

ny, and therefore they had a legal right to any proceeds or profits resulting from the invention.

"In the end the judge determined that because the sales manager was employed in that capacity and not to use his technical skills, the invention belonged to the sales manager and any profits or benefits were owned by him."

But Mr Eliades said there were many instances where the employer had won similar court cases or where both the employee and employer were awarded joint benefit from an idea.

He said the best way to avoid legal disputes involving IP was to clearly spell out the boundaries of ownership of ideas and inventions so that employers and employees were informed.

#### EMPLOYER'S RIGHTS

Mr Kay said, generally speaking, the starting point is the employer will own employees' inventions.

"However, an independent contactor will own the IP they develop," Mr Kay said.

"It will greatly depend on the amount of control over the work and if the work is integral to the business.

"If you have a clear written agreement that says that any IP developed in the course of work is the IP of the business owner, then there is at least a guideline.

"Where work done is not covered by a policy or agreement, other considerations come into play.

"Lawsuits are common between employer and employee, and also between principal and contractor, especially where the parties have not made specific reference to the ownership of IP in any contracts between them.

"Generally these issues are tied to the matter of restraint of trade and who can utilise the IP after it is developed.

"However, often the disagreements are sorted out by negotiation and mediation rather than ending in a court action."

With IP having the potential to bring about significant financial gain, Mr Eliades said it was no wonder people wanted to have a stake in it.

"In 2005-06 there were approximately 33,000 patent applications lodged in Australia," he said.

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#### IN BRIEF >>>

## Why SMEs are in downward spiral

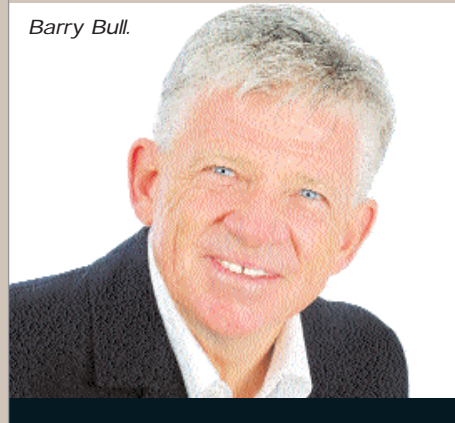
By Mike Sullivan

COULD IT BE THAT SMEs are accelerating their own demise through something as basic as superannuation? Marketing guru Barry Bull thinks it may be the case. This disturbing thought came to Mr Bull following a string of presentations to retail groups in Australia and New Zealand this year. Small and medium enterprises are the biggest providers of employee superannuation funding in Australia. Australia's listed retail groups and retail property groups are among the biggest beneficiaries of those funds, using them to drive expansion into new markets. "Those markets are currently occupied by small retailers, family businesses and the like," Mr Bull said. "Compulsory superannuation is not in yet, in New Zealand. I warned them (at a recent presentation in New Zealand) that storm clouds were coming," he said, noting rapid expansion of Australian listed companies into New Zealand. Mr Bull said SME retailers are feeling the pressure of the expansionism of the listed groups, which appeared to be driven by superannuation money seeking sound returns through mutual funds. "So this money has to be invested into successful mutual funds and then into a mix of property and retail groups... the Westfields, Centros, Harvey Normans, Big Ws and JB Hi Fis. "These guys want to expand. They have to expand to drive their share price. It's stock market money that's driving expansion.

"They (listed retail groups) are on the treadmill. They have to open more stores and duplicate to keep up the stock growth.

"And that's why they are moving into NZ." As a consequence of that retail group expansion, he said, "the shopping centre groups put the rents up, forcing small retailers out of the centres" Mr Bull said, "Small business cannot afford to stay in shopping centres while managers are trying for 5 percent per annum increases (in rent). "These centres don't deserve to have their *taste makers* in the centre. They are letting the 'box boys' in at half the

Barry Bull.



#### BULLSEYE PRINCIPLE

• Business author and marketing advisor, Barry Bull now speaks to retail organisations around the world about how to survive and prosper, using his vast retail and marketing experience drawn from the music industry. His own family business, Toombul Music, has defied the odds throughout its existence by astute marketing and promotion, drawing the biggest names in the music industry to the Toombul store and, today, continuing to provide signed albums and merchandise that Toombul Music promotes at a premium online. Mr Bull is a key presenter and panelist in the Australian Business Development Exhibition's Summit-Up conference session, *SME Owners and Government Leaders – Closing the Great Divide*. This interactive business summit features owners of outstanding Queensland businesses with representatives from Local, State and Federal Government. [www.abde.com.au](http://www.abde.com.au)

rent. The small businesses are the *taste makers*. But it is the mega centres that control the traffic."

Mr Bull said the results were an insidious assault on the viability of small businesses. But in the end it was not the price competition of the big players that hit hardest – it was the cost rises that they drove.

"Competition isn't the enemy. Costs are the enemy," Mr Bull said.

"SMEs drop prices to keep pace and go down on costs. Their basic costs, however, keep going up. The whole market is not geared in their favour." ■