THE IMPORTANCE OF REGISTERING A BUSINESS NAME

Under the law you are required to register your business name for the right to trade under a business name in Australia. It is also an important step to ensure that customers make that meaningful connection with your business and brand, and are able to differentiate you from your competitors. When you register a business name, the registration applies to the whole of Australia, not just to your State. The purpose behind this is to allow customers to be able to access information about who is running the business they are dealing with.

What is a business name?

This is the name that a person or organisation conducts a business and trades under.

When should I register my business name?

You are required to register your business name if you carry on a business and trade in Australia. This can be operating by yourself as a sole trader, through a partnership or a trust. If you have a company but trade under a different name to the company name, that trading name must be registered as a business name.

You do not have to register a business name if the name you trade under:

- is your first name (or initials) and your surname; or
- includes all of the partners’ names if it is a partnership; or
- is the same name as your registered company name.

How do I register my business name?

Business names are registered with the Australian Securities and Investments Commission (ASIC). However, first you need to apply for an ABN through the Australian Taxation Office (ATO).

Before registering a business name you must check with ASIC to ensure that your business name is not already registered by someone else. You must also check with IP Australia to ensure that your business name is not registered as a trademark by someone else – if it is and you use the name, then you can be sued for trademark infringement. If you are operating a business under a franchise agreement, then the agreement gives you the right to register a specific name.

You can register your business name for a period of one or three years. You must then renew your registration at the end of the period if you want to continue using the name.

If I register my business name, is that name protected from competitors?

It is protected to a certain point. If you want to hold further rights over and be able to enforce who uses your business name, then it is preferable to register your business name as a trademark with IP Australia. Of course if the intellectual property is owned by the franchisor, they will register the trademark and the franchisee will have no right to register it.
What if I do not register my business name?

You will be breaking the law and can be fined. The current penalty is $5,100.

**WARNING** – Please be aware that this article is aimed towards franchisees with franchise agreements to inform them of why they should register a business name. This is not general advice about business name registration and does not give you all the answers. If you would like more advice about registering a business name, please contact us to talk to one of our solicitors.