



Minister for Western Sydney
Minister for Fair Trading
Minister Assisting the Minister for Commerce

RML: M05/4475

Min No: 05/3703

File No: 05/023274

*Richard Anderson**RB**12/11/05*

Mr Stepan Kerkyasharian
Chairperson
Community Relations Commission
PO Box A2618
SYDNEY SOUTH NSW 1235

Dear Mr Kerkyasharian

I refer to your correspondence to the former Minister for Fair Trading on behalf of Dr S Orekondy regarding the use of the name Ghandi in a NSW business name.

On receipt of your correspondence the matter was referred to the Office of Fair Trading for consideration and advice.

A review by Fair Trading has found that, in addition to the NSW registered business name Handi Ghandi Lismore, there are two business names registered in Queensland, two registered companies and two registered trademarks, all of which include the phrase Handi Ghandi.

Both trademarks and one of the company names predate the registration of Handi Ghandi Lismore on 2 September 2003.

It would appear from the press extract provided by you that the primary concern of the Mahatma Gandhi Foundation is any association of Mahatma Gandhi with the sale of food products that contain meat.

The registered trademark used by the business is capable of at least associating the name Handi Ghandi with the sale of curried foods. The Indian flavour of the graphics of the trademark could, to those familiar with Mahatma Gandhi, suggest a link of the product to his name.

The business name however should be viewed in isolation of the trademark. The purpose of the *Business Names Act 2002* is to provide a means for consumers to determine who owns a business. It is not meant as a regulatory framework for marketing practices.

Clause 4 of the Ministerial Prohibitions issued under section 21 of the Act prohibits the registration of names that are likely to be offensive to members of the public or members of any section of the public.

The application of clause 4 is limited to assessing whether the actual words or combination of words forming the business name are inherently offensive. The effect of marketing practices at the place of business or in the various media on the perception of consumers and community groups is not a matter that can be considered in determining if a name has been correctly registered. It follows that such issues are not grounds for cancellation.

Handi Ghandi Lismore was not considered offensive and was therefore suitable for registration under the standard rules for determining availability of a proposed name. Further, in the two years the business name has been registered, there have been no complaints made to the Office of Fair Trading regarding the name.

Fair Trading is, however, sensitive to these matters and will place "Mahatma Gandhi" on its future restricted words list.

I trust this information is of assistance in responding to Dr Orekondy.

Yours sincerely

A handwritten signature in cursive script that reads "Diane Beamer". The signature is written in dark ink and is positioned above the printed name.

The Hon Diane Beamer MP

4 NOV 2005