



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: M32/2025
File Title: Bed Bath 'N' Table Pty Ltd (ACN 005 216 866) v. Global Retra
Registry: Melbourne
Document filed: Form 27B - Appellant's chronology
Filing party: Appellant
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Important Information

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Form 27B – Appellant’s chronology

Note: see rule 44.02.3.

M32/2025

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

ON APPEAL FROM THE FULL COURT
OF THE FEDERAL COURT OF AUSTRALIA

No M32 of 2025

BETWEEN: **BED BATH ‘N’ TABLE PTY LTD (ACN 005 216 866)**

Appellant

and

GLOBAL RETAIL BRANDS AUSTRALIA PTY LTD (ACN 006 348 205)

Respondent

APPELLANT’S CHRONOLOGY

Part I: Certification

This chronology is in a form suitable for publication on the internet.

Part II: Chronology

Item	Date	Event	Reference
1.	1976	The Appellant (BBNT) commences trading under the “BED BATH N’ TABLE” mark (BBNT mark) and operating retail stores for soft homewares and has continuously traded under that mark since that time. BBNT has used BBNT mark in respect of its store signage, packaging on BBNT’s goods, point of sale and related material, invoices, bags and catalogues. The brand has been extensively advertised and promoted in magazines, on its website, on social media and email communications. BBNT was the only retailer in Australia to use the words “bed” and “bath” in its name for over 40 years until the launch of House	Judgment of the Primary Judge (PJ) [2], [26], [33], [34], [75], [94] (CAB Tab 1, pp14, 19, 20, 29, 32) Judgment of Full Court (AJ) [7],

Item	Date	Event	Reference
		Bed & Bath (House B&B) in 2021 by the Respondent (GRBA).	[10], [11], [21] (CAB Tab 7, pp186, 187, 191)
2.	From at least 1978	GRBA and its predecessors in title operated retail stores under the “House” brand, including “House WAREHOUSE”, “House OUTLET”, “House POP UP”, “House Superstore” and “House CASA MAISON HOME”.	PJ [56] (CAB Tab 1, p24) AJ [16] (CAB Tab 7, p189)
3.	Since mid-1990s	BBNT brand has been consistently presented in accordance with the company’s brand guidelines in block capital letters on a plain background as follows: BED BATH N’ TABLE	PJ [30] (CAB Tab 1, p19) AJ [8] (CAB Tab 7, p187)
4.	2 March 1995	BBNT mark registered in class 24 (Australia trade mark No. 654780) and class 42 (Australia trade mark No. 654781).	PJ [3] (CAB Tab 1, p14) AJ [2] (CAB Tab 7, p185)
5.	July 2007	GRBA acquired the House business.	PJ [56] (CAB Tab 1, p24)
6.	Since mid-2010s	BBNT engaged in the practice of brand extension and operated a number of concept stores under and by reference to “BED BATH ‘N’ TABLE” in full and without alteration, on a dark green background, with other trade marks. This included two stores under “HOMEWORKS BED BATH ‘N’ TABLE” (for a few years in mid-2010) and “BED BATH ‘N’ TABLE THE WORKS”.	PJ [48]-[51] CAB Tab 1, pp23-24) AJ [15] (CAB Tab 7, pp188-189)
7.	November 2013	BBNT launched its online store offering products for sale.	PJ [43] (CAB Tab 1, p22)

