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Facts:

- More surveyed people consulted accountants with trademark queries than they did trademark professionals! You will see in our example why this is not always the best idea.
- If you are found to be infringing someone else's trademark rights you may be forced to re-brand everything in your business associated with that trademark and pay compensation to the trademark owner!
- Statistics have shown, that businesses who correctly register and use their intellectual property often remain successful for longer than those who don't.

Business Names Vs. Trademarks The Truth!

Recently, the Australian Office of Trademarks conducted a survey amongst persons registering and renewing business names in their respective states. The results were disturbing. **85%** of the people surveyed believed that their business name registration would stop other businesses being able to use the same names for similar business activities.

This is not true. Only trademark registration offers this protection, not a business name or a company name registration.

82% believed that by registering a business name in their state or territory they were safe to trade under that name.

This is not true. If someone owns the trademark, they may be able to stop you from trading as trademark registration supersedes other name registrations.

Almost half of the people surveyed were not told of or advised about of the importance of having a trademark search conducted prior to registering a business name.

A federally registered trademark is the only Australia-wide registration designed to protect your name.

The business names offices in each state or territory do **not** conduct trademark searches and they do **not** offer a guarantee that your business name registration won't infringe the trademark rights of others. It is up to the registrant to do their research.

The business names offices do suggest on their application forms that trademarks may be a factor. However, despite these warnings, only about **30%** of new business name registrants had a trademark search conducted.

If there was more information available to new or existing business owners then perhaps this percentage would be much higher. The result would be less disputes over names, saving Australian business a lot of money and heartache.

By having a trademark search conducted you can know in a short period of time whether:

- A) your proposed business or brand name is 'safe' to proceed with
- B) Your current name is safe to continue using & promoting.

Even if you have already registered a business name it is a sound financial investment to investigate trademarks.

As trademarks are Australia-wide, there may be a company or person in a different state to you has already taken the steps in registering a trademark that is deceptively similar to your business name. It may just be that the only reason they have not taken action against your use or your breach of their trademark rights is that they are not yet aware of your business.

DON'T GET CAUGHT OUT!

If you know of anyone starting a business we urge you to tell them to call us about trademark searching before applying for the business name.

The difference between the 'names'

In Australia, there are 4 types of registrable names, all registered with different offices. **These are:** Trademarks, Company Names, Business Names and Domain Names.

The offices do not cross reference with each other, so it is the business owner's responsibility to make sure all the proper research is done.

As a general rule, Company Names, Business Names and Domain Names will not offer you any protection. They are a requirement only in order to trade or have a website. Registration as a trademark is the "registration of protection" and **in itself will protect the others.**

A trademark is essentially the word or element used to distinguish the businesses goods or services from others. It can be the same as your company name, business name or domain name, however it does not have to match these names, nor is it a legal requirement.

A Company name is given to a corporate entity. All company names must be registered with ASIC (Australian Securities and Investment Commission). This registration applies throughout the Commonwealth of Australia

A Business name is a name under which the business operates. Registration is compulsory, (unless using your own name), in each state the business operates and must be completed before a business begins trading in the respective state.

A Domain name is basically your website address. It does not provide any proprietary rights in the use of the name. Although, certain criteria must be met to register .au names.

A company name will hold more weight than a business name as it applies throughout the whole country. If you file an application to register a business name in any state that is identical to an already registered company name for the same activities, the application will be refused.

If you intend to use your company name to trade under in any/all states and territories, then you do not have to register a separate business name. However, if the trading name differs at all from the company name, you must, as required by law, register the business name as well.

The purpose of business name registration is to maintain a database of people who trade under a name other than their personal name. This is primarily so that if another party needs to identify the people associated with a particular business, they can.

It is also entirely possible that your website address could infringe a registered trademark. You may think you are using it purely to attract consumers to your website. But, if you are using somebody else's exclusive rights to do so, they are not going to be happy and would be within their rights to take action to stop you, which can include legal action.

