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TRA/AT/9040389

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11 March 2011

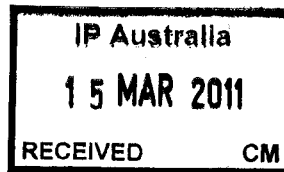
Sydney
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By courier

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Contact
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Partner
David Smith



Dear Meilin

**Australian trade mark application no. 1324099 MELBOURNE
AIRPORT in the name of Australia Pacific Airports (Melbourne)
Pty Ltd ("Applicant")**

I **enclose** evidence in support of this application, comprising a statutory declaration by the Applicant's in-house solicitor, Teresa Chong.

Having regard to the enclosed evidence, I submit that application 1324099 is in order for acceptance under Section 41(5) of the Trade Marks Act. The evidence also demonstrates honest concurrent use of the Applicant's mark in respect of goods claimed in Class 9.

Classification issues

The Applicant agrees to the amendments you suggested in your report dated 14 December 2009, namely:

- (1) transfer to class 43 the services of "providing information and advice, including online, in relation to facilities and services available at an airport (including facilities and services relating to food)";
- (2) transfer to class 35 the services of "providing information and advice, including online, in relation to facilities and services available at an airport (including facilities and services relating to shopping)".

Should you have any further queries or comments in relation to this application, please contact me on (03) 9672 3049.

Yours sincerely


Anna Tran
Senior Associate

attachments

Commonwealth of Australia
Trade Marks Act 1995

IN THE MATTER of
Australian trade mark
application number
1324099 for MELBOURNE
AIRPORT in the name of
Australia Pacific Airports
(Melbourne) Pty Limited
("Applicant")

STATUTORY DECLARATION

I, **Teresa Sue Vun Chong**, Legal Officer of Level 2, T2, Melbourne Airport in the State of Victoria, do solemnly and sincerely declare as follows:

1. I am a Legal Officer for the Applicant, having held this position since September 2010. Through my employment with the Applicant, I have gained considerable knowledge of the industry in which the Applicant operates.
2. The facts and matters stated in this declaration are within my own knowledge or obtained from information contained in documents in the possession of the Applicant, which information I believe to be true.
3. The information contained in paragraph 20 and "**CONFIDENTIAL Exhibit TC-2**" herein relates to the business affairs of the Applicant and its related entities. The information has not been made publicly available and it is of a strictly confidential nature. The disclosure of this information would, or could reasonably be expected to, adversely affect the Applicant in respect of its lawful business, commercial or financial affairs, by giving competitors an unfair advantage. Accordingly, the Applicant objects to the disclosure of this information to third

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persons and claims it is exempt for the purposes of section 43 of the Freedom of Information Act 1982 (Cth).

The Applicant

4. The Applicant was incorporated on 9 January 1997 and trades under its registered business name, MELBOURNE AIRPORT. Attached to this declaration and marked "Exhibit TC-1" are copies of ASIC extracts relating to the Applicant and its MELBOURNE AIRPORT business name registration.
5. A controlling interest in the Applicant is owned by Australia Pacific Airports Corporation Limited ("APAC"). On 2 July 1997, APAC acquired from the Australian Government a 50 year lease for the airport (officially called Melbourne (Tullamarine) Airport, then commonly known as Tullamarine Airport), with an option for a further 49 years. Prior to 2 July 1997, Tullamarine Airport was managed by the Federal Airports Corporation ("FAC"), which was funded by the Federal Government and responsible for the management of a large network of Australian airports. After 2 July 1997, the Applicant was allowed to operate the (now privatised) airport independently of FAC management.

Background to the MELBOURNE AIRPORT brand

6. On privatization in 1997, the Applicant immediately moved to adopt MELBOURNE AIRPORT as its core brand and trading name, with a new logo and corporate identity to distinguish its business and services from those provided by other airports and (formerly) the FAC. The Applicant was concerned, in particular, to familiarise the travelling public and consumers with its new name, MELBOURNE AIRPORT, and to replace all existing branding adopted by the FAC including the "Tullamarine Airport" name.
7. As part of its aim to develop a distinctive brand for the airport, the Applicant commissioned marketing experts to conduct research and advise it in relation to branding strategies for the newly adopted MELBOURNE AIRPORT name. Leading up to and shortly after privatization in 1997, a number of reports were presented to the Applicant by leading brand consultants to examine the implications of adopting the MELBOURNE AIRPORT name and corporate identity. On 4 February 1998, the Applicant issued a "Corporate Identity / Preferred Name Policy Statement" focusing on acceptable usage of the MELBOURNE AIRPORT name. A copy of the Policy Statement is attached to this declaration and marked "CONFIDENTIAL Exhibit TC-2", together with

research papers prepared by the Applicant's branding consultants, Dupree Partners and Reark Research.

