

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## Australian Karting Association v Karting (New South Wales) Incorporated [2022] FedCFamC2G 614

**Federal Circuit and Family Court of Australia, Baird J, 2 August 2022**

Application to allow an affidavit that was 600 days overdue to be relied upon at a final hearing.

**Key words:** Trade Mark, Australia, Sport, Karts, Affidavit, Delay

1. The Australian Karting Association Ltd (Karting Australia) is the Australian body responsible for promoting the sport of karting in Australia. It is a company limited by guarantee. A previous federated association known as AKA Inc had carried out these responsibilities, but in 2013 the operations of AKA Inc were transferred to Karting Australia. At the same time, a memorandum of understanding was executed between Karting Australia and the state associations.
2. Karting (NSW) Incorporated (Karting NSW) is a nonprofit association and is responsible for promoting the sport and conducting karting races in New South Wales and the Australian Capital Territory.
3. Karting Australia started proceedings on 1 July 2019 against Karting NSW for infringement of copyright and infringement of an Australian registered trade mark, a composite mark comprising a stylised image of a driver with a helmet in a motor kart, a background chequerboard pattern, and the stylised words KARTING, and 'NEW SOUTH WALES', registered in respect of specified services in class 41 of the Register of Trade Marks.
4. Karting NSW cross-claimed for cancellation and removal of the Trade Mark and sought relief for unjustified threats for copyright and trade mark infringement.
5. The proceeding was to be heard on 23 August 2022.
6. In June 2022, Karting Australia sought leave of the Court to rely on the affidavit of Karting Australia's CEO dated 20 May 2020. It was long, with about 230 pages of annexures, and over 600 days overdue.
7. The affidavit was made in response to Karting NSW's cross-claim for cancellation and removal of the Trade Mark.

8. Karting Australia argued that leave should be granted because of settlement negotiations between the parties, and there was little prejudice as it was being served three months prior to the hearing.
9. Karting NSW opposed leave on the basis of:
  - irrelevance by reference to the pleaded case;
  - inadequacy of the explanation for the delay; and
  - unfair prejudice.
10. The Court, although finding some merit in the reasons for the delay in filing the affidavit, was not persuaded that it was appropriate to allow Karting Australia leave to rely on the affidavit at the final hearing.

## IMPLICATIONS



In [Australian Karting Association Ltd v Karting \(NSW\) Incorporated](#) [2021] NSWSC 1075, disputes arose between Karting Australia and Karting NSW regarding the administration of a trust fund for track development to which the state bodies contributed funds. In 2018 Karting NSW proposed to its members that there be a vote of no confidence in Karting Australia's board and a members' resolution that Karting NSW ceases to be a member of Karting Australia.

Karting NSW later demanded its funds from the trust fund, sought to convene a meeting of Karting Australia to consider removing its directors, and took unilateral steps to establish its own rules for the conduct of karting races. Karting Australia then wrote to Karting NSW informing it that it had cancelled each of three loan agreements and demanding immediate repayment of the outstanding amount of principal, together with interest on the principal advanced, from the date of commencement of each loan.

The Court found that the funds were a bare trust, so that Karting NSW was entitled to make a claim and entitled to be paid the money from the fund by Karting Australia.

## VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FedCFamC2G//2022/614.html>

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