



THE LIMITS OF CELEBRITY REPUTATION IN AUSTRALIAN TRADE MARK LAW: *TAYLOR V KILLER QUEEN*

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This case note examines the High Court of Australia's decision in Taylor v Killer Queen LLC (2026) 100 ALJR 335, which resolved a long-running dispute concerning the cancellation of a registered trade mark based on celebrity reputation. The note outlines the factual and procedural background to the litigation and analyses the Court's treatment of reputation-based cancellation under ss 60, 88 and 89 of the Trade Marks Act 1995 (Cth). Particular attention is given to the Court's approach to reputation, evidentiary requirements for likely confusion, and the circumstances in which rectification of the trade marks register may occur.

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I INTRODUCTION

On 11 March 2026, in a landmark 3:2 majority decision, the High Court of Australia (‘High Court’) handed down *Taylor v Killer Queen LLC* (‘*Taylor v Killer Queen*’).¹ The case involved a 17-year-long trade mark dispute between global pop star Katy Perry and Australian fashion designer Katie Taylor, trading under the name “Katie Perry”. It concerned whether the designer’s registered trade mark “Katie Perry”, registered for clothing, was liable for cancellation under the *Trade Marks Act 1995* (Cth) (‘*Trade Marks Act*’) because of the celebrity reputation of the pop star. The majority of the High Court overturned the decision of the Full Court of the Federal Court of Australia (‘Full Court’) to cancel the registration of the designer’s trade mark. As a result, the designer’s trade mark remains registered.

The case provides important guidance on the operation of ss 60, 88 and 89 of the *Trade Marks Act*. In particular, it clarifies the nature and scope of what is meant by ‘reputation’ under s 60, the role of notional normal and fair use in assessing likely deception or confusion under s 88(2)(c), and the circumstances in which a court may decide against granting an application for rectification under s 89.

II BACKGROUND

Australian fashion designer Katie Taylor (the appellant, ‘Ms Taylor’) was named “Katie Perry” at birth and went by that name until she married Matthew Taylor in 2015. From 2007, she also used the name “Katie Perry” for her fashion brand. In September 2007, she applied to register a stylised logo featuring the name “Katie

¹ (2026) 100 ALJR 335 (‘*Taylor v Killer Queen*’).

Perry” in relation to clothing and fashion designing in Class 42 which was accepted on the trade marks register (‘Register’) but then expired in July 2008. On 29 September 2008 (the ‘Priority Date’), Ms Taylor applied to register “Katie Perry” as a word mark for clothing, and this was entered on the Register on 21 July 2009 (‘Designer’s Mark’). Katheryn Elizabeth Hudson (the second respondent, ‘Ms Hudson’) has performed under the stage name “Katy Perry” since 2002. By the time Ms Taylor applied for the Designer’s Mark, she was aware that “Katy Perry” was a famous pop star. She also ‘likely knew that music artists sold clothing bearing their names ... at music concerts’,² and that this was a ‘commonly accepted practice’.³

By the Priority Date, Ms Hudson had achieved significant fame in Australia, including a number-one single and an album reaching Gold certification. On 26 June 2009, Ms Hudson applied to register the word mark “Katy Perry” in relation to music-related goods and services in Classes 9 and 41 (‘Singer’s Mark’), as well as various kinds of clothing in Class 25. The singer subsequently deleted Class 25 from her application after it was objected to on the basis of Ms Taylor’s earlier trade mark registration. For over a decade, both the Designer’s Mark and the Singer’s Mark coexisted.

III STATUTORY FRAMEWORK

Under s 20 of the *Trade Marks Act*, registration confers exclusive rights to use a trade mark in relation to specified goods or services. Cancellation (or ‘rectification’) of a trade mark from the Register is permitted only in certain circumstances, which are set out in s 88. The two relevant subsections of this provision that were relied on in *Taylor v Killer Queen* were ss 88(2)(a) and (c). Even where one of these grounds is established, the court retains a discretion under s 89 to refuse to rectify the Register. The proper construction and application of these provisions were the focus of the High Court decision and are set out in further detail below.

A Section 88(2)(a)

Section 88(2)(a) allows for the cancellation of a trade mark using any ground that could have been relied upon to oppose its initial registration. One of those grounds is s 60, which allows the registration of a mark to be opposed if it is likely to cause confusion due to the established reputation of another mark.

² Ibid 351 [63] (Gordon ACJ and Beech-Jones JJ).

