
A Rough Legal Guide to Choosing a Name for your Startup

So you're setting out on your journey with your proposed startup business or company. One of the first things that you will need to grapple with is the choice of a business or company name.

From a legal perspective there are plenty of things that can go wrong if you choose your name poorly. You can spend a lot of money on implementing the name, only to subsequently discover that you can't use it (or it is legally risky to use it) for reasons including the following:

- It isn't available as a company name or business name, due to somebody else having already registered that name (or a similar name).
- It has already been registered as a trade mark by somebody else.
- Somebody is already using the same or similar name (even if they haven't registered it as a company name, business name or trade mark).

If you simply ignore the fact that somebody else has registered or is using the name, then don't be surprised if you subsequently receive a letter of demand from their lawyer, insisting that you cease using the name for your business. You might then have the headache and expense of a major rebranding exercise. Similarly, in due course an opportunity may arise to attract investors to your business, or to sell your business, but the investor/purchaser may identify any of the above potential problems with your name, which could kill the deal or affect the price.

So how do you choose a great name, and also avoid these problems?

You could, of course, engage a marketing/branding consultant and a trade mark attorney to provide suggestions and advice. In reality, however, you're a startup – what money you have needs to be spent on getting your product/service up and running, marketing etc. You don't want to burn significant amounts of cash on just your choice of name.

Startup Legal's suggestion is that you do the following:

- First, develop a list of potential names yourself. Try not to use names that are descriptive of your product - as that could make it difficult to register your name as a trade mark if you later decide that you want to do that. Plus descriptive words are inevitably just a little too obvious or common – instead you want something that's a unique signpost for your business and product. For what it's worth, invented words can be a great choice, particularly if they imply a general concept or feel related to your product. It's also a good idea to run your preferred selection of potential names past potential customers (or people you know that are similar to your target audience) – they may react to a name in ways that never even occurred to you. You can find plenty of other tips about the non-legal aspects of generating potential names if you search "choosing a name for a startup" on Google.
- Second, think about whether you want your company and product to have the same name. Of course, this won't be an issue if you don't need your own product name – e.g. if you are selling a range of generic products or third party products. If, however, you need to name your product, then your company name doesn't have to be the same. In fact, there are arguments for having totally different company and product names. Note that all the same issues described in this guide regarding the choice of a company name also apply to selecting a product name.
- Third, use the DIY Name Check on the following page to do a rough check on the "legal health" of your name.
- Finally, if any of your listed names "fail" any of the steps in the DIY Name Check, then don't use that name. Yes, technically it might be legally possible to use the same name as another business if it is in an unrelated industry – but sometimes it is difficult to tell exactly what industry they are in, and why run the risk? Plus there is the general potential for market confusion – when what you want is a distinctive name that leads your potential customers to you every time. Having a totally distinctive name should ensure that your business appears at the top of search engine results (if it is a direct search for your business name). It's usually simpler and better to choose a different name at the outset, rather than create potential complication and lack of differentiation that may become problematic once your business has matured.

Note that the above process (and DIY Check) is not “perfect” and is no guarantee that you will avoid future legal problems. But in most cases it should be “good enough” – which is usually the standard that you need to accept in the early days of your startup.

DIY NAME CHECK

1. Check ASIC’s records

You can easily check ASIC’s register of company and business names yourself. Doing so is free. Simply:

- Go to the following page on the ASIC website:
<https://connectonline.asic.gov.au/RegistrySearch/faces/landing/SearchRegisters.jspx>
- In the “Search within” box, select “Organisation and Business Names”.
- In the “For” box, type your proposed business or company name and click on “Go”. If your name consists of more than one word then also search them separately.

For the reasons indicated on the previous page, if the same name (or a similar name) appears in the search results, then we suggest that you not use your proposed name. Choose another possibility from your list instead.

2. Do a basic trade mark search

It is also simple to perform a basic trade mark search of a name (which is also free):

- Go to the following page on the IP Australia website:
<https://search.ipaustralia.gov.au/trademarks/search/quick>
- Search for your proposed name. (As suggested on the website, make sure you also search for common variations, misspellings and similar sounding words.)
- Note that you can also upload a logo/graphic to search for similar designs (which is nifty technology).

Again, if the same or quite similar name (or logo) appears in the search results, then we suggest that you not use it. Choose another name from your list.

3. Check Unregistered Usage

Finally, not every business registers its name or brand as a company name, business name or trade mark. Sometimes they simply use an unregistered name/brand – but may still have legal rights that enable them to prevent others (i.e. you) from using that name (usually on the basis of “misleading or deceptive conduct” or “passing off”).

So you need to try to check for any unregistered usage of your potential name or brand. It’s obviously impossible to detect every use of a name – e.g. many small businesses are impossible to detect. However the following two checks will pick up many instances of use of a name (particularly if the use is on a significant scale):

Google Search

We suggest limiting your search to just Australia in the first instance. (In a Google search, click on “Search Tools”, then click on the “Any Country” tab and choose “Australia” instead.) Then search on an “Any Country” basis and separately consider if the result is a concern, particularly if your target market at the outset is global.

White Pages

We suggest checking your name in the Australian online white pages.

- Go to www.whitepages.com.au
- Select the “Business” tab, and enter your name (and related names).

If the same name (or a similar name) appears in the search results, then don’t use it. Choose again.

4. Make sure the domain name is available

Check that a suitable domain name for your name is available. For .com.au domains, you can check here:
<https://www.ausregistry.com.au/>