



BUSINESS NAME SELECTION CONSIDERATIONS

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These are some of the issues related to this subject. As is the case with all material at this site, you should not consider this legal advice. This is intended only as an example of some of the many serious general issues to consider with such a matter. Expert local legal, financial advice should be obtained in all such matters.

The following list contains some, but certainly not all, of the considerations which should be made in selecting the name for your new business:

I. BUSINESS CONSIDERATIONS

- Name describes product or service**
- Name describes location of service**
- Name is easy for customers to remember**
- Name sounds or looks appealing**

II. LEGAL CONSIDERATIONS AND NAME AVAILABILITY

- Name, or one that might be considered confusingly similar, is not being used by another business located in the same business directories where this business may be located**
- Name, or one that may be confusingly similar, is not registered or recorded in the state or county**
- Name, or one that may be confusingly similar, is not being used by a corporation or partnership in the state**
- Name, or one that may be confusingly similar, is not registered as a trade name, trademark or service mark in the state**

- Name, or one that may be confusingly similar, is not registered as a federal trademark or service mark
- Name, or one that may be confusingly similar, is not in use, whether registered or not, in the same business venue or operating in the same business environment
- Some names which are descriptive or generic cannot be registered as trademarks or service marks. Some which can be registered may still be "weak" marks which may entail expensive legal battles to protect or which may turn out to be unprotectable.
- Unusual non-generic and non-descriptive names are stronger and easier to protect but may cost more initially to market.

III. INTERNET ADDRESSES

If you plan to have a reference on the Internet for your business, whether it be a home page, Web hypertext address or E-mail address, pay close attention to the ability to register your "domain" name or address.

You may find that even if you obtain registration at some level there may be a registered or unauthorized domain name or address used by another company or individual that may cause confusion or misdirection of E-mail or other information. The Internet will probably grow tremendously in the next few years and have a greater significance for you, whether or not you currently intend to advertise or be listed on it. Take steps at the outset to protect your name in this new marketing arena.

Choosing a name by which your company, product or service will be known, can be a critical stage of your business. The name may determine where you will appear in alphabetical phone and directory listings. It will influence whether customers can remember your name. Many products and services have been initially successful, simply because the name grabbed the attention of potential customers. Name selection is a part of overall marketing strategy. A trade name is use by a company to describe itself in commerce. A trademark is a name registered with a state of the U S Patent and Trademark Office to protect a name of a product such as "Coca-Cola®." A service mark is a name similarly registered to identify the service provided.

Since some time and thought should go into the selection, and money will go into the promotion of it, care should be taken to preserve the right to exclusive use of the name. If the name is valuable, it can become an asset of your business that can be sold as part of the "goodwill" of the business.

Before use is made of a name in commerce, research should be done into the availability of the name. There are a variety of methods of conducting this research, including the library, the Secretary of State, and on-line search facilities. If the name appears to be available, you might want to have a professional search conducted and registration made to preserve your right to use the name.

"Common law" rights to a name can be obtained by being the first to use a name in commerce in a particular area. The owner of this right has some ability to protect it from one who starts using it later in the same area of use and an "area of natural expansion." The expansion area is subject to judicial interpretation. This common law right may be difficult to enforce. A registered mark can be more easily enforced and has several other protective benefits.

A registered mark will allow the owner to prove when it was first registered and define the area of protection. Those issues would be a matter of proof in a common law case. Additionally, a registered name owner is presumed to own the name throughout the registration jurisdiction, rather than just where the name has been marketed.

You can do some of your own research on this. In Kentucky, for instance, to look up the availability of a name at the state level, you can log onto the Kentucky Secretary of State Web site: Kentucky Secretary of State's Office Then click on the On-line Business Database and type in the name you want to search.

This does not mean that the name has not been filed as a trademark or service mark at the federal level or in some other state. For a layman's search of federal marks, log onto the US Patent and Trademark Office Web Site at: United States Patent and Trademark Office and follow the instructions there to conduct your own "down and dirty" layman's search to eliminate obvious conflicts before having an attorney conduct a search and give you a formal legal opinion.

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