Item	Date	Event	Reference
			AJ [11] (CAB Tab 7, p187)
8.	In around 2016	BBNT launched a customer rewards scheme “HOMEstyle – BED BATH N’ TABLE” (BBNT customer rewards scheme).	PJ [42] (CAB Tab 1, p22)
9.	August 2017	BBNT commenced operating a Facebook page.	PJ [44] (CAB Tab 1, p22) AJ [11] (CAB Tab 7, p187)
10.	10 October 2017	BBNT mark registered in class 24 and class 35 (Australia trade mark No. 1878972).	PJ [3] (CAB Tab 1, p14) AJ [2] (CAB Tab 7, p185)
11.	Around June 2020	GRBA acquired the “MyHouse” business, a soft homewares business. At that time House had little or no trading reputation in the soft homewares market. GRBA previous attempt to enter the market (as House CASA MAISON HOME) had largely failed. Mr Caruana, GRBA’s Store Development Manager, was instructed to develop a new fit out. As part of his research Mr Caruana took external and internal photographs of a BBNT store.	PJ [133], [135], [136] (CAB Tab 1, pp41-42) AJ [17], [32] (CAB Tab 7, pp189, 193-195)
12.	At 2021	BBNT had annual sales in the hundreds of millions of Australian dollars.	PJ [28] (CAB Tab 1, p19)
13.	Early 2021	GRBA leased a store at Westfield Doncaster – this was to be the first new MyHouse store since acquired by GRBA. By this time, GRBA had completed its design of the new MyHouse fit out.	PJ [140], [141] (CAB Tab 1, pp42-43)
14.	28 April 2021	Mr Caruana emailed Mr Lew, GRBA’s founder, Executive Chairman and director, and Ms McGann, GRBA’s Head of Brand and Media, three layout	PJ [143] (CAB Tab 1, p43)

Item	Date	Event	Reference
		options that he had prepared for the MyHouse store in Doncaster.	AJ [32] (CAB Tab 7, pp193-195)
15.	At May 2021	<p>BBNT had acquired an extensive reputation in the BBNT marks in Australia which had been accumulated over 40 years of “unique” use in the soft homewares market.</p> <p>The BBNT mark had become factually distinctive of BBNT as a result of over 40 years of use in Australia.</p> <p>BBNT had around 167 physical stores in Australia. BBNT stores commonly had large front windows through which could be seen “Hamptons style” beds and frosted glass window decals with the BBNT mark. The presentation of a typical BBNT store is shown below:</p> 	<p>PJ [39], [40], [74] [509] (CAB Tab 1, pp21-22, 29, 115-116)</p> <p>AJ [14], [41] (CAB Tab 7, pp188, 197-198)</p>
16.	At May 2021	BBNT customer rewards scheme had almost 3 million members in Australia.	<p>PJ [42] (CAB Tab 1, p22)</p> <p>AJ [11] (CAB Tab 7, p187)</p>
17.	At May 2021	<p>GRBA had, over 40 years, acquired an extensive reputation in the House retail brand and was well-established in the hard homewares market in Australia generally located in major shopping centres or retail precincts.</p> <p>GRBA had around 100 House stores in Australia, which had a particular “discount” look, including cluttered appearance and discount signage, and sold kitchenware products. [Note: at certain paragraphs in the Primary Judgment, it refers to 140 House store.]</p>	<p>PJ [57], [69], [509], [510] (CAB Tab 1, pp25, 28, 115-116)</p> <p>AJ [14]. [16], [41] (CAB Tab 7, pp188,</p>

Item	Date	Event	Reference
		House B&B stores were different to the typical House store and adopted the “Hamptons style” look.	189, 197-198)
18.	3 May 2021 afternoon/evening	Before the opening of the first MyHouse store, at the “very last minute”, only days before the first MyHouse store was scheduled to open, Ms McGann queried during a telephone call with Mr Lew whether it was “too late to consider rebranding and calling this a HOUSE branded store?”. Mr Lew’s initial reaction was that this was “a good idea”, as it would “allow GRBA to leverage off the goodwill associated with the HOUSE brand”.	PJ [144] (CAB Tab 1, p43) AJ [32] (CAB Tab 7, pp193-195)
19.	3 May 2021 at 9:10pm	<p>Ms McGann emailed Mr Lew the “running scared” email which included the following:</p> <p>“Thanks for calling We WILL make this work and more than that — SOAR. Just on our chat Something to mull over SHE KNOWS WHAT WE DO WELL WE OFFER EXCELLENT PRODUCT WITH A GREAT VALUE PRICE TAG WHY DOES A [ROBINS KITCHEN] AND A [HOUSE] IN THE SAME CENTRE ALWAYS FAVOUR HOUSE IN SALES? — SHE KNOWS AND TRUSTS THE BRAND. We have all this BRAND LOYALTY TO LEVERAGE Just something to think about? Not 100% there myself but there is something in it?? Before we roll out too many MYHOUSE — One could be [HOUSE] — we could try? Aim to always open in the SAME centre so can push them either which way for deals — double our audience. Will have Bed bath and table running scared. HOUSE bed & bath. HOUSE BATH AND BED HOUSE BEDWORKS</p>	<p>PJ [146], [148], [200], [202], [468] (CAB Tab 1, pp43-44, 54, 55, 105-106)</p> <p>AJ [32] (CAB Tab 7, pp193-195)</p>

