

## Choosing a Business Name

A strong name gives the business two important benefits:

- A strong name helps the business sell its products or services on a day-to-day basis. The best names – Rolls Royce®, Marlboro®, and Amazon® are three that come to mind – carry powerful positive messages that give the businesses a tremendous competitive advantage.
- A good name is itself a valuable asset and can act as a powerful magnet for investment capital and even substantially increase the price for which a company is sold.
- Developing one or more names (large companies may develop hundreds) can have a big payoff. How does a business owner choose and protect a name?

### Choosing a Name

Speak with a marketing professional about choosing a name. Here are a few basics:

- Business owners probably spend too much time deciding on the name of their company and too little time thinking about brand names for their products or services
- The importance of a company or brand name increases with the size of company and the geographic area in which it operates.
- In choosing a name, the business owner often must choose between a descriptive name and a more abstract name – for example, “Maple Avenue Computer Consulting” versus “Xenophon.” The first quickly tells potential customers what the company does and where it is located, while the second may have more potential as a brand because the owner begins with a blank slate (e.g., Starbucks™). In weighing the balance, owners should know that building a brand from an abstract name (Amazon, E-Bay, etc.) requires a significant capital investment.
- Company names and brand names are not valuable by themselves. Names become valuable because of the companies and people with which they are associated, and the resources invested to promote them.

### Checking Availability

No name is a good name if someone else is already using it. As the business owner develops a name he or she must make sure the name is available.

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A first step is to check whether any corporation or other business entity has registered the name with the state – a service we can provide quickly and cost-effectively. A second step is to look in the local yellow pages and enter the name in the Google® search engine. For some businesses, such as a service business operating within a limited geographic area, these steps may be sufficient.

A business owner intending to operate within a larger area or seeking greater certainty can engage the services of a commercial search firm. The results of these searches are not always clear and should be reviewed carefully with counsel.

### **Protecting a Name**

Once the owner chooses a company or brand name, how can he or she protect it?

#### *Common Law Rights*

A business acquires some “common law” rights to a name merely by using it – without filing anything with the government and without involving lawyers. By virtue of these common law rights, the business can generally prevent competitors from using the same name within the same market area. These common law protections may be perfectly sufficient for some businesses and woefully inadequate for others. For example, a business that intends to expand geographically may find little comfort knowing that its name is protected only within a small area.

#### *Filing with State*

Contrary to a common belief, registering a company name *with the state by forming a corporation or other entity provides no real protection*. State filings are simply a matter of bureaucracy – the state wants to make sure that no two names are confusingly similar on its own records.

#### *Trademarks*

For real protection the business owner must consider a trademark filing. Filing for a state trademark may be adequate for a business that intends to operate within a single state. More typically, a business that wants to protect its name should consider a Federal trademark filing with the U.S. Patent and Trademark Office. A Federal filing provides two important benefits:

- Federal registration constitutes “constructive notice” to all later users in all locations.
- Federal registration permits an action for injunctive relief or a suit for damages (including profits, costs, treble damages and attorneys fees) against an infringer. In such a suit, registration has certain evidentiary value, including as evidence of the registrant’s ownership of and exclusive right to use the mark.

Once granted, a trademark lasts forever. This is in contrast to both copyrights and patents, which have limited statutory lives.

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Not every name can be trademarked. A name that is “merely descriptive” of the product or service being provided is not eligible for trademark protection – “Xenophon” can be registered; “Maple Avenue Computer Consulting” cannot. However, even where a name alone cannot be registered as a trademark, it may be possible to register the name together with a distinctive logo.

### **Domain Names**

The business owner must acquire all of the internet domain names related to the chosen. In the early days of the internet, names could be purchased easily and at nominal cost. Today, names can be increasingly difficult and expensive to acquire.