

POLICY

Intellectual Property

POLICY No: 3007

Effective: 25 05 2015



A key aspect of SwimmingSA Limited (SSA)'s operations is to ensure the commercial value of the swimming brand and product is optimised. This Policy has been developed to ensure that the SwimmingSA brand and its intellectual property is protected.

A comprehensive Intellectual Property Framework has been developed for the sport by Swimming Australia and this Policy supports the content of the Framework. SSA has a significant amount of intellectual property (IP) and it is each staff member's responsibility to ensure the necessary steps are taken to ensure it is protected. SSA's Chief Executive Officer (CEO) is the central point of contact for IP related matters so if you are unsure what to do or need some advice please contact them.

THE POLICY

The purpose of this Policy is:

- to ensure compliance with SAL's Intellectual Property Framework,
- to ensure SSA's IP is being protected and effectively managed,
- to provide SSA staff with an outline of the processes and procedures that need to be followed concerning specific IP matters, and

This Policy and any accompanying procedures may be amended from time to time by the resolution of SSA Board of Directors.

Adoption of Strategies

1. Who this policy applies to?

This Policy applies to Relevant Persons as defined in clause 15. In relation to SSA IP an individual may have come in contact with during their association or dealings with SSA, this Policy will continue to apply to that person, even after they have ceased that association or those dealings.

2. What is IP?

Intellectual Property (IP) is often referred to as an intangible asset. IP includes the below:

- a) copyright and related rights, including moral rights, in relation, for example, to images and photos, publications, educational resources, databases, digitised material (including DVD products), software, archives, and manuscripts
- b) patents, covering, for instance, the invention of new devices or processes (for example, a portable block top for use on a starting block)
- c) trade marks, which protect letters, numbers, words, phrases, shapes, logos, pictures or a combination of these)
- d) designs, such as the design for a product (a compression top, for example)

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- e) circuit layout rights, relating to the three-dimensional configuration of electronic circuits, and layout designs for computer chips,
- f) plant breeder's rights, in relation to a new plant variety, for example, and
- g) trade secrets and confidential information.

Please note that other registrations that are not IP rights include:

- a) Business names;
- b) Company names; and
- c) Domain names.

5. Contracts or agreements with third parties

Any Contract or Agreement SSA enters with a third party, which includes but is not limited to its stakeholders, suppliers, consultants, and venues, should include a clause regarding IP and its ownership. This may include but is not limited to, clauses that cover:

- a) Ownership of Background IP,
- b) Ownership of Contract IP,
- c) Any license between the parties to use the Background and Contract IP, and
- d) Waiver of moral rights

It is important that any agreement clearly outlines who owns what IP. Any Contracts or Agreement with third parties must be:

- a) approved by SSA's CEO prior to signing,
- b) signed by a SSA person with the relevant delegation, which is in most cases SSA's CEO. Refer to SSA Delegation of Authority Policy for who can sign contracts on SSA's behalf,
- c) entered into SSA Contract Register

6. Employee agreements

All SSA Employee agreements must include clauses relating to IP and confidential information. These clauses are contained in SSA Employment Manual which can be accessed through the SSA CEO. As per SSA's Delegation of Authority Policy, only the SSA CEO has delegation to sign SSA Employee agreements.

7. Trade marks, Business Names and Domain Names

All logos and/or words for SSA programs must be trademarked and should be considered for registered Business Names or Domain Names. The steps outlined at Appendix A must be followed to ensure SSA's IP is protected.

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8. Use of Third Party Intellectual Property

From time to time there may be the need to utilise a third party's IP as part of a SSA publication or its website. This may include for example use of images (including logos), articles (for example on nutrition or swimming technique) or drawings. Any use of third party content should be approved in writing by the content/copyright owner and include an acknowledgement on SSA's website or publication of who provided it. This is because; in some cases use might require payment of a fee or be subject to certain conditions which must be followed. Examples include photographic images from a third party supplier like Sports In Focus.

9. Confidential Information

When engaging in discussions with a third party there may be times where you need to disclose confidential information of SSA's or where the third party needs to disclose confidential information to you. When this occur a Non-Disclosure or Confidentiality Deed is often signed by the party receiving the confidential information. This also often covers off the ownership of IP. For example, Speedo may wish to disclose to SSA confidential information relating to its latest swim suit development and therefore requests SSA to sign a confidentiality deed or non-disclosure agreement. A SSA employee must not sign a third party's NDA or confidentiality deed without the prior written approval of SSA CEO. If you need to disclose confidential information of SSA's to a third party, then you should get the third party to sign a confidentiality deed prior to any discussions taking place. A template deed can be obtained from SSA CEO. The CEO should also be made aware of these discussions and will need to be a signatory on the deed. SSA's Privacy Policy should also be considered when dealing with confidential information.

