

Selecting a Name

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Why a name is important

When selecting a new name for a business, product or service, most businesses are looking for a name which distinguishes them from their competitors and which is appealing to consumers. Generally, the name needs to evoke a particular quality, characteristic or value of the business. It is important because it is the name which will identify the business, product or service to the consumer – essentially it represents the business and associates it with the reputation and quality that the business/service provides. If a business becomes successful, the name will become an important asset - it is the name which sells the product or service.

Aside from finding a name with market appeal, perhaps a more important consideration is finding a name which is available to use and, preferably, also one that can be protected. If the name is already taken, the new user of the name may be forced to change it, destroying any reputation and hard work developed in the business.

Considerations in Selecting an Available Name

Selecting a name which is available to use can be difficult. Aside from marketing appeal, the key considerations when selecting a name are availability and registrability.

1. Availability

Of paramount importance with a new name is ensuring that the name is available to use by way of clearance searches. The purpose of clearance searches is to determine whether the proposed use of a new name is likely to infringe upon another trader's existing rights – whether these be registered trade mark rights or common law rights by virtue of use and reputation. Investing time and money into a name which has not been searched for clearance is risky, and could potentially result in a business being forced to change its name at the last minute because of a trade mark dispute. Given the complexities in conducting appropriate clearance searches and interpreting the results (it is not just identical names that can be a problem but also similar names), it is important that a suitably qualified professional, such as a Trade Marks Attorney, conducts these searches. Ideally, searches will include the Australian Trade Marks Register, a company and business name search, a domain name search as well as other relevant business directories and marketplace searches.

2. Registrability

Whilst availability of a name is fundamental, ensuring that the name can be protected with trade mark registration is also an important consideration. Not all names are registrable as trade marks. In particular, names which are descriptive of the goods or services, or which are commonly used in relation to the goods or services, are difficult to register as trade marks (such as TOP QUALITY Butchers, POLISHED Timber Flooring and NATURAL Cosmetics). Selecting a name like this would make it difficult to prevent other traders from using similar names. Further, it is difficult to establish a reputation in a name which is common. Choosing a name such as an invented word (such as SONY) or an English word which would not normally be associated with the intended products or services (such as APPLE for computers) will make it easier to register the name as a trade mark (and therefore protect) and easier to establish a reputation in the name.

Our registered trade mark attorneys can recommend and conduct the appropriate clearance searches for your new product, service or business name. Having a number of different names in mind may assist if there is a conflict with the first name that you have chosen.

For further information contact us