

Protect Your Business Name

Strong, viable business names and trademarks are the cornerstone to building success in the marketplace and solid intangible value for the company. Many business leaders are unaware of the critical first steps and the protective measures needed to achieve these goals.

Here are two of the more common misperceptions that get business owners into trouble:

- Registering a business name with the state Secretary of State gives you the right to use that name to promote goods and services.
- Obtaining an internet domain name gives a business the right to use the name commercially.

In fact, neither of these common beliefs is true.

Even if you are able to obtain a name for your business through the state, another person or business who has secured prior rights by application to register, registration or commercial use, and who is selling similar goods and services, could prevent your business from using that name to identify its goods or services.

Likewise, an internet domain name owner can be forced to give up a name to a trademark owner, because the trademark owner has superior legal rights to that name.

A business trying to protect its name and brand against a company with a trademark registration or earlier use for that name can be faced with a very costly and fruitless legal fight. Losers in these battles can be forced to withdraw all marketing materials, advertising and products and re-label them. Further, web sites must be taken down and redesigned.

The best way to avoid such headaches is to have your trademark lawyer check the availability of business and internet domain names from a trademark perspective. Trademark counsel can gather information on the current usage of similar names from a variety of databases and evaluate the benefit and risks to the use or registration of a business name. A simple internet search or review of the Trademark Registries is not sufficient to qualify for the good faith efforts required to avoid punitive damages in the infringement claim context. Counsel can also advise whether a proposed word, phrase or design is a good candidate for the business owner's trademark.

To provide the highest level of protection, the trademark attorney would then advise the business to register the name on the state or federal trademark registry. Once registered as a trademark, a business is in an excellent position to protect its name.

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