



A Start-Up's Guide to: Avoiding Conflicts when Choosing a Brand Name

If you fail to undertake due diligence before launching a brand name, you risk infringing a third-party's existing trade mark rights. An infringement could expose you to, at best, an embarrassing and expensive future rebranding, and at worst, an additional claim for financial compensation.

Due diligence will normally involve an initial search of pre-existing names to avoid potential conflicts or confusion. However, there are risks in undertaking only an initial 'Google Search' of existing brand names, as some pre-existing trade mark rights may be missed.

Clearance Search

To mitigate the risk of overlooking a mark, it's recommended that a more thorough 'Clearance Search' is carried out: a search of the UK, European Union Trade Mark and International trade mark registers to confirm if there are any existing registered rights for the same or similar brand names.

The search can be adapted to reveal potential infringement issues in your chosen territory, the results of which will either give some comfort that you are able to use a name without risk of infringing another party's pre-existing trade mark rights, or else it will alert you to any potential problems. You can then create and implement a robust, confident, branding strategy.

A legal professional, specialising in intellectual property, can assist with carrying out a Clearance Search.

Trade Mark Protection

If there aren't any conflicts with existing trade marks, you can then look to protect your proposed new name by way of a registered trade mark.

It's a common misconception that registering a company name at Companies House offers the same protection as registering a trade mark: not so. In fact, if the name you register at Companies House conflicts with an existing name or trade mark, it can expose you to further liability. Therefore, again, due diligence is key.

Anyone can apply to register a trade mark through the Intellectual Property Office (**IPO**) website. However, the IPO carries out minimal checks when a trade mark application is received, so simply because a registration is granted does not mean that it's not vulnerable to challenge. A solicitor or trade mark attorney can provide robust legal and commercial advice at the initial application stage, and throughout the registration process, to maximise the chances of a robust and effective registration.

A trade mark registration provides 10 years of protection, and a cannot generally be amended after registration, so careful consideration of future business plans (franchising and brand exploitation) is required when registering a mark, to ensure effective protection.

Domain Name

If your intended new domain name is different from your proposed new company name, it's advisable to also carry out the same Clearance Search due diligence on the proposed domain name. A domain name also risks infringing pre-existing registered or unregistered trade mark rights; an infringing domain can be seized and a legal action for damages pursued against the owner.

Social Media Username

Social media is likely to form an integral part of your brand and marketing plan. The same principles will also apply to social media usernames; whether it be on Twitter, Instagram or any other platform, caution should be exercised.

Usernames, like domain names, are handed out on a first come first served basis: simply because you've been able to secure the name, doesn't mean you're legally entitled to use or own it. If a third party claims prior rights in your username, they can report you to the platform in question and have the name taken from you; you risk losing not only a valuable following, but also damage to the goodwill and reputation in your brand.

Due diligence at the outset therefore should also include searching proposed usernames and branding on social media.

Conclusion

When creating a new brand, it's important to have the right protections in place from the start, pre-launch. Professional advice at the outset can help to inform an effective and valuable brand protection strategy, which will in turn permit safer expansion and exploitation of the brand.

If you don't carry out due diligence, you risk investing time and money in developing and growing a brand which could be taken from you a few years down the line, and you having to surrender your profits as financial compensation for a trade mark infringement.

Top Tips: First Steps

1. Undertake an initial Clearance Search at the outset, before any brand launched and before the registration of domain names or social media usernames.
2. Once you have the results of the Clearance Search, provided there are no conflicts, register your preferred domain name (and any similar variants), and your required social media usernames, before making your intentions public, otherwise you risk cybersquatters taking the domains and usernames and ransoming them back to you.
3. Subject to the results of the Clearance Search, consider protecting your name through trade mark registration.

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The law relating to intellectual property is complex and constantly developing. The purpose of this note is to assist in providing an overall understanding of the legal context within which such claims operate. This note is not intended as specific legal advice. Each case is judged on its own merits and, against its own particular set of facts.