

## BUSINESS NAMES V TRADEMARKS – THE TRUTH!

Following are the survey results following interviews with business owners in Australia. The survey aimed at providing reports to government departments to increase the awareness and understanding of trademarks in Australia:

- **85%** believe that a state or territory business names office automatically conducts a trademark search when you apply for your business name.  
**This is not true. Currently the business names offices in each state will reference in their paperwork that business owners need to be aware that their chosen name *could* infringe a trademark, but no searches are carried out.**
- **82%** believe that registering a business name gives one the ‘right’ to use that name.  
**This is not true. Business Name registrations are “trading name” registrations. They are not intended for the purpose of securing rights to a name or ensuring exclusive operation under a particular name.**
- **42%** believe that registering a business name means that, even if someone else already uses a similar name for their products and services, you are free to operate without infringing their rights.  
**This is not true. If someone else does use a similar name they may have registered it as a trademark for those products/services and your promotion of your business name could constitute trademark infringement, or, if the other party have a considerable reputation in the marketplace they may consider your use of the same name ‘passing off’ as their business, which is an actionable matter.**
- **50%** either believe, or are unsure, that a registered business name offers better protection from infringement of your rights by other businesses than a trademark does.  
**This is not true. If you have a registered trademark you have the right to use your trademark. One registered trademark owner cannot initiate trademark infringement against another.**

**The truth is, business name registration does not protect a name, nor does it necessarily give you the right to use the name.** Only a federally registered trademark grants the owner the ‘right’ to use a name (or other trademark).