

Name your Business!

A GUIDE TO SELECTING A BUSINESS NAME



HUNTER
BUSINESS LAW

TABLE OF CONTENTS

1. BRAINSTORM
2. CRITERIA
3. SELECT
4. PROTECT
5. SYMBOLS
6. CONTACT US

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BRAINSTORM

The first thing you want to do when selecting a name for your business is to make a list of options. Jot down whatever comes to mind, without judgment.

Keep going until you get a list of at least 50 names.

Recruit a small but diverse group of people to brainstorm with you. Make it a fun and creative process and keep an open mind.



CRITERIA

Judge your potential names against each of these criteria. There are many examples of successful brands that break one or more of these rules, but there are good reasons to follow them. Break one of these rules with caution!

- an exact match domain name is available (you can search at www.godaddy.com)
- 1 to 3 words long
- easy to spell
- spelled like it sounds
- only one way to spell it
- sounds good when saying it out loud
- easy to remember
- well-suited to your target market
- Conveys the image you're seeking (professional, hip, innovative, traditional, boutique, global, etc.)
- will still work for the business as it grows in size and geographical reach
- will appeal to a future buyer (careful using your name for this reason)
- is not too trendy
- it doesn't translate into an offensive or undesirable meaning in another language (more relevant if business has international reach)

CRITERIA

The criteria on this page is focused on (1) selecting a name that does not infringe on the intellectual property rights of an existing business and (2) selecting a name that can be registered as a trademark with the United States Patent & Trademark office and is easier to protect from infringement.

- not already “live” registered federal trademark – you can conduct a basic search at this page:
<http://tess2.uspto.gov/bin/gate.exe?f=tess&state=4809:1yze7m.1.1>
- not already a registered trademark in the state in which you intend to operate your business (search the state’s trademark database, usually located on the Secretary of State’s website).
- can’t find another company using it after web-searching
- isn’t the same as an existing name except for the addition/removal of an “s” or a “the” or a single extra word
- isn’t the same as an existing name except for a different spelling
- not too generic (avoid words that are too common in terms of describing the product or service; “Salt Water Fishing” or “Hair Brushes” are examples of too generic)
- not too descriptive (“Tampa Law Firm” and “Perfect Pedicures” are too descriptive)

CRITERIA

The trademarks that are most likely to be registered and easiest to protect against infringement fit one or more of the following criteria:

- ❑ the trademark is “fanciful” – a fanciful mark is a made up word. Examples would be Kodak, Xerox, Google.

- ❑ the trademark is “arbitrary” – arbitrary marks are words used out of context, disassociated with their normal meaning. “Apple” for a computer and “Jaguar” for a car are examples.

- ❑ the trademark is “suggestive” (but not too descriptive) – a suggestive mark implies the nature, quality or characteristics of the services or products but doesn’t provide a precise description; the consumer has to make a connection in his or her mind. Examples would be “Habitats” for a home decorating business or “Par” for a golf store.

SELECT

Once you have narrowed down your list of names using the criteria and have a #1 choice, there is one more step we advise you to take before making a final selection. Hire an attorney to conduct a national trademark search and issue an opinion letter.

You should do this because the user of an unregistered trademark has “common law” rights to that mark, at least in the geographical area in which the company has engaged in commerce. Common law rights exist regardless of whether the name has been registered and regardless of whether it showed up in your web-search. Your use of the same or similar name could lead to your receipt of a “cease and desist” letter demanding that you stop using the name or face a lawsuit for infringement. Once you have invested in marketing materials and started to establish your brand, you don’t want to start over!

While the search and opinion letter is an expense and it’s not possible to get a 100% guarantee that no business exists anywhere using your name, it’s worth spending a little to save a lot. Also, an attorney understands the nuances of trademark law; for example, two companies can have the same or similar name without infringement so long as there would be no likelihood of confusion by consumers as to the source of the goods or services. This is a multi-factor analysis tied to case law.

PROTECT

Register Your Trademark

Once you have selected your name and are offering products or services across state lines (“interstate commerce” is required but a website is usually sufficient), you should invest in federal trademark registration. The process can take between 4 and 24 months and can range in cost from \$1,000 to over \$10,000 depending on whether the application faces challenges such as objections from owners of similar marks or concerns by the United States trademark examining attorney.





THE POWER OF BRANDS



When you speak the name of your business you should feel confident that it attracts the customers – the market – that you desire. Select and protect your name as though millions of dollars are riding on it. After all, the name is the foundation of your brand and you're building brand value with every consumer that comes in contact with it.

THE SYMBOLS

Your Name ®

The “R” in a circle indicates that you have been granted U.S. trademark registration

It is illegal to use this symbol until the official registration is granted by the United States Patent and Trademark Office

Your Name ™

The “TM” symbol indicates that you consider this name to be a trademark owned by you

You can use this TM symbol without registering your name

There is also a “SM” which is a service mark but most people use the more widely recognized “TM”

Would you like assistance with selecting and protecting a name for your business? Interested in a price quote for trademark registration services?

CONTACT US – WE ARE HERE TO HELP!

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