The MELBOURNE AIRPORT business

8. The airport operated by the Applicant under the MELBOURNE AIRPORT name is the second busiest in Australia, with more than 5.5 million visitors in 2009/2010.
9. The Applicant's airport services flights from Melbourne to Sydney, the third most-travelled passenger air route in the world. The airport features direct flights to 33 destinations in all states and territories of Australia, in addition to numerous international destinations in Asia, Europe, North America, Africa and Oceania. It also serves as a major hub for Qantas and Virgin Blue airlines, while Jetstar and Tiger Airways Australia utilise the Applicant's airport as their home base.
10. As of September 2010, the Applicant's airport is the busiest Australian airport for international export freight, and second busiest for import freight. Domestically, the airport serves as headquarters for Australian Air Express and Toll Priority and handles more domestic freight than any other airport in Australia.
11. In addition to its core aviation, air transportation, passenger and freight services, the Applicant's MELBOURNE AIRPORT business, or its licensees, also provides a wide range of goods and services typically associated with the operation and maintenance of a large international airport, including:
 - development and implementation of various technical software including noise modeling software, software for landing aircrafts and software for modeling/monitoring ground and air traffic;
 - provision of printed publications, manuals, corporate stationery and the like;
 - advertising;
 - retailing and related property leasing and management services;
 - business management and consultancy in relation to retailing and other commercial activities conducted at the airport;
 - design, construction and maintenance of airport facilities and infrastructure; and

- provision of food, drink, accommodation and medical services for travellers.

Further details of the specific goods and services provided by the Applicant under the MELBOURNE AIRPORT trade mark can be found below at paragraph 19 and accompanying "Exhibit TC-8".

12. Many of the MELBOURNE AIRPORT branded goods and services are provided through licensees. In all cases, the Applicant exercises control over the quality of the goods and services provided under or by reference to MELBOURNE AIRPORT. This includes jointly branded services such as those offered in relation to the provision of food and drink and café and cafeteria services, including CAFÉ VUE MELBOURNE AIRPORT.

Use and recognition of the MELBOURNE AIRPORT trade mark

13. The MELBOURNE AIRPORT trade mark is encountered by millions of visitors to the Applicant's airport each year. The passenger and aircraft traffic figures below demonstrate that the MELBOURNE AIRPORT trade mark has achieved a very high level of consumer recognition within the relevant market over a significant period of time:

	(A) Passenger Numbers (Millions)			
Year end June 30	1999	2000	2001	2002
International	2.73	2.99	3.36	3.41
Domestic	11.64	12.34	13.56	12.81
Total*	14.58	15.57	17.24	16.48
Year end June 30	2003	2004	2005	2006
International	3.28	3.76	4.30	4.38
Domestic	13.48	15.23	16.30	16.88
Total*	16.92	19.16	20.78	21.43
Year end June 30	2007	2008	2009	2010
International	4.53	4.77	4.91	5.54
Domestic	17.81	19.36	19.74	20.63
Total*	22.50	24.26	24.77	26.29

* Total includes transit passengers

	(B) Aircraft Movements (Thousands)			
Year end June 30	1999	2000	2001	2002
International	18.2	20.5	23.1	22.6
Domestic	136.2	142.7	162.0	133.1
General Aviation	2.4	1.5	2.3	1.9
Total	156.8	164.7	187.4	157.6
Year end June 30	2003	2004	2005	2006
International	21.3	24.0	28.0	25.2
Domestic	135.0	140.0	151.2	151.9
General Aviation	1.6	1.3	1.3	1.2
Total	157.9	165.3	180.5	179.3

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Year end June 30	2007	2008	2009	2010
International	24.10	25.20	27.06	30.4
Domestic	154.8	166.8	166.2	164.7
General Aviation	1.3	1.5	0.9	0.8
Total*	180.2	193.5	194.2	195.9

