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## LEGAL BRIEFS

### Protecting the Name of Your Business: It is Not as Simple as You May Think!

How long did it take you to come up with the name of your company? Was it a quick, no-brainer decision or was it something that you contemplated for days or even weeks. Whichever the case, once you have chosen a name for your business, the name immediately becomes a significant asset and is no longer merely a series of letters or words strung together. After all, the name of your business is an important marketing tool. It is one of the primary ways that your customers and potential customers recognize and refer to your business.

Once you have chosen a name for your business, it becomes important to protect that name by ensuring that other businesses are not using or planning to use that same name. So what can you do to protect the name of your business?

For starters, if you have set up a corporation or a limited liability company (LLC) in the State of Maryland, your company's Articles of Incorporation or your Articles of Organization contain the name of the business. The State Department of Assessments and Taxation (SDAT), the state agency that accepts your articles, will not incorporate your business or establish your LLC if the name that you have chosen is identical or deceptively similar to a name already being used by another corporation or LLC in the State of Maryland. Therefore, if SDAT denies your articles on this basis, it is back to the drawing board for name selection.

If, however, SDAT accepts your articles, you are not out of the woods yet. All this means is that there is no other corporation or LLC registered to do business in the State of Maryland with the same or similar name. Other types of business entities, such as a partnership or a sole proprietor may be operating a business with your chosen name. In addition, there may be companies in other states with the same name as your business' name. This is becoming an increasing problem as more companies do business via the internet.

Just because you have taken the step of incorporating or organizing an LLC, this does not necessarily give you the right to stop other companies from using your company name. In fact, if that other company has established common law rights to the name or if the other company has a registered federal trademark for that name, then that other company will actually be able to stop you from using your business' name.

So what exactly does all this mean? Let's begin with this concept of common law rights to a name. What this means is that the name has been used by a business, in commerce, and is recognized by that business' consumers in a particular geographic area. Nothing needs to be filed with any agency to establish common law rights. All you need to do is use the name and you have established your rights. However, common law rights are limited to the geographic area in which you use the name and in which it is actually recognized by consumers. Therefore, if another company has been using the name longer than you have in a particular geographic area and has established common law rights to the name, this company can prevent you from using your company name in that same geographic area.

If you want to have broad based protection for your name, then you must go through the process of filing an application with the Federal Patent & Trademark Office and obtain a federal registration. Please note that even if you have a registered trademark for your company name, this will not enable you to stop another company from using that name if that other company's common law rights to the name predate your federal registration. However, by registering the name, you will prevent that company from expanding its rights to the use of the name. In addition, you will be able to prevent other companies from being able to use your name in the future and you will be able to prevent another company from obtaining a federal registration for the name.



In order to receive a federal trademark, your name may not be confusingly similar to another name for the same type of goods or services. For example, everyone is familiar (even if you don't own one) with the car "Lexus." There is also a legal research program known as "Lexus." Both of these are registered trademarks because no reasonable person would confuse the two types of "Lexus."

Registering a federal trademark is a time consuming and expensive process. However, it is the only way that you can prevent other companies from using your name in the future. Also, if another company beats you to the punch and receives a registration for your name, it may prevent you from using the name or limit your right to use the name to a particular geographic area. There are also penalties that can be charged to you if you are, in fact, infringing upon another company's registered mark.

Finally, I would be remiss if I did not mention that you can also obtain a state registration for your company name. This registration provides you with no additional rights other than common law rights. However, the benefit to a state registration is that you are putting other companies on notice that you are using the name. This alone may prevent someone else from establishing a company with your name and, thus save you the time and expense of stopping that company from using your name.