



Australian Government
IP Australia

October 2005
Project number 3078

REGISTERED BUSINESS
NAMES SURVEY



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Executive summary

This study was undertaken by Eureka Strategic Research to assist IP Australia and the Advisory Council on Intellectual Property (ACIP) to explore business owners' understanding of the nature and purpose of registered business names. Market-place understanding of business identifiers, and of the interface between them, has been the subject of recent discussion among state and federal governments. However, little direct research has been conducted in this area.

RESEARCH OBJECTIVES

The primary aim of this research was to assess the level of awareness and understanding of the rights and limitations associated with business name registration. This assessment will help IP Australia and ACIP to identify any areas in which ignorance or error exist, and to gauge the need for initiatives to address the risks associated with a failure to understand the nature of business name registration.

METHODOLOGY

A traditional mail approach was employed to survey recent business name registrants in NSW. The sample consisted of business proprietors who had either registered a name for the first time, or renewed an existing registration, in a period of two weeks prior to commencement of the study.

- **Field dates:** 1 August to 1 September.
- **Sample source:** Contact details for recent registrants were supplied by the NSW Office of Fair Trading.
- **Sample size:** In all, N=267 surveys were returned and used in analyses.

RESEARCH FINDINGS

Overall, there appears to be a considerable lack of awareness accompanied by significant misconceptions. Business names are thought by many to be ‘rights-conferring’ titles as much as ‘business identifiers’. Mistaken assumptions include the beliefs that a business name confers a ‘right to trade’ (in one’s own, and perhaps also in other states); that business names are exclusive, even across state and territory boundaries; that one ‘owns’ a business name; and that business names offer a form of ‘protection’ against other businesses.

Trade marks are thought to be important, but do not appear to be well understood. While almost all agree that it is important to conduct a trade mark search when applying for a business name, and there is a belief that trade marks confer rights and impose limitations, there is a less than adequate understanding of what those rights and limitations actually are.

There exists a widely held belief that the registration process undertaken by state business names offices involves more than it does; in particular, that an application for business name registration will necessarily ‘trigger’ a trade mark search. Consequently, many believe that the mere act of registration will afford necessary and sufficient protection. It may appear naturally counter-intuitive to think that by fulfilling an obligation in registering a business name, one could put oneself at risk of infringing a trade mark.

While few businesses have registered their business name as a trade mark, a greater number report having conducted a trade mark search. For some, this may be based on the false assumption that the state business names office has searched on their behalf.

A minority of businesses has experienced some form of conflict between their own identifiers and those of another business, with consequences ranging from administrative inconvenience to the threat of legal action.

In summary, understanding of registered business names appears to involve an over-estimation of the ‘rights’ value of this fundamental business identifier. It tends to be accompanied by a limited understanding of the nature of trade marks, and mistaken assumptions about the nature of the registration process. Together, ignorance and error may create a false sense of security for many businesses.

Although it is beyond the scope of this study to determine the extent of risk faced by business proprietors who do not fully understand the nature of registered business names and trade marks, there is a strong case for education to enable businesses to make informed decisions on their own behalf, and to independently assess the merits of conducting a trade mark search or registering a trade mark. The research findings suggest that State and Commonwealth Government departments and agencies are a first port of call for information in this area, and the existence of discrete, well-established communication channels via the registration process should also facilitate communication.

Research context

This section outlines the background to the project, and specifies the research objectives.

2.1 Background

Understanding business identifiers Business, company and domain names, and trade marks each serve different purposes, involve different registrars, and confer different rights. The failure to recognise these differences can prove costly, if not disastrous, for businesses, particularly SMEs. At present, IP Australia and other Government agencies provide information resources to help people understand the nature of business identifiers. There is concern, however, that a significant amount of confusion may still exist. Anecdotal evidence suggests, for example, that there may be a mistaken belief among some business owners that a business name confers proprietary rights similar to those conferred by a trade mark, or that it offers immunity from infringement of another business's registered trade mark.

Discussion and review The issue has attracted the attention of state business names offices, the Advisory Council on Intellectual Property (ACIP) and IP Australia. A series of legislative reviews has been conducted in a number of states, and the ACIP published an informative issues paper in January 2004 as part of its review of the relationship between business identifiers. So far, however, little direct research has been conducted to establish the true extent of public awareness, or misconception, in this area.

2.2 Research objectives

The primary aim of this research was to assess the level of awareness and understanding of rights and limitations associated with business name registration.

In addition, its findings will assist IP Australia and ACIP to:

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- identify opportunities to address confusion associated with business names and trade mark rights, and
- gauge the need for further provision of information or training services relating to business names.