14. The MELBOURNE AIRPORT trade mark features prominently on advertising placed by the Applicant in various forms of media. Attached to this declaration and marked "**Exhibit TC-3**" are examples of advertising promoting the Applicant's MELBOURNE AIRPORT trade mark in print, on billboards, on radio and television and on the Internet.
15. The Applicant's MELBOURNE AIRPORT business is also promoted online through its website located at www.melbourneairport.com.au. The website was launched in July 1997 and was the first in Australia to provide travellers with real-time flight information over the Internet. Extracts from the Applicant's website are attached to this declaration and marked "**Exhibit TC-4**".
16. In addition to advertising through various forms of media, the Applicant has also promoted the MELBOURNE AIRPORT brand through hosting events (such as the Diwali Festival of Light, an Indian cultural celebration) and sponsorship of nationally and internationally renowned festivals, conferences, cultural events and not-for-profit organizations, including:
- The Australian Open Tennis
 - Melbourne International Arts Festival
 - Melbourne International Film Festival
 - Melbourne International Comedy Festival
 - Tulip Festival
 - Melbourne Food and Wine Festival
 - Tourism Awards
 - ACMI – Tim Burton/Dreams Come True Exhibition
 - National Gallery of Victoria
 - The Air Transport Association (IATA) Conference
 - The Salvation Army Jacana Family Centre
 - Service Skills Victoria - Skills for the Future Programme
 - Western Chances – A bridge to the future
 - The Melbourne Airport Golf Club

Details of the Applicant's sponsorship programs and events can be found at "**Exhibit TC-5**".

17. In 2001, the Applicant established the "Melbourne Airport Emerging Talent Program" to support and encourage outstanding upcoming artists. Over the decade since its inception, the Melbourne Airport Awards have grown to include five separate annual prizes across diverse art forms including visual arts, comedy, film, classical music and fringe performance. The Awards provide travel assistance to enable young artists to attend international arts events such as the Venice Biennale, the Edinburgh Fringe and the Berlin Film Festival. Past winners have included Fiona O'Loughlin (2001) and Eddie Perfect (2004). Further information relating to the Melbourne Airport Awards can be found at "Exhibit TC-6" and "Exhibit TC-8".

18. The Applicant has itself won numerous awards for its airport and associated MELBOURNE AIRPORT businesses, including:

- Routes Asia Marketing Award 2010 (Highly Commended)
- CAPA 2009 – World Low Cost Airport Award
- Australian Construction Achievement Award 2006
- International Air Transport Association Eagle Award for Service 2003
- Australian Tourism Award for General Tourism Services 1998

Further details of these awards can be found at exhibit marked "Exhibit TC-7".

Use of the MELBOURNE AIRPORT trade mark in respect of claimed goods and services

19. Attached to this declaration and marked "Exhibit TC-8" is a folder containing representative examples of use of the MELBOURNE AIRPORT trade mark in respect of specific goods and services claimed by the Applicant, as summarized below:

Tab no.	Goods/services provided under MELBOURNE AIRPORT trade mark
1	Class 9: Computer software including interactive computer programs; electronic publications (downloadable) NOTE: For use in respect of "electronic publications", please refer to Applicant's website and "Exhibit TC-4".
2	Class 16: Printed matter such as brochures, timetables, magazines, newsletters, stickers,

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	postcards, photographs, calendars, posters, safety and operational manuals, reports; luggage labels/tags (made of cardboard or paper); stationery; pens; security identification cards
3	Class 35: Management and consultancy services relating the development and operation of airports and business activities conducted at or associated with airports; consulting services in relation to retailing
4	Class 35: logistics services (business management and organisation of facilities and resources)
5	Class 35: advertising, marketing and promotional services including those relating to tourism and travel; providing information and advice in relation to advertising, marketing, promotion, retailing and business activities NOTE: Please also see Tab 2 for promotion of tourism and travel services
6	Class 35: retailing and business services, car dealership (vehicle sales)
7	Class 36: Financial sponsorship services; provision and funding of scholarships including to people involved in the arts and entertainment industry NOTE: Please see also paragraphs 16-17 above and accompanying "Exhibit TC-5" and "Exhibit TC-6".
8	Class 36: Property leasing and management services
9	Class 37: Construction, installation, maintenance and repair services including in relation to communications networks and security devices; property development services; property maintenance services (including airfields, buildings, roads and footpaths); cleaning services; providing information and advice in relation to construction, installation, maintenance, repair and property development services
10	Class 37: Vehicle refuelling services; car washing services; car maintenance services; providing information and advice in relation to vehicle refuelling
11	Class 38: Wireless communications services including providing a wireless communications network; provision/rental of communications apparatus (including phones, fax machines, modems, radios); operating and providing access to intranet and other electronic communications networks (including wireless networks); operation and management of radio communication networks and systems; providing information and advice in relation to communications and communication networks
12	Class 39: Services provided in the operation of an airport and airline terminals including the