³ Ibid 352 [71].

The application of s 60 involves a two-step inquiry.⁴ First, it must be shown that another trade mark had, before the relevant priority date, acquired a reputation in Australia.⁵ Reputation in this context refers to the ‘recognition of the ... mark by the public generally’ as a signifier of the source of goods or services.⁶

Second, it must be established that, ‘because of that reputation, the use of the [challenged] mark would be likely to deceive or cause confusion’.⁷ These are distinct legal concepts. To ‘deceive’ involves creating an incorrect mental impression or belief, whereas to ‘cause confusion’ may merely involve ‘perplexing or mixing up the minds’ of potential customers.⁸ For this ground to be established, there must be a ‘real, tangible danger’ of deception or confusion occurring; a mere possibility is insufficient.⁹

A critical element of this inquiry is the comparison between the actual use of the prior mark and the ‘notional normal and fair use’ of the challenged mark.¹⁰ The concept of what constitutes ‘notional normal and fair use’ is a hypothetical test that considers all legitimate, typical ways the mark could be used in a hypothetical market.¹¹

B Section 88(2)(c)

Section 88(2)(c) provides a further ground for rectification where, because of circumstances applying at the time the rectification application is filed, notional use of the registered mark would be likely to deceive or cause confusion. Section 88(2)(c) provides a broader basis for rectification than s 88(2)(a) when read with s 60. Unlike s 60, which requires proving that the likelihood of deception or confusion arises specifically ‘because of’ the reputation of another trade mark, s 88(2)(c) does not limit the source of the confusion to another mark’s reputation. Instead, s 88(2)(c) allows the court to examine any ‘circumstances applying’ at the

⁴ *Self Care IP Holdings Pty Ltd v Allergan Australia Pty Ltd* (2023) 277 CLR 186, 202–3 [13] (*‘Self Care’*).

⁵ *Ibid.*

⁶ *McCormick & Co Inc v McCormick* (2000) 51 IPR 102, 127 [81].

⁷ *Self Care* (n 4) 202–3 [13].

⁸ *Coca-Cola Co v All-Fect Distributors Ltd* (1999) 96 FCR 107, 122 [39], quoting *Pioneer Hi-Bred Corn Co v Hy-Line Chicks Pty Ltd* [1979] RPC 410, 423.

⁹ *Southern Cross Refrigerating Co v Toowoomba Foundry Pty Ltd* (1953) 91 CLR 592, 595.

¹⁰ *Taylor v Killer Queen* (n 1) 349–50 [55] (Gordon ACJ and Beech-Jones JJ), citing *Vivo International Corporation Pty Ltd v Tivo Inc* (2012) 294 ALR 661, 681 [113]–[114] (*‘Vivo’*).

¹¹ *Taylor v Killer Queen* (n 1) 349–50 [55] (Gordon ACJ and Beech-Jones JJ), citing *Vivo* (n 10) 681 [114] and the authorities cited therein.

time the rectification application is filed that might render the registered mark's use deceptive or confusing.¹²

C Section 89

Section 89 allows the court to refuse an application for rectification once a ground for cancellation has been established. For this provision, the burden of proof shifts to the registered owner, who must convince the court that the reasons for cancelling their mark 'ha[ve] not arisen through any act or fault' by them.¹³ Australian courts have recognised that the phrase 'any act or fault' is a composite expression that captures a broad range of conduct, including both positive actions and omissions.¹⁴ The mere fact of applying for and obtaining registration does not itself constitute an 'act or fault', although other circumstances surrounding the application, such as the applicant's state of mind, may do so.¹⁵ Furthermore, by using the term 'arisen through', the statute implies that a registered owner's conduct does not need to be the primary or only reason for confusion. Instead, the discretion under s 89 is lost as long as the owner's act or fault substantially contributed to the grounds for cancellation, even if it was not the 'proximate' cause.¹⁶ In exercising this discretion, the court is legally required to consider prescribed matters, such as the public interest, the extent to which the mark remains distinctive, and whether any adequate alternative remedies exist.¹⁷

IV EARLIER DECISIONS

A Federal Court Decision

Ms Taylor initiated legal proceedings against Ms Hudson and three of her companies. In the initial hearing, Justice Markovic ruled that while Ms Hudson's company, Kitty Purry Inc, had infringed on the Designer's Mark, Ms Hudson avoided personal liability.¹⁸ The judge noted that even though Ms Hudson's social media activity would have normally constituted infringement, she was able to rely on the "own name"

¹² *Taylor v Killer Queen* (n 1).