The research program undertaken to meet the research objectives and explore these issues of interest is outlined in the following section.

Research design

This section provides details of the research methodology employed to achieve the project's objectives.

3.1 Mail survey

Survey Instrument

Given the nature and scope of the subject matter, a self-complete questionnaire was deemed to be the best way of collecting information.

In the absence of telephone or email contact details, a traditional mail approach was employed. While it would have been possible to match trading names with telephone numbers from the electronic yellow pages, this would only have yielded numbers for one group within the target audience: 'renewals' who had registered their business name and were listed in the yellow pages before October 2004 (the age of the current directory).

The questionnaire (Appendix A) was designed in consultation with IP Australia and ACIP. With a business audience in mind, the length of the questionnaire was limited to allow completion in less than ten minutes. An invitation letter (Appendix B) signed by the Director General of IP Australia was enclosed with all questionnaires to encourage participation. Within the limitations of the NSW Office of Fair Trading database, a personalised salutation was used where possible. No incentives were used.

Drawing the sample

As already noted, the primary target audience was comprised of recent business name registrants. A time-frame was imposed on the sample, so that contact details were sourced for registrants within a period of two weeks from the time of their lodging an application for renewal or registration. The NSW Office of Fair Trading provided a database excerpt containing all 'renewals' and 'new registrations' made in a 14-day period (25 June to 8 July 2005): a list of nearly 8,000 registrants. In addition to mailing addresses, the database excerpt contained, for each business name, the

date of first registration, method of registration (online, via mail, or over the counter) and a description of the main activity of the business. It is worth noting that future research in this area would benefit greatly from the collection of phone numbers and email addresses in the database, allowing larger, more representative samples to be drawn.

Conduct of fieldwork Fieldwork was conducted between 1 August and 1 September. With the aim of achieving a sample of at least N=200 respondents, questionnaires were mailed in two batches to a total of 1,600 randomly selected registrants. A fieldwork supplier, I-View, was engaged to conduct the mail-out. Case IDs were assigned to reply-paid envelopes so that survey responses could be linked to key sample characteristics already held.

With 267 surveys completed and returned, a response rate of 17% was achieved. On those key characteristics that can be compared, such as business activity and location, the sample does appear to be representative of the broader population.

A sample size of 267 yields a 95% confidence interval of no more than $\pm 5.6\%$.

3.2 Sample characteristics

Sample size The final sample consisted of **267** business name registrants. For 257 of these, it was possible to match survey responses with key sample characteristics including: information about the type of registration (new or renewal), registration method (online, mail or over-the-counter), date of first registration, respondent location and main business activity.

Registration type and method Renewals accounted for the majority of the sample (59.5%), with the remainder made up of new registrations. The following table (Table 1) presents a breakdown of these two groups according to the method used to lodge an application.

Table 1 – Registration type and method

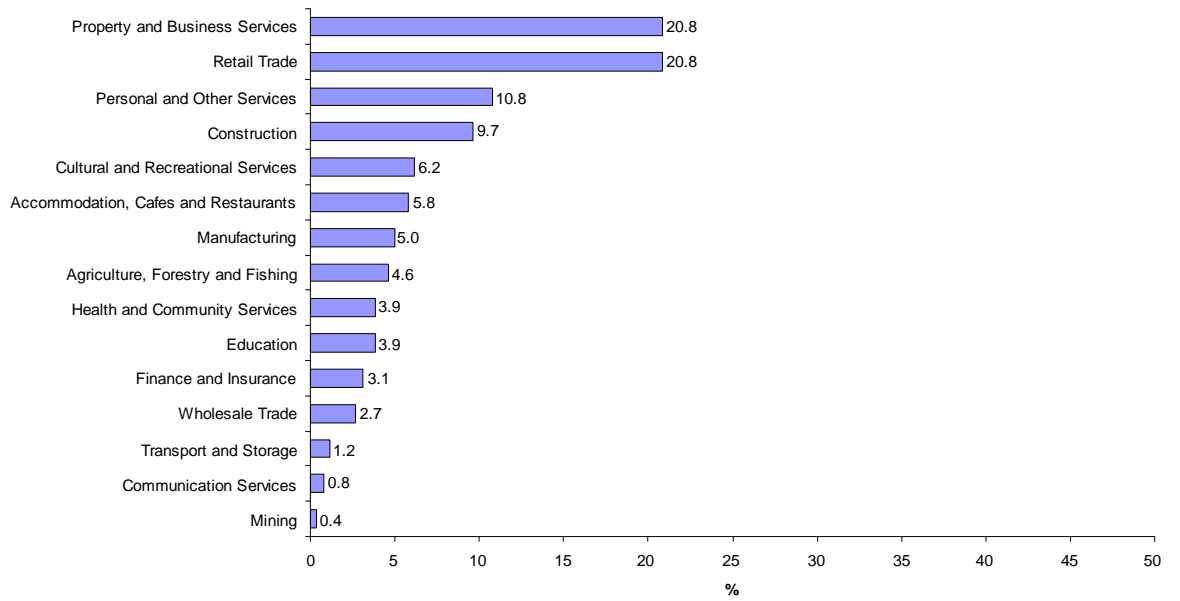
Registration type	Registration method		
	Counter	Mail	Online
New	59.6%	40.4%	0.0%
Renewal	7.8%	57.5%	34.6%

