



Take advantage of the extra protection that registering your name as a trademark can give you. While it's not required, registering your name as a trademark at the state and/or federal level can prevent other businesses from using a name that's likely to be confused with your business name. Be as specific as possible.

What is a trademark?

A trademark, sometimes called simply a *mark*, is any word, phrase, design, or symbol used to market a product or service. Technically, a mark used to market a service, rather than a product, is called a *service mark*, though the term *trademark* is commonly used for both types of marks because they refer to the same group of legal protections. Owners of trademarks have rights under both federal and state law that gives them the power in many cases to prevent others from using the same or confusingly similar trademarks.

Trademark Protection

To make sure your proposed business name won't infringe on someone's rights to an existing trademark, perform a trademark search. Go to the USPTO's Trademark Electronic Business Center at <http://www.uspto.gov/web/menu/tmebc/index.html> and choose "Search." Then follow the instructions on your screen.

Search the web.



Conducting a Name Search

Unfortunately, there is no one place to look when searching for conflicting business names. In large part, this is because a business can establish a trademark simply by using it -- and millions do just that. Use the following search tactics to search for both registered and unregistered trademarks.

Fictitious Name Databases

First check with your county clerk's office to see whether your desired name is already on the list of fictitious or assumed business names in your county. (In a few states, there is just one statewide fictitious name database. If that is the case in your state, your county clerk will tell you.) This list will contain names that you won't find in any other database -- usually unregistered trademarks of very small companies. If you find that your chosen name (or a very similar name) is listed on a local fictitious or assumed name register, you should not use it.

Corporation, LLC, and Limited Partnership Name Databases

If you are organizing your business as a corporation, LLC, or limited partnership, ensure your business name isn't the same as that of an existing corporation, LLC, or limited partnership in your state. Contact your state filing office to find out how to search their name database. If your proposed name (or a very similar one) shows up in your state's database, you will have to choose another.

Registered Trademarks

Finally, **no matter what type of structure you have chosen for your business**, you should search the federal trademark database to determine whether the name you want to use has already been registered with the U.S. Patent and Trademark Office (USPTO). If you don't, and you use a trademark that's on the federal register and the trademark owner sues you, you can be liable for what's called *willful infringement*, or knowingly violating someone else's trademark, even though it wasn't intentional. Willful infringement carries more costly penalties than other types of trademark violations.

It's easy to search for federally registered trademarks. Go to the USPTO's Trademark Electronic Business Center at <http://www.uspto.gov/web/menu/tmebc/index.html> and choose "Search." Then follow the instructions on your screen.