¹³ *Ibid* 357 [96] (Gordon ACJ and Beech-Jones J).

¹⁴ *XYZ v Commonwealth* (2006) 227 CLR 532, 543–4 [19]; *Sea Shepherd Australia Ltd v Federal Commissioner of Taxation* (2013) 212 FCR 252, 261 [34].

¹⁵ *Taylor v Killer Queen* (n 1) 382 [248] (Jagot J).

¹⁶ *Government Insurance Office of NSW v R J Green & Lloyd Pty Ltd* (1966) 114 CLR 437, 443, 445, 447; *Dickinson v Motor Vehicle Insurance Trust* (1987) 163 CLR 500, 505.

¹⁷ *Trade Mark Regulations 1995* (Cth) reg 8.2.

¹⁸ *Taylor v Killer Queen, LLC and Others (No 5)* (2023) 172 IPR 1 ('*Taylor v Killer Queen* FCA').

defence found in s 122(1)(a)(i) of the *Trade Marks Act*.¹⁹ This provision applies where a person uses their own name in good faith, even if that name is similar to a registered trade mark.

Ms Hudson's attempt to have the Designer's Mark cancelled was unsuccessful. Regarding s 88(2)(a), the judge found that while the singer was certainly famous for music and entertainment, that reputation did not extend to clothing at the time.²⁰ Because the "Katy Perry" brand had not acquired a reputation in relation to clothing in Australia, the judge concluded there was no real likelihood of consumers being deceived or confused. In relation to s 88(2)(c), the judge also pointed to the fact that the two brands had coexisted for a decade without a single documented instance of actual confusion.²¹ Furthermore, her Honour reasoned that the singer's massive "star power" by 2019 actually made it easier for consumers to distinguish between the two, as they would recognise the absence of a connection after a 'moment's reflection'.²² Because the grounds for cancellation were never met, the judge declined to consider the s 89 discretion.

Ms Hudson and two of her companies appealed the infringement and rectification findings to the Full Court. Ms Taylor cross-appealed to broaden the scope of liability for the singer's other companies.

B Full Court Decision

The Full Court overturned the primary judge's decision, ruling that Ms Taylor's trade mark should be cancelled on both grounds for rectification.²³ Regarding the cancellation ground under s 88(2)(a) (evaluated at the Priority Date), the Court found the original judge's view was too narrow and should have recognised that a pop star's stage name naturally functions as a trade mark.²⁴ The Court also held that the primary judge failed to account for the 'common practice' of musicians selling clothing at concerts and launching fashion labels, which made consumer confusion a real risk.²⁵ Because the names were nearly identical, the Full Court concluded that consumers would likely wonder if a trade connection existed.

¹⁹ Ibid 160 [626], 161 [633], 162 [639], 163–4 [648], 169 [667], 177 [705].

²⁰ Ibid 188 [742].

²¹ Ibid 199 [790].

²² Ibid 200 [794].

²³ *Killer Queen, LLC v Taylor* (2024) 306 FCR 199.

²⁴ Ibid 260 [289]–[290].

²⁵ Ibid 260–1 [291], 262–3 [302].

Regarding s 88(2)(c), the Full Court decided that the risk of confusion had actually increased alongside the singer's international fame.²⁶ Crucially, the Court held that this risk must be assessed by reference to the notional normal and fair use of the "Katie Perry" mark rather than being limited only to Ms Taylor's actual modest use of the brand.²⁷ They reasoned that when marks are so similar, a stronger reputation makes it more likely that people will assume the singer is behind both brands.

The Full Court also refused to exercise its discretion to save the mark under s 89, finding that the ground for cancellation arose through Ms Taylor's own 'act or fault'. This was based not just on the act of registration, but also the fact that she applied for the mark with full knowledge of the singer's fame and the common practice of music merchandising.²⁸

In the same proceeding, Ms Taylor cross-appealed regarding the liability of the singer's other companies and whether Ms Hudson was personally liable as a joint tortfeasor. The Court dismissed the cross-appeal regarding the other companies, finding that they acted only as licensor and played no active role in the commission of the tort.²⁹ However, the Full Court allowed the cross-appeal regarding Ms Hudson, finding she should have been found to be a joint tortfeasor with her companies.³⁰

