

Understanding the Difference: Trade Marks, Business Names and Domain Names

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There are a number of different registration mechanisms in Australia for names each of which offer different advantages and have different requirements. This can make it confusing for new businesses in trying to understand what needs to be registered, when and for what purpose.

1. Trade Mark Registration

The best way to protect a name is with trade mark registration. Trade mark registration provides the owner with the exclusive right to use that name throughout Australia and to prevent others from using a similar name in relation to the registered goods or services. Not only product names should be registered as trade marks. Trade marks are also relevant for business / trading names, company names, company logos, domain names and names of services. Each of these serve to distinguish the business from its competitors and each therefore function as trade marks. Trade mark registration is Australia wide.

2. Business Name Registration

A common misconception is that a name need only be registered as a business name. However, a business name registration does not provide any proprietary rights to a name. It is instead merely a state requirement for persons wishing to trade under a name other than their own. A business name serves to identify the owner of a business by making this information publicly available. Business name registration applies only to the state in which the owner is trading.

Having a registered business name does not exclude the owner from infringing the rights of another trader as the relevant government state office does not conduct clearance searches at the time of registering a new business name. Instead the onus is upon the owner of the business name to have these searches conducted to ensure that their use of a new business name does not infringe upon the rights of another trader. If another trader does have existing rights to a particular business name (by virtue of a prior registered trade mark), they can legally force the new business owner to cancel the business name registration and change their name.

3. Domain Name Registration

If you wish to operate a website, you will need to register a domain name. Ideally, the domain name will tie in with the business name although it is not always possible to register the identical domain name to your business name. For Australian businesses, the most popular domain name is the .com.au, however, many businesses register the .com version as well.

Domain names are not owned by the registrants, instead they are licensed to the registrant (usually on a 2 or 3 year term) and there are no proprietary rights in a domain name. This means that if a .com.au domain name is registered, the same or similar name can be registered to another entity as, say, a .com or .net.au domain. Therefore registration of a domain name does not allow the registrant to prevent others from using or registering similar domain names. This is where a trade mark registration is useful.

As domain names are issued on a first come first serve basis, even if you have a registered trade mark, it may not be possible to also register the corresponding domain name. It is therefore important to check the availability of the desired domain name when selecting a business or product name.

Our registered trade mark attorneys can advise in relation to the most appropriate registration system for your business including conducting the appropriate clearance searches of the trade marks, business name and domain name registers.

For further information contact us