

## WHAT'S IN A NAME? – PROTECTING YOUR BRAND

Are your valuable brands protected:

### **By a registered business name?**

No.

If you don't register a business name when you should, you may be fined; if you do register, you get no protection or rights, you just don't get fined.

You must register a business name if you trade under a name that is not your actual name. You must do so in each State that you trade under that name.

A registered business name is no comfort that the name does not infringe a third party's rights (including trade mark). Nor does it stop a third party from using that name or a similar name (though they may not be able to register the same business name in the same State as you).

The scheme of registered business names is only to keep a public register of business names in use, so that people can see (and sue) the registered owners of those names. It is a policing regime.

For more, see the website of the [Office of Consumer and Business Affairs \(SA\)](#).

### **By my company's name?**

No.

A company name does not give protection or rights. At best it stops a third party from registering a company name or business name that is the same as your company name.

Two or more companies may have the same name if incorporated before the national company law regime was in place. You have to look at the Australian Company Number (ACN) to tell them apart.

### **By my domain name?**

No.

A domain name does not give protection or rights. At best it stops a third party from acquiring the same domain name.

You need a registered business name, a company name or a registered trade mark to obtain an Australian commercial domain name.

### **By use in the trade?**

Possibly.

Your brand may become a trade mark through use. This is called a common law trade mark.

A common law trade mark does not give you exclusive rights to use the brand. You may however, sue for "passing off" a third party using a similar brand for the same type of goods or services. To do so you will have to prove that you have a substantial reputation in the brand and that the third party's use of a brand is likely to cause confusion or mislead people in the same geographical and product market. It can be hard, and expensive, to do that.

Under the *Trade Practices Act*, you may be entitled to remedies if their use of the brand is misleading or deceptive.

### **By a registered trade mark?**

Yes.

A brand becomes your personal property if it is registered as a trade mark. Registration gives you the exclusive right to use the trade mark in Australia in relation to the class of goods or services covered by the registration. You also have the right to sell or license the use of the trade mark. There are other benefits also.

A third party infringes your rights by using a substantially identical or deceptively similar brand in relation to the class of goods or services covered by your registered trade mark.

A registered trade mark can and should use the ® symbol, to set it apart from a common law trade mark. You can however use the ™ symbol with both a common law trade mark and a registered trade mark.

To get statutory rights overseas, you should apply for overseas registration when applying for Australian registration.

To see if your brand is the same or similar as another business name or company name, search

the website of ASIC at [National Names Index](#). To look for a registered trade mark, search the website of IP Australia at [Trade Mark Search](#).

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