Ms Taylor then appealed these findings to the High Court. She argued that the Full Court had wrongly conflated the singer's celebrity status with a specific reputation for selling clothes and contended that the absence of actual confusion over 10 years should have been the most important factor.³¹ She also challenged the interpretation of s 89, arguing that the mere act of registering a mark with knowledge of another's reputation should not be enough to block the court's discretion.³²

V THE HIGH COURT'S FINDINGS AND REASONING

By a 3:2 majority, the High Court allowed the appeal. The reasoning differed substantially between the majority judges, comprising Gleeson, Steward and Jagot JJ, and the dissenting judgment of Gordon ACJ and Beech-Jones J. There were three main issues raised in the High Court appeal, each set out below.

²⁶ Ibid 268 [339].

²⁷ Ibid 262–3 [302].

²⁸ Ibid 265 [317].

²⁹ Ibid 232 [120].

³⁰ Ibid 232 [119], 270 [355].

³¹ *Taylor v Killer Queen* (n 1) 348 [47].

³² Ibid 348 [49].

A *Rectification of the Designer's Mark under ss 60 and 88(2)(a)*

The first issue raised by the Court was whether, under ss 88(2)(a) and 60, use of the Designer's Mark at the Priority Date was likely to deceive or cause confusion because of the singer's reputation. In other words, did the pop star's fame in music automatically translate to a reputation in clothing that would make the Designer's Mark likely to cause confusion?

The majority held that the cancellation ground in s 88(2)(a) (read with s 60) was not established. Justice Jagot accepted that the Singer's Mark had acquired a substantial reputation in Australia. However, that reputation was primarily associated with music and entertainment rather than clothing, and there was insufficient evidence that use of the Designer's Mark in relation to clothing would give rise to a real and tangible risk of deception or confusion.³³ While an ordinary person might momentarily wonder whether there was a connection between the marks, the majority held that any such confusion did not pose a real or tangible risk.³⁴ Their Honours held that the Full Court had erred in relying on the 'common practice' of pop stars selling merchandise to extend the reputation of their trade mark beyond its use.³⁵ Specifically, there was no evidence that "Katy Perry" branded clothing had been sold in Australia before the priority date.³⁶

Acting Chief Justice Gordon and Beech-Jones J dissented, finding that the s 60 ground was established. Their Honours concluded that, even though the Singer's Mark had acquired a reputation in music and entertainment, rather than clothing, the common practice of pop stars selling merchandise apparel meant that notional use of the Designer's Mark on clothing would nonetheless present a real risk of confusion.³⁷ They stated that the lack of evidence of actual confusion was not determinative, given the limited use of the Designer's Mark.³⁸

³³ Ibid 384–6 [271]–[283] (Jagot J). Justice Steward generally agreed with the reasons of Jagot J for finding that ss 88(2)(a) and 60 were not satisfied: at 359 [114]. Justice Gleeson decided similarly: at 373–4 [197]–[201].

³⁴ Ibid 374 [200] (Gleeson J), 387 [285] (Jagot J, Steward J agreeing at 362–3 [134]).

³⁵ Ibid 373 [195] (Gleeson J), 384 [270]–[271] (Jagot J).

³⁶ Ibid 375 [209] (Gleeson J), 386 [282] (Jagot J).

³⁷ Ibid 352–3 [71]–[72] (Gordon ACJ and Beech-Jones J).

³⁸ Ibid 353 [73]–[74] (Gordon ACJ and Beech-Jones J).

B Rectification of the Designer's Mark under s 88(2)(c)

The second issue for the Court concerned s 88(2)(c), which allows for the cancellation or amendment of a registered trade mark if, due to circumstances existing at the time of the rectification application, its use is likely to deceive or cause confusion. The issue was whether, given the circumstances at the time of the rectification application (20 December 2019), the use of the Designer's Mark was likely to deceive or cause confusion. The question was whether the pop star's massive subsequent fame made the continued registration of the Designer's Mark deceptive by 2019.

