

Protect Your Name

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Please note that these are general recommendations and don't replace the legal advice of your attorney.

Once you have a list of names, you'll need to research their availability. First, review this background information about trademarks, servicemarks, and legal protection:

TRADE NAMES AND MARKS

Trademark law is the primary method for protecting the words and symbols that identify products and services. Trademarks help to

- ▶ Prevent businesses from using the creativity of others in naming and distinguishing services and products
- ▶ Prevent customers from confusion about names that are misleadingly similar

TERM	DEFINITION	EXAMPLE	PURSUE?
Trade name	A name, word, term or symbol, or combination that identifies a company or entity name .	Microsoft	<input type="checkbox"/> Yes
Trademark	A name, word, term or symbol, or combination that identifies a product .	Word, Excel, etc.	<input type="checkbox"/> Yes
Servicemark	A name, word, term or symbol, or combination that identifies service .	AFL-CIO	<input type="checkbox"/> Yes

The rest of this section refers to all three simply as **Trademarks**.

The United States Trademark & Patent Office (USPTO) grants federal protection for trademarks in the United States. Companies may gain approval for the same name if they are in different industries, but typically not if there is overlap between their businesses.

PROTECTING YOUR NAME

You don't necessarily have to file a trademark, but doing so will help you to:

- ▶ Ensure that you do not receive a cease-and-desist letter from an existing trademark holder, which could be expensive to fight and could force you to change your name again. For example, if you name your company Crest Dental Supplies, Proctor and Gamble may take legal action against you

because they own a trademark for Crest toothpaste, which could be considered a dental supply product.

- ▶ Ensure that you can prevent another company from using your name and causing confusion, lost revenue, or lost potential for expansion.

The more generic your name, the more difficult it is to trademark.

NAME TYPE	YOUR NAME TYPE?	EXAMPLE	PROTECTABILITY
Created names	<input type="checkbox"/>	Google, Kleenex	Very good because a created name is less likely to have been used before
Expressive and experiential names	<input type="checkbox"/>	Target (store), Camel (cigarettes)	Good because the names are less likely to have been used in your context before
Descriptive names	<input type="checkbox"/>	Easy Diet, Accurate Accounting	Difficult because terms are common and generic
Noun names	<input type="checkbox"/>	Skateboard, car	Non-existent

The “availability” of a name also depends on the name itself, your state, your product/service, and the locations in which you’re selling (your market).

In many states, your name is protected in your state once you file it with your corporation commission or secretary of state. Common law may also protect your name once you start using it in commerce.

Most intellectual property attorneys would recommend that every company ALWAYS complete stages 1-5 in the exercise that follows this section; however, many smaller companies don’t do a rigorous check because they either don’t believe it’s necessary or can’t afford to do so.

To understand what you should do at an absolute minimum, review these variables and check off which categories apply to your company, then move forward with AT LEAST the minimum steps listed.

Market (locations in which you’re trying to sell)	Relevant?	Minimum steps you should complete
Local metropolitan area	<input type="checkbox"/>	1, 2, 3
Your state only	<input type="checkbox"/>	1, 2, 3
US	<input type="checkbox"/>	1, 2, 3
Worldwide	<input type="checkbox"/>	1, 2, 3, 4

Advertising Strategy Which channels will you use to promote your products/services?	Relevant?	Minimum steps you should complete
Internet but only small scale, very local (local listings, extremely targeted paid search, banners on local sites, etc.)	<input type="checkbox"/>	1, 2, 3
All other local advertising	<input type="checkbox"/>	1, 2, 3
More significant internet promotion (beyond solely local)	<input type="checkbox"/>	1, 2, 3, 4, 5
Other national / international campaigns	<input type="checkbox"/>	1, 2, 3, 4

CONFLICT CHECK

Now perform the steps listed for each potential name. Copy this box for as many names as you need.

NAME		
STEP	DESCRIPTION	LIST POTENTIAL CONFLICTS HERE
<input type="checkbox"/> 1	Internet search for URL and name availability. Check major endings: .com, .net, .org, etc.	
<input type="checkbox"/> 2	Search the major search engines to find other companies with similar names. Review their sites and note their industry – if they’re in a similar business, you have a conflict.	
<input type="checkbox"/> 3	Check your state’s Corporation Commission or Secretary of State for name availability.	
<input type="checkbox"/> 4	Check the U.S. Patent and Trade Office’s website: www.uspto.gov for similar trademarks and/or service marks. If you find a	

NAME		
STEP	DESCRIPTION	LIST POTENTIAL CONFLICTS HERE
	mark for your name and it's in a similar industry, move on.	
<input type="checkbox"/> 5	Have your attorney run a complete name search , which will outline every company using your selected name with both common law and federally registered protection.*	
Should you continue on with this name?		<input type="checkbox"/> Yes <input type="checkbox"/> No

*Typical costs for a report of this nature are \$500 to \$2,000 plus attorneys' fees for their analyses and recommendations. Weigh this cost against the risk of receiving a "cease and desist" letter for any potential infringement.

Speak with an intellectual property attorney or visit www.uspto.gov to trademark your name.

POTENTIAL RESULTS OF CONFLICTS

If another entity has obtained federal protection for a registered trademark and its lawyers feel you might be infringing on that trademark, they could potentially send you a "cease and desist" letter requesting that you stop using the name.

Here are your typical options at that point:

WHICH WOULD I CHOOSE?	OPTION	POTENTIAL RESULT	POTENTIAL COSTS
<input type="checkbox"/>	Ignore and do nothing	You might be sued for copyright infringement	Legal costs could be from \$10,000 to \$100,000s, depending on the size of the parties
<input type="checkbox"/>	Stop immediately	You will have to rename and rebrand	All new marketing materials, which can easily run from \$5,000 to \$100,000, plus the brand equity you will have lost
<input type="checkbox"/>	Fight in court	You can enter into a potential	The most expensive option if you lose,

		lengthy court battle where the outcome is unpredictable	as many cases take five to ten years and cost \$100,000s to \$1,000,000s
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RESULTS

Which names are still in contention?

REMAINING NAMES	COMMENTS

NAMES ELIMINATED	REASON