



Special Release

Do you own your own name?

If you carry on business as a sole trader (self-employed, freelance, etc.), you may find yourself in trouble if you do not register your business name as a trade mark. And you may also find it difficult to register the domain name that you want.

An individual trader has the basic right to carry on business under his or her actual name, for example, 'John Smith' (if that is your name). But if you trade, for example, as 'Smith's Agency', and have not registered that name as a trade mark, someone else might apply to register the same name (or a similar name) as a trade mark, and if successful they could actually prevent you from using your own business name.

Assuming that you became aware of the application, you could object to it, provided you could show that you had acquired a sufficient reputation in your name to be entitled to be protected under the law of 'passing off', but this is often difficult.

Frequently, the problem only arises when a sole trader seeks to register his or her business name as a domain name e.g. johnsmith.co.uk and finds that someone else has already registered the same or a similar domain name. Domain names are issued on a 'first come, first served' basis. Only one person can use a particular domain name, although variations are often used in practice, e.g. johnsmithagency.co.uk, to get round this problem.

But if you want to stop someone else using a domain name that is similar to your business name, you will have difficulty doing so unless you have previously registered your own business name as a trade mark.

Sole traders may think that they can get round the problem by registering a company, such as John Smith Agency Limited. However, the right of an individual to do business under his or her own name does not necessarily apply to a company and, although Companies House may accept the registration of your company with your business name as the name of your company, this will not of itself protect the company from an action by a party which has previously registered the same business name as a trade mark.

Registering a UK trade mark is comparatively easy and not prohibitively expensive in a business context, but not all names are registrable. Getting the details right is sufficiently important to warrant using a trade mark lawyer or attorney.

Davenport Lyons now has a 'one-stop shop' that can deal with registration of UK, European Community and worldwide trade marks.

If you have any queries on this issue please do not hesitate to contact David Marchese in our IP Group on 020 7468 2646 or dmarchese@davenportlyons.com or Laurence Brown in our Media Group 020 7468 1506 or lbrown@davenportlyons.com.