

Title:

Protecting Your Corporate Name

Word Count:

809

Summary:

The first thing a new business owner must do is register the name of the new corporation.

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corporate name, business

Article Body:

Imagine this: you want to sell widgets, and you've chosen the perfect name for your brand new widget business. You've made the name original and yet homey, easy to say, hard to forget, and you've checked databases everywhere to make sure that nobody else thought of it first. You've invested vast sums of money in marketing materials and storefront signs that include your wonderful new name. Best of all, you've already impressed some new widget customers with your amazing services and they are spreading the word that your business—yes, the one with your fabulously unique name—is the place to go for all their widget needs, bar none. You love your new name.

Then picture this: shortly after your widget shop opens for business, you learn that a guy two blocks over is using the same name, for a strikingly similar widget business. That's your name hanging in his window, by God! Customers are getting confused. Your business begins to drop off and you suspect the other widget guy is getting the customers who were looking for you.

Is this nightmare scenario possible?

Sadly, yes—but only if you don't know how to protect your corporate name properly.

The first thing a new business owner must do is register the name of the new corporation. The procedure for registration varies by state, but generally involves some very simple paperwork to be submitted to the state's Secretary of State's office, along with a small fee. The Secretary of State's office will not register two businesses with the same name, so this procedure will prevent later businesses from incorporating in the same state under your corporate name.

Registration with the Secretary of State's office will also legitimize the corporate identity of your business as a legal entity separate from its founders, and will provide evidence to demonstrate that the name is being used in commerce when you next register the name as a trademark. Be aware, however, that a business can incorporate in any of the fifty states, so registering your business in your own state provides only partial protection of your corporate name. To provide greater protection, it is necessary to register the name as a trademark or service mark with the United States Patent and Trademark Office.

Registering your new business name with the U.S. Patent and Trademark Office will provide nationwide notice of your claim to the name as a trademark, and invokes the jurisdiction of the federal courts in protecting the name. To register a new business name as a trademark, an application may be obtained online at the U.S. Patent and Trademark website, www.uspto.gov. This application may either be filed online or mailed into the Patent and Trademark Office. Be aware that the processing of your application may take more than a year, so this application should be filed as soon as possible to begin the process. Status of your application may be checked online.

You do not need to wait until your trademark is nationally registered to begin protecting your right to it, however. When using your business name on marketing materials or other written matter, you can demonstrate your claim to the name as a trademark by adding a small "TM" at the end of the word. This provides notice to those who see the written materials that you consider the name to be proprietary and should not be "borrowed" by others. After you receive national registration of the business name as a trademark, however, it will receive the greatest possible protection and you may demonstrate this by including an R in a circle, "®," at the end of your business name.

Once you have received trademark registration, you must file periodic Affidavits of Use with the Patent and Trademark Office to prove that the name remains in use. If you cease use of the mark for a period of years, you will lose ownership of the name as a trademark and others may be able to use it.

Next comes the business of "policing" your trademark. This involves online research and investigation within your own industry to determine whether your trademarked business name is being used by others in the same or similar business that might cause customer confusion as to your business identity. In that event, a judicious letter often dissuades the newcomer from using the business name. If a letter is ineffective, the matter may be resolved through litigation.

The founding of a new business is a busy time, but it is necessary to begin as

quickly as possible to protect the new business name against infringement. In this way, it is possible to prevent customer confusion and retain all of the customer good will that they have come to associate with your company's name.