



Is Trade-mark protection right for your business?

What's in a name? If you think about it, a lot rests on the name you have built for your business. If you lost the right to use your name tomorrow would you survive?

Protecting your business includes protecting your name. Name recognition is an integral part of your business' success. Registering a trade-mark is a simple step that distinguishes your company from your competitors.

What is a trade-mark?

A trade-mark can be:

- a combination of words;
- a slogan;
- a logo; or
- a shape

which is used to identify a particular product or service.

Trade-mark or trade name?

A trade name is the business name under which a company conducts business. A trade name is also used as a trade-mark if it is used to identify a product or service. For example, "Nintendo Company Ltd." is a business name and "Nintendo" is a trade-mark of a particular product made by that company. Trade names can only be registered as trade-marks if they are being used to identify products or services.

Registration of a trade name is not the same

Registration of a trade name in a corporate registry (for example, when your business is

incorporated) does not itself create any trade-mark rights. Use of a trade name gives you, as the owner of the trade name, some common law rights to that name based on your actual use, usually limited to the geographic area in which you are using the name.

Unregistered trade-marks

Trade-marks can be adopted and used without registration. However, an unregistered trade-mark only benefits from common law rights. These rights are limited to the geographic area in which your trade-mark is used and can be asserted against a third party who is using your unregistered trade-mark in the context of passing off.

Why register a trade-mark?

Registering a trade-mark gives you, by statute, the exclusive right to use that trade-mark across Canada, with respect to your identified products or services, for a period of 15 years. Your trade-mark can also be renewed every 15 years. Registration of a trade-mark provides for faster recourse if trade-mark infringement occurs. It also provides a presumption and evidence of ownership; common law rights do not. Protecting your common law rights can be a more expensive and time-consuming process if no registration exists. Once your trade-mark is registered, it facilitates registration and enhanced protection in other countries that are members of international trade-mark treaties.

If you are interested in more information on registering your trade-mark, please contact Jill Corraini at 604-484-1768 or jcorraini@ahbl.ca.