Item	Date	Event	Reference
		<p>House Bed & Bath ”</p> <p>This was the first time that Mr Lew had heard of “House BED & BATH” as a potential brand. “Bed” and “Bath” were not mentioned as category descriptors or navigational aids in any contemporaneous document at the time of Ms McGann selecting the House B&B name.</p>	
20.	5 May 2021 at 7:03am	Mr Lew sent Ms McGann a text message image of the House B&B Logo from Ms McGann’s running scared email with the comment “I think you could be right”. Ms McGann replied and agreed. Ms McGann saw a significant advantage in being branded House B&B as opposed to MyHouse.	PJ [150] (CAB Tab 1, pp44-45)
21.	6 May 2021	<p>Mr Lew decided to proceed with the House B&B mark as his preferred option.</p> <p>Mr Lew instructed Mr Caruana to get signage made up for the Doncaster store with the new brand and put up in time for the launch of the store in four days.</p> <p>Mr Lew’s executive assistant instructed GRBA’s corporate lawyer to lodge a Headstart application for the below House B&B logo in class 35:</p> 	<p>PJ [153], [158] (CAB Tab 1, pp45, 46-47)</p> <p>AJ [32], [35] (CAB Tab 7, pp193-195, 196)</p>
22.	6 May 2021	<p>Mr Lew responded to Ms McGann’s email (bold text) by filing in his answers to the question asked (not bold text), including the following:</p> <p>“1. CHECK WITH LEGAL?”</p> <ul style="list-style-type: none"> • HOUSE Bed & Bath <p><i>BEING FAST TRACKED NOT A BIG CONCERN FROM LAWYERS.</i></p> <ul style="list-style-type: none"> • <i>Check we can proceed – no objections</i> • Send logo off to register” 	<p>PJ [154] (CAB Tab 1, p45)</p> <p>AJ [32] (CAB Tab 7, pp193-195)</p>
23.	12 May 2021	GRBA applied for registration of the House B&B in class 35 the subject of the Headstart Application. The application was trade mark application number 2176694:	PJ [161] (CAB Tab 1, p47)

Item	Date	Event	Reference
			AJ [32] (CAB Tab 7, pp193-195)
24.	13 May 2021	New signage was installed at the Doncaster store.	PJ [162] (CAB Tab 1, p47) AJ [32] (CAB Tab 7, pp193-195)
25.	14 May 2021	GRBA began operating a new soft homewares business selling products for the bedroom and bathroom. GRBA opened its first House BED & BATH store in Doncaster shopping centre in Victoria using the House B&B mark and below signage:  The store was in close proximity to the BBNT store.	PJ [78], [163], [507] (CAB Tab 1, pp29-30, 47-48, 115) AJ [18], [20] (CAB Tab 7, pp190-191)
26.	25 May 2021	BBNT's solicitors sent a letter of demand to GRBA, noting the existence of the BBNT marks, and BBNT's extremely high level of brand recognition throughout Australia, in the name BED BATH N' TABLE.	PJ [165] (CAB Tab 1, p48)
27.	At about June 2021	GRBA opened a House BED & BATH store in Knox shopping centre.	PJ [167] (CAB Tab 1, p48)
28.	1 June 2021	GRBA's solicitors responded to BBNT's solicitor's letter of demand, which set out the trade mark registrations held by GRBA and noted that the House brand and trade marks were well known in Australia and that House B&B was a clear brand	PJ [166] (CAB Tab 1, p48)

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		extension and not deceptively similar to the BBNT marks. There was no mention of the concept of “bed” and “bath” being category descriptors or navigational aids.	
29.	11 June 2021	BBNT commenced proceedings against GRBA.	PJ [167] (CAB Tab 1, p48)

Dated: 22 May 2025



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