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	processing of passengers and their baggage and animals; airport baggage handling; baggage check-in services; inspection services in this class including providing information and advice; travel information services; providing information and advice, including online, in relation to flight departure and arrival times, location of in-flight planes, airlines, facilities and services available at an airport (including facilities and services relating to food, shopping, vehicle parking, vehicle hire, logistics, physical storage, and packing and wrapping of goods) and in relation to travel, tourism and transportation
13	Class 39: Air transportation services (including of people and goods); transportation of baggage; freight services, including air transport of freight and freight packing and handling; freight brokerage;
14	Class 39: Air and ground traffic control services; management of airfield operations; aircraft fuelling services; aircraft handling; aircraft parking; aircraft runway services; aircraft storage; aircraft trucking; inspection of aircraft; operation of aerobridges
15	Class 39: Logistics services (transport, packaging, and storage of goods); travel and tourism services; road transportation services (including of people and of goods); traffic management services; vehicle parking services (including rental of parking spaces and valet parking services) NOTE: Please also see Tabs 4 (logistics) and 12 (travel & tourism services).
16	Class 39: Electricity supply services; water supply services; wastewater removal services; vehicle hire services
17	Class 41: Education and training services (including in relation to aviation and airport management, security and safety); providing information and advice in relation to education and training; publication services; production of videos and DVDs (including for training); providing online electronic publications (not downloadable) NOTE: Please also see paragraph 15 above and accompanying "Exhibit TC-4".
18	Class 41: Entertainment, sporting, cultural, social and recreational services (including games, computer games, gym, golf course, lounges and clubs); providing awards and organising and managing award processes and ceremonies in the entertainment and cultural field; social club services; sports club services; providing information and advice in relation to entertainment and sporting, cultural, social and recreational activities and facilities NOTE: For use in respect of "providing awards and organising award processes", please refer to paragraphs 16-17 above and accompanying "Exhibit TC-5" and "Exhibit TC-6".

19	Class 42: Research, design and development services (for others), including design services relating to communications networks and security devices; engineering services; quality control (for others); inspection services in this class including providing information and advice; providing information and advice in relation to design services, quality control, and safety evaluation and testing
20	Class 42: Occupational health and safety services in this class including providing information and advice; safety evaluation and testing services
21	Class 42: Providing information and advice in relation to environmental protection including recommendations for reducing aircraft noise exposure; environmental monitoring services including monitoring of aircraft noise exposure; environmental hazard assessment services; environmental testing services; development and management of processes and operations for environmental protection and for reducing the impact of various activities on the environment
22	Class 42: Internet cafe/kiosk services (computer rental); providing information relating to time and weather; computer network services in this class including design and development of computer networks; information technology services in this class including consulting services
23	Class 43: Providing information and advice in relation to the provision of food and drink and temporary accommodation; cafe and cafeteria services; preparation of food and drink
24	Class 43: Booking of temporary accommodation for travellers; provision of hotel accommodation; provision of facilities for conventions; provision of facilities for exhibitions; room hire
25	Class 43: Childcare services; animal kennel services (including in connection with quarantine issues)
26	Class 44: Medical services; hygienic/beauty care (including toilet, washroom, shower and baby change facilities)
27	Class 45: Aircraft and airline passenger safety services; airline passenger screening (security) services; baggage inspection for security purposes; safety and security services including provision and operation of cctv systems and duress alarm systems and issuing of security identification cards; fire safety services; emergency planning services including providing information and advice; providing information and advice in this class in relation to safety and security

Financial performance and marketing expenditure


20. The Applicant's annual operating revenue and marketing expenditure in respect of products and services supplied under the MELBOURNE AIRPORT trade mark for the financial years from 30 June 2007 to 30 June 2010 are as follows:

Year	Approximate revenue (AUD) (in millions)	Approximate marketing expenditure (AUD) (in millions)
2007	\$374	\$2.7
2008	\$437	\$4.5
2009	\$464	\$5.1
2010	\$503	\$7.4

AND I MAKE this solemn declaration by virtue of the Statutory Declaration Act 1959, and subject to the penalties provided by that Act for the making of false statements in statutory declaration, conscientiously believing the statements contained in this declaration to be true in every particular.

DECLARED at Melbourne
in the State of Victoria this
7 day of March 2011

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TERESA SUE VUN CHONG

Before me:


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Frances Eileen Wheelahan
Corrs Chambers Westgarth
600 Bourke Street, Melbourne Vic 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004