10. Commercialisation

In making decisions about commercialising SSA IP, SSA must decide what will most benefit the sport of swimming will obtain the maximum benefit. In some cases it may be in the best interest of SSA for it to transfer the IP to another sporting body, or private industry, either for a fee, a non-commercial fee, or free of charge. Commercialisation decisions are to be made on the basis of appropriate legal, financial, and commercial IP advice. A decision about commercialising IP should be based on a consideration of SSA's core functions and the IP concerned. The SSA CEO should be engaged in any commercialisation discussions and a risk versus benefit exercise undertaken. If it is agreed that commercialisation is the best option the following must take place:

- Approval by the SSA CEO and Board if necessary, and
- Commercialisation Strategy developed specific to the project.

The Commercialisation section of the SAL Intellectual Property Framework provides further information on what should be considered in any Commercialisation Strategy.

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11. Recording and auditing SSA Intellectual Property

It is important that all SSA IP is recorded in the relevant register. Registers include:

- SSA Trade Mark Register which also includes the General IP Register (covers copyright, software, business names, domain names, confidential information).
- Third Party Trade Mark Register, and
- SSA Contract Register.

It is the responsibility of each employee to ensure these remain up to date. All of these registers can be accessed via the SSA CEO.

12. Financial, legal and commercialisation advice

In many instances appropriate legal and financial advice needs to be sought surrounding IP issues. The SSA CEO should always be consulted prior to seeking legal, commercialisation or financial advice.

13. What is a breach of this Policy?

Where a Relevant Person commits a breach under this Policy, they may be subject to disciplinary action, sanctions or termination as determined by SSA having regard to the type of Relevant Person and their relationship and obligations to SSA. Relevant Persons must report relevant IP issues to the SSA CEO as soon as they are made aware of them, including the following:

- a) potential or actual infringement of SSA IP
- b) potential or actual infringement of third party IP
- c) the proposed sale or disposal of IP,
- d) confidentiality issues, and
- e) conflicts of interest.

14. Relevant Registers and Policies that apply to this Policy

- SSA Delegation of Authority Policy
- SSA Contract Register
- SSA Trade mark Register
- SSA Privacy Policy
- SSA Risk Management Policy
- SSA Employee Manual

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and Agreements and any other relevant policies.

15. Definitions

In this Policy the following words have the following meaning:

"Attachment" means an attachment to this Policy.

"Background IP" means any Intellectual Property that was owned by a party prior to contract or agreement being entered into.

"Contracts or Agreements" means any written agreement between one or more parties that outlines the parties obligations to one another.

"Contract IP" means Intellectual Property developed during the course of a contract or agreement. **"Employees"** means employees, independent contractors, agents and consultants.

"Intellectual Property" means all present and future registered and unregistered rights conferred by statute, common law, equity or any corresponding law in or in relation to copyright, trade marks, designs, patents, circuit layouts, trade secrets, know-how, plant varieties, business and domain names, inventions, confidential information, Moral Rights and any other intellectual property rights as defined by Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

"Members" means any member of SSA as defined in SSA's Constitution.

"Offence" means any breach by a Relevant Person of the terms and conditions contained within this Policy and the supporting Intellectual Property Framework.

"Policy" means this Intellectual Property Policy and any Attachments.

"Relevant Person" refers to directors and officers of SSA and directors and officers of SSA's Affiliates and Members, swimmers, coaches, event officials, Members, Employees, volunteers, support services personnel and any other person who agrees to be or is otherwise bound by this Policy.

"Stakeholders" means SSA's Affiliates and Members.

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APPENDIX A Trade mark Protection Process

1. When developing a new name for a program and/or logo you must undertake the following:
 - a) Visit IP Australia's trade mark register where you can do a search to ensure no-one else already has trade marked the name or logo - <http://www.ipaustralia.gov.au/get-the-right-ip/trade-marks/search-for-a-trade-mark/>; and
 - b) If you are also going to need a website for the program you should also check if the domain name is available by searching Domain Registration Services - <http://www.domainregistration.com.au/>Keep in mind that you are searching for not only identical names but also similar names and logos.
2. Once the logo for the program is completed and has been approved by the relevant parties, advise the SSA CEO who will register the trade mark with your assistance to ensure it is registered in the right classes. Use of the logo and/or name should not take place until the registration has been submitted, and ideally approved by IP Australia. You must have budget in your area to cover registration costs. Basically the more classes it is registered in the more expensive it is. The SSA CEO will keep you updated on the process and when it has been approved by IP Australia (or if there are any objections).
3. Work with the SSA CEO to enter trade mark details into the SSA Trade mark Register.