

## Choosing a Name for Your Business

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Whether you decide to trade as a limited company, a limited liability partnership, a partnership or as a sole trader one of the first things you will do is choose a name for your business. Often the name you choose will give a flavour of what the nature of your business is or it will indicate the geographic location where it will be based.

Once committed to a name, a business will typically spend a good deal of time and money marketing the business under its chosen name, designing a website using the name, printing business stationery and brochures bearing the name and placing advertisements. Indeed, much of new business' initial efforts will be directed to building a goodwill and reputation in its chosen field and much of that goodwill and reputation will be focussed around the name of the business.

The name is therefore an important ingredient in the success of your business. It is important, not only that you do everything you can to protect your chosen name, but also that you take care to choose a name which is not going to conflict with a name which another business already has, otherwise there is a serious danger that you could be forced to change your name.

### **Limited companies and Limited liability partnerships**

The legislation governing both the formation of limited companies and limited liability partnerships (LLPs) places certain restrictions on what your limited company or LLP may be called. For example it is generally not possible to register a company or a LLP that would be likely to give the impression that the company or LLP is connected in any way with the government or with a local authority. Certain words cannot be used at all and others, only with prior written consent of a regulatory body.

Similarly, it is not possible to register a name which is already taken. Therefore two companies called XYZ Limited cannot exist at the same time. Objection may also be taken where an attempt is made to register a company or a LLP which is too similar to a name already used by another limited company or LLP. It will however often be possible to register company names with subtle variations – for example XYZ Limited, XYZ (London) Limited and XYZ Haulage Limited are all likely to be allowed as the names of limited companies or LLPs. It is not possible to reserve the name of a limited company or LLP in advance but a check can be made to see if the name is already taken prior to incorporation.

### **Names already registered as trade marks**

Company names and trading names are often registered as trade marks in relation to specific goods and services. The registration of a trade mark gives the owner of the trade mark the exclusive right to use that name in relation to the goods and services for which it is registered. In certain circumstances the owner of a trade mark may also be able to prevent the use of the name, or a similar name, in relation to similar or even different goods or services.

It is therefore important when choosing a new name for your business to conduct a search of the trade mark register to ensure that there are no registrations for your chosen name (or similar names) nor that there are any registrations for your chosen name or similar names in relation to the same or similar goods or services in which you are proposing to trade. Use of a name which is too close to someone else's trade mark may well mean that you need to change your business name before your business is truly up and running.

## **Names already in use**

As well as registered trade marks, names which have been in use for a period of time may also attract rights. These rights can be used to prevent the continued use of an identical or similar name in the same or similar field of business. For example, a business which has been trading as XYZ for a period of years is likely to be able to stop a new business trading under the name XYZ Limited in the same field of business.

It is impossible to undertake a complete search for the unregistered rights of third parties. However checks made of business directories, trade associations, local chamber of commerce etc can be a useful starting point.

## **Protection through registration as a trade mark**

Registering your name as a limited company or a LLP may not provide you with the right to trade under that name. Consideration should therefore be given to applying for a trade mark for your company name, the name of your LLP or your trading name, which will provide you with the exclusive right to use the name for your chosen goods or services.

Not all names can be registered as trade marks and there may be particular difficulties if the chosen trade mark is seen to be too descriptive of your business or if it conflicts with earlier rights. The name of your business is however potentially one of the business' most valuable assets and serious thought should be given to securing this asset with a trade mark registration.

## **Protection through use**

As soon as you start to use your business name then that name will attract goodwill and reputation. Ultimately, your business name may come to be associated with the type and quality of the goods and services which your business provides and you will be able to prevent other similar businesses using the same or similar name.

The best way to protect this goodwill and reputation is through a trade mark registration. If, however, for some reason a trade mark registration is not possible then you should take some basic steps to ensure that you maximise the goodwill and reputation in your business name. These steps will include:-

- Attempting to differentiate the name in some way from the rest of the text around it either by the use of quotation marks or by using the TM symbol after it followed by a statement showing that you are the owner of this trade mark;
- Always using the name as an adjective and not as a noun or an adverb. For example "an XYZ Product or Service" and not "an XYZ" or "XYZs" or "to XYZ";
- Always try to use the name in the same form. Do not be tempted to change it.

## **Domain Names**

It is increasingly vital for businesses to have an internet presence. It is therefore important that your business secures a domain name which is in some way connected to your business name. This generally means either choosing a domain name which is descriptive of the nature of your business or one which includes all or part of the name you have chosen for your business.

Domain Names are allocated on a first come, first served basis and you may therefore find that your first choice domain name is already taken by another business. If registration of a domain name is important you can secure the domain name of your choice at the same time or before you register your name as a limited company or a LLP or before you start to trade. This may influence the choice of your name.

The same care needs to be exercised when choosing a domain name as when choosing the name for your business, as domain names can also infringe the rights of other businesses.

**For further information or assistance please contact Veronica Bailey or Nick Phillips in the Intellectual Property Department of Barlow Robbins LLP on 01483 748 500 or by email at [veronicabailey@barlowrobbins.com](mailto:veronicabailey@barlowrobbins.com) or [nickphillips@barlowrobbins.com](mailto:nickphillips@barlowrobbins.com) or through your usual contact at Barlow Robbins LLP.**