

# IP Australia Service Request

Trade Mark Number  
**1530747**

Request Date & Time  
19-Jun-2014 15:23:37

## Submitting Party

Party Identifier	FZK8250011821
Agency Code	JB
Name	King & Wood Mallesons
Customer's Reference	1530747 - K Batchelor
Email	Brisbane.Trademarks@au.kwm.com

## Respond to an Examiner's Report

### Fees

FANG Batch Identifier 7926651

Fee # 1	Fee Code	TXR
	Fee Type	OTHER
	Fee Description	Respond to an Examiner's Report
	Number of Goods and Services Classes	2
	Fee Unit Count	1
	Fee Amount	\$0.00
	Calculation Date & Time	19-Jun-2014 15:21:00

Fee Total Amount \$0.00

### Service Request Details

Channel WEB

<b>Batch Identifier</b>	STBI-0000333729
<b>Batch Reference</b>	
<b>Service Request Identifier</b>	STER-0000695995
<b>Service Request Code</b>	TER
<b>Request Date &amp; Time</b>	19-Jun-2014 15:23:37
<b>Customer's Reference</b>	1530747 - K Batchelor
<b>Application numbers</b>	<b>Customer's IP Right Reference</b>
1530747	1530747 - K Batchelor
<b>Contact Details</b>	
<b>Address</b>	PO Box 1406 BRISBANE QLD, 4001 AU
<b>Phone</b>	07 3244 8050

## Customer Supplied Documents

Document Sequence	Document Type	Document File Name	Physical Media
1	Other	<a href="#">Letter - IP Australia.pdf</a>	No
2	Other	<a href="#">Statutory declaration.pdf</a>	No
3	Other	<a href="#">Exhibits JK-1 to JK-6.pdf</a>	No
4	Other	<a href="#">Exhibit JK-7.pdf</a>	No

18 June 2014

Ms Margaret Rogis  
Trade Mark Examiner  
IP Australia  
PO Box 200  
Woden ACT 2606

Dear Ms Rogis

**Trade Mark Application No. 1530747 for SIMPLY SMARTER INSURANCE in classes 36 and 37 ("Trade Mark") in the name of A&G Insurance Services Pty Ltd ("Applicant")**

We refer to the Examination Report issued in respect of the Trade Mark on 18 March 2013.

The Examiner raised an objection to registration of the Trade Mark under section 41 of the *Trade Marks Act 1995* (Cwlth) on the basis that the Trade Mark is not capable of distinguishing the Applicant's services from the services of other traders.

The Examiner suggested that the Applicant may be able to overcome this objection by supplying evidence of use of the Trade Mark under section 41(5) of the *Trade Marks Act 1995* (Cwlth). We **enclose** a statutory declaration in the name of Jonathan Kerr evidencing substantial use of the trade mark by the Applicant. This statutory declaration contains commercially sensitive information (as marked) and we request that that information be kept confidential.

We submit that the evidence of use contained in the statutory declaration shows that the Trade Mark is capable of distinguishing the Applicant's services from those of other traders. The Applicant provides a range of insurance and related services under the Trade Mark. The Applicant expects that it will make approximately [REDACTED] in sales under the Trade Mark in FY2013/2014. The Applicant has also invested [REDACTED] in promoting its services under the Trade Mark. The Applicant has spent approximately [REDACTED] in advertising those services under the Trade Mark in FY2013/2014 and plans to spend approximately [REDACTED] in FY2014/2015. The Applicant advertises services under the Trade Mark using a variety of channels (including television, newspaper, online and outdoor advertisements). The Applicant has also won industry awards for the services it provides under the Trade Mark.

We submit that the Applicant's use of the Trade Mark is such that, if another trader used the Trade Mark in connection with the class 36 or 37 services (or similar), it would result in confusion in the marketplace.

In light of the above, we respectfully request that you withdraw the objection to the trade mark application and allow it to proceed to acceptance.

We look forward to receiving your response in due course.

Yours sincerely



John Swinson  
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Encl 1

**EVIDENCE SUMMARY SHEET**

**s41(5) / s41(4)**

**TRADE MARK NUMBER: 1530747**  
**insurance**

**TRADE MARK: simply smarter**

**TYPE: (SFAS, Geog, Desc, Subj matt, etc) laud**

**FILING DATE: 11-DEC-2012**

**EVIDENCE SUMMARY:**

**Comment on the following:**

How the trade mark is being used (See Part 19A of the Manual): evidence indicates as a tag line, always with and underneath BUDGET DIRECT. statements that it is used solus is not backed up

How the trade mark is being promoted: stat dec is ambiguous on this matter, no definite reference to this phrase other than this 'trademark' or this 'application'

The geographical extent of the use: at least australia and south africa

Duration of use (including date of first use, continuous use): prep began in 2012, first use in aug 13.

How substantial is the sales volume/turnover: dec indicates applicant expects to make ██████ in 13/14 and ██████ in 14/15

Unit cost: not given

How much has been expended on advertising: dec indicates around ██████

Goods/services the trade mark has been used on: claims in relation to the services.

Overseas use: s.africa?

Intended use:

Other Circumstances:           o

<b>EXAMINER'S RECOMMENDATION/S:</b>	<b>s41(5)</b>	<b>Applied</b>	<input type="checkbox"/>	<b>Not Applied</b>	<input checked="" type="checkbox"/>
	<b>s41(4)</b>	<b>Overcome</b>		<b>Not Overcome</b>	

**REASON/S:** although declaration refers to application, provided evidence does not back this up. mark is used as a tag line, no evidence presented that shows use of mark as applied for

**s41(5) could be applied under the following conditions / s41(4) could be overcome by:**

**Examiner :** mark ayres

**Date:** 21/7/2014

**SUPERVISOR/TEAM LEADER COMMENTS:**

**Supervisor:**

**Date:**

\_\_\_\_\_

**Team Leader:**

**Date:**

**REMINDERS:**

- **s41(5) applies to applications with a filing date prior to 15 April 2013**
- **s41(4) applies to applications with a filing date on/after 15 April 2013**
- **Add Endorsement**