In what order should you register your names?

Before registering any names you should have a thorough trademark search conducted by a trademark professional. Many people go to accountants or general business advisors. We

have recently read a story of a woman in Brisbane being incorrectly advised by her accountant "not to worry about trademarks", that a business name would be sufficient. She followed this advice and soon after received letters from the trademark owners threatening action! So,

ALWAYS conduct a trademark search first. If you have already registered a company, business or domain name, investigate trademarks now, before it is too late!

After the search is done and *you know your name is safe*, the least expensive option is to register the business name in your state. Or, you could register the company name if you intend on trading in each state and territory.

Remember: Trademark Search First!
Then everything else can follow safely and quickly. To get everything underway will take less than one week

Once you have registered your business name (or company name) you should register the domain name if you wish to have a website. These days, registration of a domain name is an inexpensive exercise.

The most commonly registered in Australia, would be .com.au names as they are associated with being an Australian business website. You can use your recently registered business or company name to meet the criteria for registering a domain name as a .com.au.

Assuming you have kept the name uniform between trademark search, business/company name registration and domain name registration, we then suggest filing an official trademark application. The government office will conduct their examinations and let you know whether they accepted the trademark to be registered. This is a lengthy process, but by having the trademark search conducted at the very beginning, you will already know the outcome. A trademark search only takes a couple of days and could turn out to

ANOTHER EXAMPLE

The following is a further example of how company name registration is not as protective as people tend to think.

A mortgage company in Sydney was forced to re-brand at an expense in excess of \$50,000 and faced demands in excess of \$25,000 to cover legal costs of a registered trademark owner after they registered only a company name. The mortgage company spent a lot of money and more than 6 months building their brand as they believed their company registration was sufficient in protecting their name.

After about 6 months they received letters from the trademark owner demanding they cease use of their trademark.

Unfortunately, ignorance does not win trademark disputes.

This example demonstrates the cost involved in breaching someone else's trademark.

Be prepared and make sure this doesn't happen to you. Call us now to search your trademark.

FREE ADVERTISING! - OUR THANK YOU TO OUR CLIENTS

The main reason behind us providing this newsletter is to help other businesses. We wish to provide information that is useful to our readers, or other people they know.

We would like to 'thank' our readers and clients by providing some free advertising.

When you register a trademark through Complete IP Pty Limited, and you receive your certificate, we will advertise your business in the next newsletter, upon your approval of course!

Once a certificate is issued, we know their name is 'safe' and therefore can advertise them without potentially drawing attention to an unprotected name.

If you have already registered a trademark, let us know and we will try to include you in future issues.



SPECIAL OFFER

As we have spent this Issue informing you of the Importance of trademark searches - it makes sense to offer a special price to our readers for this service!

Until June 30th 2007 you will receive 15% off the total invoice for any trademark searches you authorise us to conduct on your behalf.

Plus - It's a tax deduction! So make sure you return the form before the end of this financial year so you can claim it straight back!

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TRADEMARK SEARCH REQUEST

By completing and returning this form you request Complete IP Pty Limited to conduct a trademark search or searches on your behalf. (You may fax, email or post this form back!)

Trademark/s to be searched: (attach if logo)	
What are the goods or services you use this for?	
Are you already using this mark? If yes, since when?	
Company or person making request:	
Postal Address:	
Phone Number: Email Address:	
Date & Signature of authorised person:	

Standard Fees: Searching of wording only \$395.00 per search / searching of graphics only \$395.00 per search / Searching of combined logo \$650.00 per search. Don't forget to take 15% from the total if responding by 30/6/07! Full description of our searches can be found on either of our websites.

Payment: Post Cheque or money order to details shown. If wishing to pay EFT, please contact our office for details.

Card No. _____

Name on card: _____

Signature: _____ Expiry: _____

Card Type (please circle): MASTERCARD VISA