With no option to lodge new registration applications online, the majority of new registrants (59.6%) applied in person at a NSW Office of Fair Trading shop-front. For those renewing their registration, mail was the most common method (57.5%), with just over a third (34.6%) lodging their renewal online. Only 7.8% of renewals took place in person. The different lodgement patterns for new and renewing registrants will need to be taken into account when considering communication strategies.

Location Analysis of postcodes revealed that the majority (72.3%) of proprietors’ main postal addresses were located in metropolitan areas, while just over a quarter of addresses (27.7%) were located in rural and remote areas. All but six respondents’ main postal addresses were in NSW. Three were located in Queensland, two in Victoria and one in Western Australia.

Business activities Respondents’ own descriptions of their main business activity were coded according to the Australian and New Zealand Standard Industrial Classification (ANZSIC). The chart below (Figure 1) provides a breakdown of respondents by industry, revealing that a broad range of business activities are represented in the final sample. Property and business services (20.8%) and Retail trade (20.8%) were the largest categories, followed by Personal and other services (10.8%) and Construction (9.7%).

Figure 1 – Main business activity of respondents



Base: N=257 (all matched records)

Research findings

This section presents findings for each area of focus included in the research: understanding of business names; trade mark searching (advice and conduct); trade mark registration; experiences of conflict; and sources of information and advice.

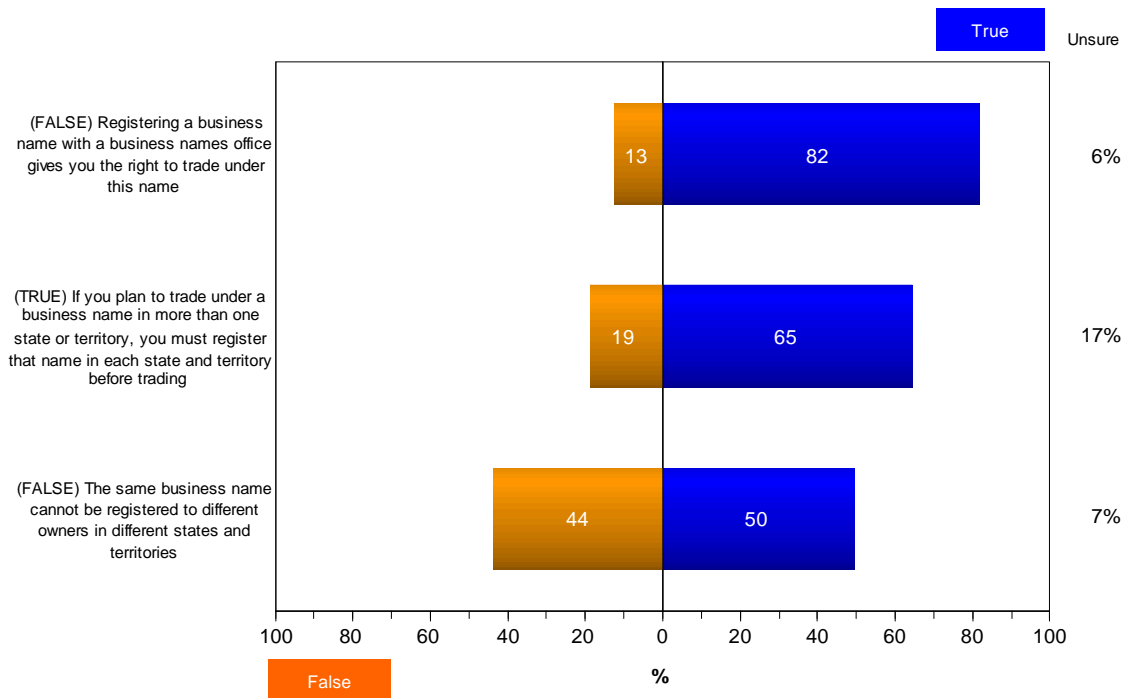
4.1 Understanding of business names

Respondents were presented with a series of nine statements about business names and asked to indicate whether they thought them true or false, or whether they were unsure. The statements explored several facets of business name registration. In broad terms, these were: the nature and purpose of the registration process; the jurisdiction in which a registered name is valid; perceived rights and limitations; the relationship between business names and trade marks; and the importance of conducting a trade mark search.

