

Is “YOUR” COMPANY NAME, TRADE NAME OR PRODUCT NAME PROTECTED?

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As a business law attorney, we have seen numerous businesses and business owners confronted with tough issues regarding their business and product (and service) names. Usually, the first difficult decision is choosing your business and product name and whether it is “available” with the State of Florida (or other state), Division of Corporations. Often we see companies facing competitors with strikingly similar names. Those similar names may be the actual corporate name, a business trade name (otherwise known as a fictitious name) or similar product name.

In this State and this Country, we enjoy many freedoms and benefits that are provided in a Capitalist market, where competition is generally open. However, we sometimes desire restrictions on that competition to avoid losing our business advantage or recognition/goodwill in the market place. So when that competition “copies” or uses a strikingly similar name, are you protected or are you growing that business and want to protect it for the future?

There are numerous Federal and State (Florida Statute §495 *et al*) statutory provisions to protect trade names or other identifying marks (logos, slogans) and even Florida common law (case law without a statute) to potentially protect your rights. The first lesson to be taken is that registering your business name with the State of Florida, Division of Corporations does not protect that name from being used with a minor working modification or by a business with a different legal form (Inc. v LLC). Further, registering the name as a fictitious name (d/b/a) with the State of Florida Division of Corporations allows you to use the name and operate a bank account under that fictitious name, but provides no real protection.

The best protection is to attempt to register your name or mark with the United States Patent and Trademark office (PTO) or secondarily registering with the State of Florida. Both are costly (in the short run), difficult to obtain and could take months if not longer, if ever.

So, if you are unable or unwilling to go through the registration process, you can take many steps to attempt to protect that name and put the public on notice of your claim of ownership interest in that trade name or mark. Without putting them in order, as each case may be unique, you can (i) select a name that is unique and not previous used, (ii) avoid names that are merely descriptive without other (“secondary”) meaning, (iii) place superscript TM when using the name, (iv) create and define a market area, (v) seek legal advise immediately upon seeing a competitor using the same or similar name, (vi) market so that the public has a perception that the name belongs to your company or product, (vii) file that fictitious name filing or use the key words in your company name, and (viii) be consistent in the use and order of the exact same words.

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