

## **A Thorny Issue Resolved as “Flowers for All” Trademark Deemed Distinctive**

Article By:

Gregory Pieris

Phoebe Naylor

---

Business blooms for one trade mark owner as “FLOWERS FOR ALL” has been deemed distinctive enough to be registered as a trade mark in Australia.

*Re KJ Ince Pty Ltd* [2023] ATMO 139 concerned an application to register the trade mark FLOWERS FOR ALL for flowers and floristry services.

The mark achieved registration without opposition on 31 January 2023, before an anonymous third party submitted that the registration ought to be revoked on 15 March 2023. The Registrar subsequently issued a Notice of Intention to Revoke Registration on the basis that FLOWERS FOR ALL mark was not sufficiently distinctive to be registered as a trade mark, therefore a ground for rejection ought to have been raised during examination under section 41 of the *Trade Marks Act 1995* (Cth) (Act). The matter proceeded to a hearing, where the Hearings Officer found no error was made during examination and the FLOWERS FOR ALL mark is sufficiently distinctive to be registered as a trade mark.

The Hearings Officer applied the two step test for distinctiveness under section 41 of the Act enunciated by the High Court of Australia in *Centorollo Bros Pty Ltd v Modeno Trading Pty Ltd* (2014) 254 CLR 337, summarised as follows:

a. ~~What is the ordinary significance of the trade mark in~~

The FLOWERS FOR ALL was considered to have a “fairly obvious ordinary signification in respect of the Applicant’s Goods and Services”.

However, critically, the Hearings Officer considered that “it would be unusual, in common parlance in Australia today, for people to use the term ‘for all’ to refer to all people... It [would] likely to strike the listener as odd, or be taken as an intentional attempt to use this (potentially) archaic terminology for effect.”

The Hearings Officer therefore found that other traders would not, without improper motives, wish to use FLOWERS FOR ALL in respect of similar goods and services.

As the Hearings Officer found there was no error made during examination, the FLOWERS FOR ALL mark remains registered.

### Key Takeaways:

- ~~• [REDACTED]~~

Copyright 2024 K & L Gates

---

National Law Review, Volumess XIII, Number 338

Source URL: <https://natlawreview.com/article/thorny-issue-resolved-flowers-all-trademark-deemed-distinctive>