

**SOUTHERN CROSS REFRIGERATING CO V. TOOWOOMBA FOUNDRY PTY LTD [1959] 71 CLR 592**

High Court of Australia – 15 December 1954

**FACTS**

Southern Cross sought to register a trademark consisting of the words “Southern Cross” in respect of refrigeration on the ground that it would be likely to deceive consumers. Toowoomba built and registered trademarks for milking machine, windmills, well-drilling machines and parts.

**ISSUE**

Would the registration of the trademark “Southern Cross” for refrigerators deceive consumers in believing there was a connection between Toowoomba’s products and the refrigerators?

**FINDING**

A trademark registration should be refused if there is a real risk that the consumers would wonder or believe that the two products came from the same source.

**QUOTE**

The Court said:

*“In part the confusion resulted from the use by the appellant of a mark which had long and widely been used by the respondent, in part from the fact that it was a mark which had been used by the latter with respect to such diverse objects as both manual and power well-drilling and boring machinery, milking machines and engines and windmills, in part from the fact that in the course of business those articles frequently are and have, for a long time, been sold in country stores where, side by side with them, domestic refrigerators are stocked and sold, and last but not least from the circumstance that the name “Southern Cross” is a mark of general character and – as appears from what we have already said – of a wide and varied significance.*

*A careful scrutiny of the evidence convinces us that the respondent made out a clear case not only that a user of the mark by the appellant for the purposes proposed by it would be likely to deceive, but that it has already done so ....”*

**IMPACT**

A trademark should not be registered if the registration and use of the trademark could confuse the market place into believing that products produced by the established entity already using a similar trademark.