



Protecting Business and Company Names



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Preliminary

With an increasingly on-line world, it has never been more important to protect your business and company name. This fact sheet gives practical advice on what you need to do and how you should do it.

The starting point is choosing a name.

How do you choose a business or company name?

For any entrepreneur, one of the first things to be considered is the name of the company. A related issue is the legal entity that will run the business. If it is a limited company you will generally need to put the word "limited" at the end of the name. Another common vehicle is a limited liability partnership in which case the end of the name will be LLP.

This is often driven by tax considerations but a crucial issue may also be the wish to limit liability for trading losses. Where this is not a consideration a person may go into business as a sole trader or in a traditional partnership, rather than an LLP.

So, the end of the name is governed by legal rules. What about the all important name proper: the branding and identity of your business?

You will obviously want to choose a name that is distinctive but easy to remember. Also, a name that is not too long or difficult to spell. If you plan to trade overseas, you will want a name that appeals to local people and can be pronounced easily by people whose first language is not English.

Having had a brainstorm with friends and family and come up with a list of suitable names, here is what you should do next:

Step One

Through popular search engines, check whether anyone else is using that name. You should search generally and in specific trades and geographic areas.

This will remove any obvious clashes.

Leaving aside the legal issues (see below) you do not want your prospective customers to be confused and go to another company by mistake.

Step Two

The next step is to check whether the proposed name is available for registration as a domain name. Generally UK businesses prefer to have a domain name with [.co.uk](http://www.co.uk) but [.com](http://www.com) is also very popular, particularly for those looking to appeal to an international audience.

Step Three

The third step will be to check whether the chosen name might be protected by a Trade Mark registration.

The basic points to note are these:

- UK Trade Mark regulations can be searched at UKIPO (The United Kingdom Intellectual Property Office) <http://www.ipo.gov.uk/>
- you must be careful to check whether a registration is a Word Mark or a Word and Logo Mark: Word Marks give much better protection and if someone only has a Word and Logo Mark, you may be less at risk of infringing their Mark.
- Trade Marks are registered according to the class of goods and services in which the owner wishes to obtain protection.
- only *distinctive* names can be registered as Trade Marks. If they are descriptive of the business or activity, they will not be registrable. You will also not be able to register a Trade Mark if there is an identical Mark registered in the same class.
- a UK Mark in one class will cost some £750 if you use a Trade Mark agent. If you can afford it, using a Trade Mark agent can be very useful as this is a complex area.
- you can instead (or in addition to a UK Mark) apply for an EU or Community Trade Mark. This is likely to cost not less than £2,500 if you use a Trade Mark agent.

- it is also possible to apply for protection in individual EU Countries.

Step Four

If you plan to trade as a limited company or LLP, you should then check the website at Companies House.

Go to www.companieshouse.gov.uk.

They have a list of over 2.5 million currently registered companies and LLPs. You cannot register an identical name and if you register one very similar to someone else's, they may object within 12 months of your registration.

Note that a name that is different only because of the addition of the word "Company" or "Services" or "&" instead of "and" are regarded as identical.

Also, if you want to use the word "Holdings", "Group" or "International", you will need to justify the use of the word with a letter to Companies House.

It is generally best to use an accountant or solicitor to arrange for the company to be formed. That way they can help you with other necessary set up arrangements.

You will need to notify HM Revenue and Customs, obtain a PAYE Scheme number (if you are going to employ people) and register for VAT if your turnover (excluding certain exempt supplies) is likely to be above £73,000 per annum.

If trading as a company, you will want advice on keeping your statutory books up-to-date and on on-line filing. See the Everyman fact sheet on our on-line Company Secretarial Service.

Step Five

You should then make sure you have made the appropriate applications arising from Steps One to Four.

Do you need a registered trade mark?

The first point to note is that lots of companies and businesses do not have a registered Trade Mark. So don't worry if your budget means you cannot afford one. You should still check at UKIPO

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that your intended name is not the same as or confusingly similar to a registered Mark particularly a Word Mark and particularly if you are to trade in the same class of goods or services in which there is a registration.

If you do not have a registered Trade Mark, you will have the general law

protection of *passing off*. This is the legal right to prevent other people using your business name, or a similar one, if by doing so they confuse the market into thinking they are you. The key here is that you must have an established reputation: that is to say *goodwill* in the name in your particular market or geographic area.

So, why bother with a trade mark?

Whilst the passing off law gives you some protection, it is not as strong on a registered Trade Mark. The problem is that to win an action for passing off, you must prove that potential customers have been confused. So, expensive customer surveys may be needed and these may well be inconclusive.

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