

YOUR BUSINESS NAME - REGISTRATION IS JUST THE START

When you register your title to real estate, you become the legal owner of that land. When you register your title to shares, you become the legal owner of those shares. So when you register your Business Name, you become the legal owner of that name, right?

Wrong!

Section 22(2) of the new national *Business Names Registration Act 2011 (Cth)* (which came into effect on 28 May 2012) states that the purpose of registration is to provide a way to identify the entity that is carrying on the business under that business name and how that entity may be contacted.

In other words registration does not guarantee or perfect your title to the name, but simply tells the world who is operating a business using that name.

ASIC is now responsible for registering, renewing and administering business names for all businesses Australia-wide, with the new national system replacing the previous state based system which required businesses to register their names separately in each state or territory in which they wish to operate.

A business name is simply a name or title under which a person or entity conducts a business. In general, if you are carrying on a business or trading within Australia under a name that is not your own name or your entity name, you need to register that name as a business name.

Registering your business name does not:

- give you ownership of that name called a “proprietary right”;
- stop another person from registering a similar name;
- exclude others from carrying on a business using the same name;
- give you exclusive trading rights to use the name or part of the name; or
- prevent the name being used by somebody who has registered it as a trade mark.

All those rights arise from the protection granted under intellectual property law, for example when a brand or name is registered as a trade mark or is protected by copyright.

Businesses need to be aware that the legal obligation to register a business name is separate to any obligation to ensure the business name does not infringe on an existing registered trade mark, or that its use is not detrimental to another person or business.

Registering a business name is also separate to the process of obtaining a unique electronic address of a domain name.

The new national system introduces the potential to be in conflict with the naming rights of other business in other states.

If you have any questions regarding business names, please call Brad on 02 4655 7263.

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