

## LEGAL ASPECTS OF BUSINESS NAMES

**Business Name** - A registered Business Name is a trading name under which you carry on a business or trade. It should be as distinctive as possible to prevent creating any confusion to the public.

**Registration** - Registering a Business Name means being added to a public registry of names of businesses conducted from premises within your State. The registration and the issuing of a Business Registration Certificate is the responsibility of the State in which your business trades. Where your business operates in a number of States, you should register in each state. The registration requires the completion of an application form and the payment of a fee. Business Name registration is compulsory and you should not commence business or print stationery until your Business Name is legitimately registered.

**Protection** - Protecting a Business Name is done using other legal avenues. The associated legislation attempts to prevent the registration of names which will mislead or confuse the public. This legislation also precludes the use of such words as "building society", "ANZAC" and "Royal Family", or any offensive words, or words used to advertise an illegal activity.

**Availability** - When considering a potential Business Name for registration, it is advisable you first check its availability. Names identical to an existing business or incorporated association in the State, or Company Name in Australia, will not be registered. However, a Company may apply to register its Company Name as a Business Name. The State departments will not register any proposed name if, in their opinion, it is too similar to an existing business or incorporated association name in the State or Company name anywhere in Australia.

**Business Name v Company** - There is confusion between Company Name registration and Business Name registration. The Business Names Acts are similar throughout Australia. Since a Business Name is not a corporate body, a Business Name is not a legal entity, cannot incur or have legal rights or obligations, cannot enter into contracts in its own name, cannot sue or be sued and cannot own assets. A business owner cannot use or refer to a registered Business Name to invite the public to invest in, lend or deposit money with the business.

**Trademark Protection** – Businesses and individuals mistakenly believe the registration of a Business, Company or Domain Name provides a proprietary right in the name equivalent to Trade Mark registration, or immunity from a Trade Mark infringement claim. However, the registration of Business, Company or Domain Names of itself gives no exclusive right to use the name. A Business Name search will not prevent the name being used by somebody who has registered it as a Trade Mark. This confusion means many fail to conduct adequate searches of the Trade Marks Register which may lead to the infringement of another party's Trade Mark and substantial costs being incurred if the Business or Company Name must be changed. It also means many fail to maximise the protection of their Trade Marks.

**Domain Names** – While websites are growing in popularity for businesses, unfortunately registration of a company or business name does not guarantee an entitlement to register the same name or similar name as a domain name.

**Challenges to the Registration** - Even if your business name gets registered, this does not prevent a previously registered entity from challenging your registration, especially if they can prove that your latter registration is for the purposes of deceiving the public. The previously registered business may sue you under the Trade Practices Act or claim damages under an action of "passing off" in Common Law. The legal remedies allowable include the removal of your business name from the Register and may even require you to pay compensation to the original business for loss of trade.

**Business Name Owner Responsibilities** – Pursuant to The Victorian Business Names Act 1962, the owner of a business must commence business using the registered Business Name within two (2) months of registration.

**Renewal** – A Business Name Owner must renew the Business Registration every 3 years if you continue to trade under the Business Name.

**Ownership of the Business Name** - Many new business applicants think that registering a Business Name under the Business Names Acts protects them from others using that Business Name. It doesn't. Registration of a Business Name does not give you the exclusive rights to use a name or words contained in a name. Another name may be registered containing the same words as your Business Name, prefixed or suffixed by a distinguishing word or words. For example, the registration of the name "Good Bookkeeping" would not stop someone registering the name "AAA Good Bookkeeping."

**Displaying your name** - Once your Business Name is registered it must be displayed correctly. Your Business Name must be on public display be shown clearly on any business letter, statement of account, invoice, official notice, publication, order for goods or receipt issued or signed by the owner in connection with the conduct of the business. Your Business Registration Certificate must be displayed in the principal place of business where it can be easily seen.

**Own Name** - A Company can conduct business under the Company Name without registering a Business Name. You can conduct business under your own name without registering a Business Name, provided you don't change or add anything to your name. For example, John Citizen is fine but not John Citizens Café. To conduct business under any other name, that name must first be registered as a Business Name.

**Conclusion** - It is strongly recommended business advisers including accountants and lawyers are involved in the process, to ensure rights and obligations are respectively protected and honoured.

**DISCLAIMER**

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