering using State Symbols in your art, you can seek advice about whether you need permission to do so.

Importing art bearing flags and Coats of Arms

If you are making your art outside Australia and are thinking about importing something bearing the flag or coat of arms, you generally must have approval under customs laws.

Can I use the Australian National Anthem in my own work?

The Australian National Anthem, Advance Australia Fair was written by Peter Dodds Cormick in 1878. Since the time it was written, there have been some amendments to the lyrics. In copyright law, a song can be protected a number of different ways. The original music and original lyrics are protected, and later arrangements and recordings can also be separately protected.

The music and lyrics for Advance Australia Fair that were originally written by Peter Dodds Cormick are out of copyright, because he passed away in 1916. However, the Federal Government says that Australia holds copyright in the lyrics of the

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anthem in the form when the song was made the official anthem in 1986, and that it holds copyright in particular arrangements. Presumably, because the original is out of copyright, the Government is referring to owning copyright in the amended version of the words and a later arrangement.

What this means is that you do not need permission to use the original (1878) version of the music or lyrics. However, if you are using the later versions, you will need to consider whether you are using a substantial part of the later versions, and if so, whether you need permission. You may need to get some legal help on the question of whether you are using a substantial part of the later versions. This is a tricky question, particularly because the original version is out of copyright.

If you are using the Commonwealth's versions, the Government says that you do not need permission to use, perform, record, or reproduce the anthem for non-commercial purposes. The Government says you do need permission for commercial use. You can get permission for commercial use from the Department of Prime Minister and Cabinet. The Department may choose not to grant permission if the tune or lyrics are modified, parodied, or demeaned. Proposals can be submitted to the Department. You can get more information here.

Can I use Australian money in my art?

It is a criminal offence to intentionally deface, disfigure, mutilate, or destroy any current Australian coins or notes. To deface includes to cover some or all of the note or coin with any material. For this reason, you need to be careful to keep any money that you are using in your artwork intact.

If you use fake money or reproductions of money in your art, you need to be careful to avoid counterfeiting, which is a serious offence.

If you are reproducing banknotes or coins in your art, you also need to think about copyright law. Australian banknote designs, and individual drawings on those designs, may be protected by copyright. This means that you cannot reproduce the whole or a substantial part of a literary or artistic work without permission of the copyright owner, unless a defence or exception applies, or unless copyright has expired.

- The Reserve Bank of Australia (RBA) owns copyright in banknotes. s. The RBA has given general permission to use images and partial images of past and present Australian banknotes, provided you follow the guidelines for reproducing banknotes.
- The Royal Australian Mint is responsible for giving permission for the reproduction of images of Australian coins. The Mint has published a copyright and re-use of materials policy, which generally requires permission to be sought from the Mint to reproduce coins. Some coin designs are collaborations and the copyright is owned by third parties.

Like the artists who designed flags, the artists creating banknote designs or artwork that is reproduced on banknotes may also have moral rights in their artwork.

Is the word ANZAC restricted?

The use of the word ANZAC (the acronym of Australian and New Zealand Army Corps) is regulated in Australia. These regulations mean that the use of the word 'Anzac' in your art without permission may not be allowed. There are also laws that specifically prevent the word 'Anzac' being used in a registered trade mark.

Regulations effectively prohibit the assumption or use of the word 'Anzac', or any word resembling 'Anzac', without permission for commercial purposes or entertainment. Those commercial purposes include the application of the word to any goods created for sale or sold. Entertainment includes exhibitions and performances. There is an exception for events and entertainment that are held on Anzac Day 25 April.

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The Department of Veterans' Affairs has produced Guidelines on the use of the word Anzac, which provide more information. This includes information on making applications to use the word Anzac.

Those Guidelines state that the regulations do *not* apply when producing a book or poem, on the condition that the person producing the book is not a professional writer and the content of the book or poem is historical in nature.

Are there any other symbols that are restricted?

The Swastika and Nazi gestures

It is a criminal offence in Federal law, and a number of Australian States and Territory laws to intentionally and publicly display a Nazi symbol, like the swastika, or perform a Nazi gesture.

There are exceptions that allow for the use of Nazi imagery the use is reasonable and if it has a genuine artistic purpose. The Federal Government has given the examples of displaying the Nazi symbol as part of a costume or set shown in a movie.

Federal laws also require that any use of Nazi symbols is not "contrary to the public interest".

The Red Cross and Red Crescent

The Red Cross and Red Crescent are symbols used for aid in armed conflict and war. They are protected under specific laws in Australia. The Red Cross (the red cross emblem on a white background) and Red Crescent (the red crescent moon emblem on a white background) cannot used for any purpose without permission from the Minister or their delegate. This protection extends to related insignia, including the 'Red Lion and Sun' and 'Red Crystal'. Use without permission is against the law.

The Olympic symbols

The Olympic symbols (such as the Olympic rings) are protected and regulated under specific laws. Those laws give rights to the Australian Olympic Committee that allow it to prevent people from reproducing the Olympic symbols without permission. For example, it is an infringement to put the Olympic rings on an object without permission, unless it is not intended for use in Australia.

The Olympic rings are protected as a copyright work. Unlike other copyright works, copyright in the Olympic rings does not expire.

Designs and trade marks featuring the Olympic symbols cannot be registered.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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