The majority affirmed that this ground is to be assessed by reference to the notional normal and fair use of the registered trade mark, rather than by reference solely to its actual use at the time the rectification application was filed.³⁹ Applying this test, the majority found that the cancellation ground in s 88 (2)(c) was not established. Justice Jagot stated:

[T]en years is a long time for two deceptively similar trade marks to be on the market in Australia with no evidence of any confusion, despite the attempts by [Ms Hudson] to find such evidence by way of discovery. That period was sufficiently long to support an inference from the absence of evidence of confusion that in fact it was not likely that people had been or would be deceived or confused.⁴⁰

Justice Steward delivered a separate judgment which provided a different basis for reaching the same conclusion. His Honour's concern was to avoid permitting an 'assiduous infringer' to take advantage of their own wrongdoing to secure cancellation of the very mark being infringed.⁴¹ He noted that Ms Hudson had continually sold "Katy Perry" branded clothing in Australia despite the existence of the Designer's Mark and suggested that it would be an 'extraordinary result' if confusion arising from this type of conduct could justify the removal of the Designer's Mark from the Register.⁴²

His Honour held that s 88(2)(c) should be interpreted in light of the maxim "*nullus commodum capere potest de injuria sua propria*" — no man can take advantage of his own wrong', in line with several High Court decisions decided under s 28(a) of

³⁹ Ibid 375 [206] (Gleeson J), 376 [218], 379–80 [241]–[243] (Jagot J).

⁴⁰ Ibid 388 [294] (Jagot J).

⁴¹ Ibid 360 [117], 363–6 [135]–[155] (Steward J).

⁴² Ibid 367 [157] (Steward J), quoting *Riv-Oland Marble Co (Vic) Pty Ltd v Settef SpA* (1988) 19 FCR 569, 599 (Lockhart J).

the *Trade Marks Act*, highlighting that the respondents' persistent infringing conduct over many years should not be rewarded.⁴³ His Honour held that whilst s 88(2)(c) refers to 'circumstances applying at the time when the application for rectification is filed', the provision should be 'construed in a restricted or "strained" way so that it does not include such deception or confusion which has occurred because of the infringing conduct of an applicant for rectification'.⁴⁴

The dissenting judges found the s 88(2)(c) ground was even stronger by 2019 in light of Ms Hudson's heightened fame and increase in merchandising.⁴⁵ Their Honours said the threshold question for s 88(2)(c) was whether it should be assessed by reference to the Designer's actual use or to notional use.⁴⁶ The relevant use 'is necessarily the notional normal and fair use', and the inquiry is not confined to actual use.⁴⁷ This 'properly reflects that the proprietor enjoys a statutory monopoly across the full range of goods or services to which the registration extends' and would avoid permitting

the registered owner of a trade mark to resist rectification on the basis of its narrow use of the trade mark with a broad specification, even while there would be a real, tangible danger of deception or confusion if the mark was used beyond that narrow use.⁴⁸

C Discretion Not to Cancel Designer's Mark under s 89

The third issue arose only if one or both of the rectification grounds under s 88 were established. In that event, the issue was whether the Court should exercise its discretion not to rectify the Register under s 89, where the registered owner, Ms Taylor, could demonstrate that the relevant ground for rectification had not arisen through any act or fault of her own. In other words, if confusion was found, should the Designer's Mark be cancelled even if Ms Taylor was not legally responsible for the confusion?

The majority held the discretion under s 89 did not arise since no ground for rectification under ss 88(2)(a) or (c) was established.⁴⁹ However, Jagot J agreed with

⁴³ *Taylor v Killer Queen* (n 1) 363–7 [135]–[156] (Steward J).

⁴⁴ *Ibid* 367 [157] (Steward J), quoting *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85, 113.

⁴⁵ *Taylor v Killer Queen* (n 1) 355–6 [87]–[93] (Gordon ACJ and Beech-Jones JJ).

⁴⁶ *Ibid* 354 [81] (Gordon ACJ and Beech-Jones JJ).

⁴⁷ *Ibid* 355 [85] (Gordon ACJ and Beech-Jones JJ).

⁴⁸ *Ibid* 355 [86] (Gordon ACJ and Beech-Jones JJ).

⁴⁹ *Ibid* 375–6 [210] (Gleeson J), 368 [164] (Steward J), 389 [296]–[299] (Jagot J).

the Full Court that the relevant 'act or fault' of Ms Taylor under s 89(1) would not have been merely applying to register her trade mark.⁵⁰ Instead, the circumstances in which the application was made, including the applicant's state of mind, could constitute the relevant 'act or fault'.⁵¹

The dissenting judges found that the discretion not to cancel the registration under s 89 was not enlivened, for several reasons. First, the designer was aware of the reputation of the Singer's Mark and the common practice of musicians marketing clothing at the time of filing her trade mark application.⁵² Second, the designer had encouraged an association between herself and the singer, including through social media references intended to promote her.⁵³ Third, the designer took no steps to enforce her trade mark rights for 10 years.⁵⁴

VI SIGNIFICANCE OF THE CASE

The case provides important clarification of the operation of reputation-based cancellation under the *Trade Marks Act*, particularly in relation to ss 60, 88 and 89.

