

# International Trademark Association (INTA) Business Name/Trademark Differences Information

## FAQs



### **Is a business name the same as a trademark?**

No.

### **What is the difference between a business name and a trademark?**

A business name is the name under which a company does business. A trademark is any word, symbol, or design that identifies and distinguishes the source of one party's goods or services from those of others.

### **How do I find out if I can use my business name for my business or company?**

It is recommended that you conduct a so-called clearance search before starting use of your business name. Clearance searches are used to verify whether there are any potentially similar or conflicting prior rights in the marketplace. There are databases available for clearance searches (some publicly accessible, some for a fee) to assess if another person/business is using a name or mark similar to your business name, for similar products or services.

### **If I record my business name with the Secretary of State, do I have the right to use it in connection with my business?**

Not necessarily. Registering a business name with the Secretary of State is required to be able to do business under a particular name within the state, but this registration does not give any assurance that the registered business name is not in conflict with the trademark rights of other parties. Other parties may already be using similar names or trademarks in the marketplace which may take precedence over your rights to use a particular business name. For this reason, it is recommended that you conduct clearance searches before registering and using a business name.

### **If I record my business name with the Secretary of State, do I have the right to use it on products I sell or for services I offer?**

Not necessarily. If another business has been using a name or trademark similar to your business name, for similar products or services, you may be infringing that trademark and could be prevented from using your business name. Again, the risk can be reduced by conducting clearance searches prior to registering and using a business name.

### **If I record my business name with the Secretary of State of one state, am I automatically authorized to use my business name in other states?**

No. The regulation of business name approval is done state by state. You must check the regulations of the other states in which you intend to do business to determine what to do to achieve authorization in those states.

### **Can I protect my business name as a trademark?**

Possibly. If your business name satisfies the standards for a trademark, and is used in the manner of a mark for your products or services, you may be able to establish trademark rights. The details on how to claim trademark rights should be discussed with a trademark lawyer.

### **Should I protect my business name as a trademark?**

If you would like to prevent others from using your business name to sell similar products and services, you should consider using your business name as a trademark. A lawyer may be able to advise you on the advantages of obtaining trademark rights.

### **Do I need to file something to be able to protect my business name as a trademark?**

Trademark rights in the United States are typically established by proper use of a mark. These rights can be enhanced by seeking trademark registrations through

the United States Patent and Trademark Office (USPTO) or through a Secretary of State's office. The details for trademark protection and how to achieve it are best discussed with a trademark lawyer.

**Will the Secretary of State notify me if my proposed company name is the same or confusingly similar to someone else's trademark or trade name?**

The Secretary of State does not examine the business name application to verify if it conflicts with federal or state trademark registrations, so there will be no notification of such a conflict. The Secretary of State typically will look at whether the proposed name is identical or close to a previously registered business name in that state, and will notify the applicant of this conclusion.

**If I have recorded my business name with the Secretary of State and registered my business name as a trademark with the Secretary of State, am I now safe to use my business name and my trademark?**

Not necessarily. If a third party has established trademark rights through use in this state, even though that party has not registered its mark with this state or federally, this third party may be able to show rights superior to your business name or trademark and get a court to prohibit your use. Such prior use may be detected through a clearance search.

**What if I use an alternative name for my business: for example, a "dba" [meaning "doing business as"]? Do I need to record this alternative name?**

You may. This would be a question of the requirements of the state or municipality's business laws and regulations. Most local cities and counties also have requirements for filing "doing business as" company names.

**Are the risks from superior trademark or business name rights of others the same for a "dba" as they are for my formal business name?**

Yes.

**Am I free to use a business name or trademark that no one has registered?**

Maybe not. Trademark laws also protect "common law" rights in unregistered trademarks, so a third party may have acquired such rights through continued use of a trademark even without having registered the mark.

**Is there any way that I can actually be certain that using my business name after registration will not create any conflicts?**

Unfortunately, there is no guarantee, but you can significantly reduce the risk of conflict if you conduct clearance searches prior to adopting and using your

business name. This will provide you with a good overview of the existing rights in the marketplace and will assist you to make the right decisions before investing in your business name.

### **Where can I get more information about business names and trademarks?**

There are several sources of information at your fingertips. Check the website of the Secretary of State's office; check the website of the USPTO [[www.uspto.gov/trademarks](http://www.uspto.gov/trademarks)]; and check the website of the International Trademark Association [[www.inta.org](http://www.inta.org)].

The rights of business name owners and trademark owners are subject to many factors and nuances. The resources for clearing a business name or a trademark are many and of differing comprehensiveness and value. Business owners should consider discussing these matters with their business lawyer or trademark lawyer to get a better understanding of their rights and exposures.