

What the L?

If your parents chose to give you the name Armani, when you grew up could you open a boutique called “Armani”? Not so simple, huh

Colette Hayman of Manly finds herself in an analogous pickle at the moment, being sued by the fashion goddess Collette Dinnigan over whether she can call her little accessories brand in Brookvale “Colette Accessories”.

Collette with two L's says she can't. The *Competition & Consumer Act* says (well, it doesn't say this, the courts say that it says this) that, if you develop a substantial reputation in a trading name so that it's closely identified in the consumer's mind with you, others cannot then purloin that name or anything similar and in effect “trade off” your reputation and goodwill. The legal risk is that punters will be confused into thinking that Colette Accessories is in some way connected with Collette Dinnigan.

Collette with one L says pish posh to that, not only does she only have one L, but Collette D has no reputation in jewellery and handbags, and anyway how can she stop me from using my own birth name? What, Collette with one L might well ask, am I supposed to do, change my name?

The case might turn on the fact that Collette with two Ls is very well known for clothing but not so much for accessories. Our extensive research (Google search) revealed a lot of flesh but no handbags on the Collette Dinnigan website. But we did note that Colette Accessories came up as Number 2 result in a “Collette” search, so that's probably why the litigation.

Anyway, Colette might escape on the basis that they're not really in the same business. But if the court finds otherwise, then the question is whether Colette can be prevented from trading under her own name.

The answer will be “yes”, we expect. The CCA doesn't distinguish between accidental and deliberate cases of passing off. For example, it would make no difference if Colette's parents had named her Colette for the express purpose of causing confusion in the marketplace 30 or so years later, as opposed to the probable reality that they just thought it was a nice name (but only with one L).

To mislead, under the CCA, requires no intention. The test is all about the effect, not what was meant. So, it's quite likely that Colette with one L will be looking for a new name. As for Collette with two Ls, seriously? Was it that big a deal?

Questions? Please give us a call.

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