

The Name of the Game

Small Business Development Corporation

In an increasingly competitive world it is important you select a name for your business that has impact, is memorable and distinguishes your product or service from your competitors.

A name can be a business name, company name, trade mark or domain name. It is important to understand the differences between each, what each offers in terms of protection or exclusivity and how to register those appropriate to your business venture.

Some important facts

A search of the trade mark databases before you register a business name, company name or domain name can help you to avoid potentially costly errors.

Failure to do so may cost you dearly. For instance, if you inadvertently infringe someone's trade mark, you could be sued - and required to change your business name and remove all traces of the name from your business, products, labelling, packaging, vehicles, stationery, advertising material, website and uniforms.

Furthermore, when establishing a business, you should not spend money on any of the above items until the name has been registered in case it is unavailable.

What takes precedence?

Registering a business name, company name or domain name does not give you any proprietary right (ownership) to that name. Only a trade mark can give you that protection.

The same word(s) can be registered as a business name, company name, domain name and trade mark by different people, so registering a trade mark will afford you the best protection.

How does each name differ?

Business Name

Is a name used by a commercial profit seeking enterprise under which it operates. It is compulsory to register a business name and registration must occur before you start

trading. Registration is administered under state and territory legislation so businesses trading in more than one state or territory must register their name in each one. If you choose to operate the business under your own personal name only you do not need to register it.

Company Name

Is a name registered under federal Corporations Law administered by the Australian Securities and Investments Commission (ASIC). If your company chooses to trade under a name different from its company name, the company must register the trading name as a business name.

Domain Name

Is an address on the Internet for a website. The organisation that administers domain names is .au Domain Administration Ltd. Registration of domain names is available through its accredited registrars. A domain name identical to your business name, company name or trade mark may make it easier to find you on the Internet.

Trade Mark

Is a word, phrase, letter, number, logo, picture, sound, smell, shape, aspect of packaging or a combination of any of these that is used to distinguish the products or services of a trader from other traders. The registered owner of the trademark has a right to exclusive use of the trade mark throughout Australia for products or services for which it is registered. Trade marks are administered by a Federal Government agency, IP Australia.

Searches

It is always wise to search the trade mark databases before you register a business name, company name or domain name.

IP Australia provides a professional search service for a fee of \$40 (GST inclusive). Trained staff will perform a skilled search of existing registered or pending trade marks and provide a report indicating if there is an existing trademark the same or similar to your intended business name. They guarantee to provide you with the report within 24 hours (excluding weekends and public holidays).

You may also conduct your own search at the IP Australia WA state office or by searching the trade marks database (ATMOSS) over the internet at www.ipaustralia.gov.au. You can also engage a patent attorney, trade marks attorney, trade marks agent, legal practitioner or professional search firm to undertake a search on your behalf.

It is also wise to search the National Names Index at www.asic.gov.au before you decide on a business or company name. It is an extensive index of Australian company names and business names of each state and territory. The index provides some basic free information on each organisation. Further information may be obtained for a fee.

Sources of Information

Business Names

Department of Consumer and Employment Protection
The Forrest Centre
219 St Georges Terrace
PERTH WA 6000
Tel: 1300 304 014
www.docep.wa.gov.au

Company Names

Australian Securities and Investments Commission
Level 3
66 St Georges Terrace
PERTH WA 6000
Tel: (08) 9261 4200
ASIC Infoline Advisory Service 1300 300 630
www.asic.gov.au

Domain Names

auDA
107 Faraday Street
CARLTON VIC 3053
Tel: 1300 732 939
www.auda.org.au

Trade Marks

IP Australia
233 Adelaide Terrace
PERTH WA 6000
Tel: 1300 651 010
www.ipaustralia.gov.au

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