The Court's clearest contribution is its reaffirmation that, for the purposes of s 60, a trade mark's reputation must be in the mark itself and must also be in respect of particular goods or services, not just general fame.⁵⁵ This clarification indicates that courts will be cautious about extending a celebrity's reputation into new product categories without evidence tied to those goods.

Equally significant is the Court's treatment of evidence, and the absence of evidence of actual confusion. By restoring the primary judge's findings, the majority endorsed the proposition that prolonged coexistence without evidence of confusion may constitute a powerful factor against cancellation, even where the marks are deceptively similar.⁵⁶ This approach does not lower the standard of proof in claims based on likely confusion. It makes clear that confusion has to be a real and tangible risk rather than just a possibility. It also warns courts not to ignore the lack of confusion just because one business is smaller than the other.

⁵⁰ Ibid 380 [248], 389 [298] (Jagot J).

⁵¹ Ibid 380 [248].

⁵² Ibid 358 [103]–[104], 359 [107]–[108] (Gordon ACJ and Beech-Jones J).

⁵³ Ibid 359 [109] (Gordon ACJ and Beech-Jones J).

⁵⁴ Ibid 359 [110]–[111] (Gordon ACJ and Beech-Jones J).

⁵⁵ Ibid 379 [239] (Jagot J).

⁵⁶ Ibid 373 [193] (Gleeson J), 388–9 [294] (Jagot J).

The Court's construction of s 89 confirms that the choice not to rectify a trade mark is made only if the owner of the registered mark shows that the rectification ground has not arisen through their act or fault.⁵⁷ In addition, the mere act of applying for registration is not enough to enliven the provision. The decision highlights that registered rights still matter and reinforces the Register as a stable source of proprietary entitlement, rather than a mechanism for retrospectively reallocating rights based on evolving fame.

This decision also confirms that courts will not look kindly on an 'assiduous infringer'.⁵⁸ Although said in obiter, Steward J's warning that the *Trade Marks Act* should not be construed to enable a party to profit from confusion generated by its own infringing conduct is important. It highlights the risks for those who enter the market second and then knowingly continue to use a trade mark despite an existing registration.

The narrow 3:2 decision in *Taylor v Killer Queen* highlights the continuing uncertainty regarding the operation of ss 88 and 89 of the *Trade Marks Act* and the need for potential legislative reform. For example, Justice Steward's 'assiduous infringer' reasoning could be codified within s 88 to explicitly prevent a party from being able to rely on confusion they generated through their own infringing conduct as a basis for cancelling a valid trade mark registration. In addition, the uncertainty surrounding the meaning of 'act or fault' in s 89 also needs clarifying. Reform could require some form of blameworthy conduct, rather than the mere filing of a trade mark application with knowledge of another's reputation. Ultimately, as Burrell and Handler suggest, the 'simplest solution' to the current statutory instability may be to repeal the specific discretionary ground contained in s 89(1)(b) entirely.⁵⁹

The case is likely to resonate with small business owners and independent creators because it confirms that trade mark protection does not depend on the relative size, wealth or fame of the parties. Despite Ms Hudson's global reputation, the High Court upheld the Designer's Mark and confirmed that an earlier registration will not readily be displaced by a later reputation-based challenge. For small businesses and creators, the decision reinforces the value of securing trade mark protection early and the security that registration is intended to provide.

⁵⁷ Ibid 380 [248] (Jagot J).

⁵⁸ Ibid 360 [117], 363–7 [135]–[157] (Steward J).

⁵⁹ Robert Burrell and Michael Handler, 'Reputation, Confusion and Discretion in Australian Trade Mark Law: "Taylor v Killer Queen LLC"' (2025) 47 *Sydney Law Review* 1, 14.

VII CONCLUSION

Taylor v Killer Queen clarifies the limits of reputation-based cancellation under the *Trade Marks Act*. The decision confirms that trade mark rights are to be assessed by reference to use, evidence, and statutory function rather than notoriety alone. In doing so, the Court has made clear the limits of challenging validly registered trade marks using reputation alone, especially where similar trade marks have coexisted for a long period without causing any confusion.