

## Another Shark Tank IP lesson - business name registrations don't protect your business – A Shark says so!

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Is the name of your business protected? Many businesses say yes because they have a business name registration or are a registered company. But those kinds of registrations don't protect the business. Don't just take my word for it, Shark's Janine and Naomi from Shark Tank were at pains to explain this to one of the hopeful start up contestants during a pitch on the Channel 10 TV show.

There is so much confusion about protecting business names and it doesn't just come from start-up businesses. I have seen well established businesses operating internationally that haven't understood how to protect the name of their business.

### 1. The Problem

A business thinks its name is protected when it has a business name or company registration. This is simply not the case. Registering the name of your business is only an administrative requirement in order to commence business under that name. It doesn't give you exclusive rights to use the name or something similar. It doesn't give you any rights to stop anyone else from trading under your name or something similar. And lastly, it doesn't provide you with any protection from infringing the rights of someone else if a similar name is already in use.

- **Investors Want Registrations**

Not protecting the name of your business is problematic on many levels. The Sharks have made it clear that they are not interested in a business without trade mark registrations in place or at least applications filed. My recent article about the [Sharks wanting IP registrations](#) goes into detail about the comfort, commitment and freedom registrations provide. This is a good indication of the position most investors will take.

- **Cost Liability Risk Increases**

There can be huge cost implications for failing to protect the name of your business. If the business is infringing the rights of someone else, court action, legal fees and an award of damages could cripple the business. If a rebrand is required, it can be super expensive to implement, much more than the cost of any protection steps, not to mention the heartbreak if you are attached to the name.

- **Value of Business Decreases**

If you ever wanted to sell the business, the value of the business would be lower than if protection was in place. The reason is that any purchaser will not acquire exclusive rights to the name and a freedom to operate the business under the name without risk. This would be the exact opposite of the ordinary expectation upon purchasing the business. The purchaser of a new business has enough to worry about let alone if the name of the business he or she has purchased can in fact be used or will require rebranding.

## 2. The Solution

Register your business name as a trade mark. We have seen on Shark Tank that the Sharks want trade mark registrations for every business that pitches before them. We have seen the expectation that if the business has an aspiration to delve into the overseas market, that international trade mark applications must be filed to protect international commercialisation. And finally, we have seen the awkward silence that follows when a start-up contestant responds in the negative about having trade mark protection in place. Talk about a tumbleweed.

Depending on your chosen name, the process to register a trade mark can be straight forward. It is always good to conduct a search to see if your trade mark is already registered prior to filing an application. That way you know if there will be any obvious problems during the application process. Lodging an application as soon as possible is the best course of action as once your trade mark is registered, your rights date back to the day the application was filed. You don't want a competitor to beat you to it.

A similar process applies to international trade mark protection. You need a registration in every country that your goods or services are offered or where you manufacture your goods.

Don't wait until you are face to face with a potential investor and tumbleweeds begin rolling because you haven't registered the name of your business as a trade mark.

If you are looking for a quick and easy way to find out if your business name is available for use and registration as a trade mark, visit the [online tools](#) at the Sladen Legal website, where you can select the trade mark search that is best suited for you and an intellectual property specialist lawyer will email you the results. It's a wholly online service so no need to pick up the phone if that's your preference. The response turnaround may be as quick as 24 hours to meet the demands of urgent branding decisions.

To discuss Shark Tank in more detail, or for further information on any intellectual property needs, please contact:

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