
Australia: Court Tests Limits of Style Names

By [Robin N. Baydurcan](#)

Pinnacle Runway Pty Ltd v Triangl Limited [2019] FCA 1662

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Rather than use long alphanumeric codes to identify each available product, fashion houses often use style names to assign an identifiable shorthand name to a particular article of clothing. Examples include “Molly Mock Turtleneck” or “Pauline A-Line Skirt.” A recent Australian case holds that style names are generally not source identifiers and therefore not trademarks.

Australian fashion house Pinnacle Runway owns the registered trademark DELPHINE in Class 25. In 2017, Pinnacle sued online swimwear retailer Triangl for using the style name “Delphine” for one of its bikini styles. In an October 2019 decision, the Federal Court dismissed Pinnacle’s claim, noting that in the field of women’s swimwear, consumers are unlikely to perceive style names as indications of source, which is the very function of trademarks. The Court reasoned that style names are convenient labels that can add a poetic, feminine, or even quirky quality to a product, but they are not badges of origin meant to distinguish the goods of one trader from the goods of another.

The Court contrasted style names for fashion items with model names for cars. It explained that car model names are typically considered trademarks. Given the relatively limited number of car models available for purchase, it is reasonable to expect that different car manufacturers will use different model names for their respective vehicles to avoid consumer confusion.

In the *Pinnacle* decision, the Court provides guidance to those in the fashion industry looking to

minimize the risk of infringement when using style names that may be similar to third-party registered trademarks:

- Give prominence to the house mark, and de-emphasize the style name in terms of positioning, font style, size, and color. Do this not only on the product label, but also on the website and other point-of-purchase displays.
- Do not allocate a separate logo or website to the style name, to avoid it being construed as a sub-brand.
- Avoid printing or stitching the style name onto the product itself.
- Do not file a trademark application for the style name, and do not use the TM symbol.
- Cyclical use of the same style name year after year may give rise to a finding that the use is intended to serve as a trademark, thus increasing the risk of an infringement claim. The use of many other style names for many other products may reduce the risk, as consumers could more readily perceive each individual style name as just one of many, and not as a sub-brand.
- Consider whether consumers should be able to search by style name; searchability of the style name could be construed as a sub-brand use.
- Reputation is a factor. Consider the BIRKIN bag by Hermès, which is without question regarded as a trademark in its own right.

If Pinnacle had won this case, the consequences for the fashion industry could have been disastrous, as each style name would need to be cleared and, ideally, registered. Indeed, while fashion companies sometimes currently conduct clearance searches for their proposed style names (particularly those that are distinctive), it is rare that they seek registration, due to the common understanding that style names are not trademarks per se, and also because style names tend to be used in short-term seasonal cycles.

Of course, each case will still be analyzed on its own facts, so caution is advisable when adopting style names.

Primary Contacts

Robin N. Baydurcan

