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What's in a Name?

by Michael Mann

Are you starting up a new business? Or maybe you have already been operating for some time. In either case, you want to be sure that the identity you create is unique and will distinguish you from your competitors. Your customers, suppliers and others will come to know you, and will refer to you, by your business name so it is important to take great care in selecting that name. It is equally important that you do not infringe upon the rights of another business who may already be using the name or something similar to it.

In Ontario, the Ministry of Government Services maintains a public registry of business names which can be searched for minimal cost. This search reveals names of sole proprietors, corporations and partnerships that may be using names akin to the one that you propose. If your planned business name is not confusingly similar, then you will need to take steps to register it in order to further protect your rights.

The manner of registration will depend upon the legal nature of your business. For instance, if you are the sole owner, you can register a business name as a sole proprietor pursuant to the *Business Names Act* of Ontario (the "*Act*"). Conversely, single or multiple owners of a business may choose to incorporate the business and register as such. The *Act* also makes provision for the registration of partnership names. With very limited exceptions, all businesses are required to register their name prior to use in the marketplace.

If you do not have a properly registered business name, then in addition to sacrificing the goodwill that your business has generated, you may also be prevented from suing someone who has caused you damages without special permission of the court. The government is concerned that no business should deceive or mislead the public when referring to its identity.

There can be significant value attached to business names. Mention names like "Coca Cola", "McDonalds" or "Microsoft" almost anywhere in the world, and people will know who you are talking about. Businesses therefore take great efforts to protect their identities. In Canada, the highest level of protection that can be achieved in a specific name is a registered trade-mark. Unlike a business name registration, the process of obtaining a registered mark is a rather time-consuming process and is more costly; but having such a registration will put you in a very good position to oppose the use of the name or anything confusingly similar to it throughout the country.

Regardless of the level of protection you are seeking for your business name or brand, you would be well-advised to seek appropriate legal advice.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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