The results are presented in three charts below. It should be noted that the charts depict frequencies of ‘true’, ‘false’ and ‘unsure’ answers, not the correctness or incorrectness of those answers. Each chart indicates the percentage of respondents answering ‘true’ in blue on the right-hand side of the chart, and the percentage of ‘false’ responses in orange on the left-hand side. ‘Unsure’ answers are not represented graphically, but appear as a percentage on the far right-hand side of the chart.

The first chart (Figure 2) presents results for three statements related to the ‘rights’ and jurisdictions associated with business names.

Figure 2 – True/False statements



Base: N=267

A great majority of respondents (82%) incorrectly believe that registering a business name gives one the ‘right’ to trade under that name. When interpreted in the light of responses to subsequent statements, this result appears to reflect a genuine misunderstanding of the nature of business name registration. It may be that the compulsory nature of registration leads proprietors to believe that, since they cannot trade without a registered business name, it is the name itself that confers a ‘right to trade’.

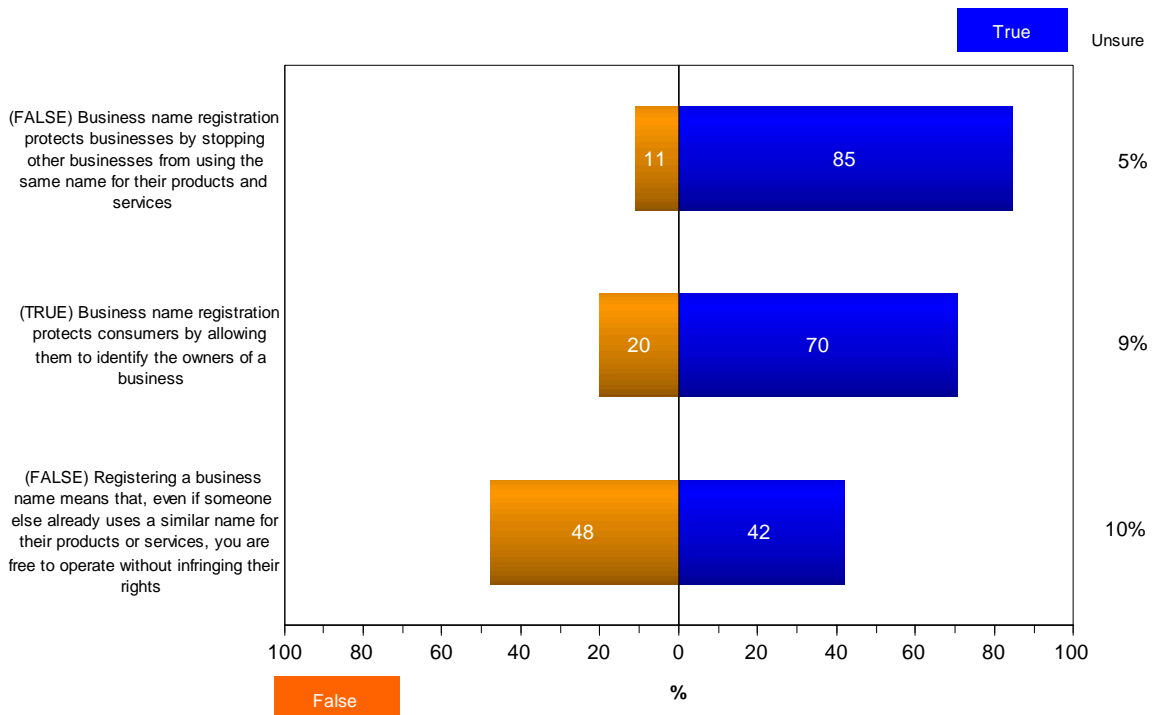
When asked whether it is true or false that one must register a business name in different states and territories before trading in them, nearly two-thirds of respondents (65%) correctly answered ‘true’. As many as 19%, however, incorrectly labelled the statement ‘false’, with a further 17% indicating that they were simply unsure. Given that it is reasonable to assume that many businesses, particularly the smaller among them, will only trade in one state or territory, the degree of uncertainty and misconception surrounding this point may not be of great concern. It is not unreasonable to expect, however, that businesses may eventually confront a situation in which competitors from other states and territories begin trading in their state or territory. In this case, a failure to understand the extent of the jurisdiction in which business

names (and, importantly, trade marks) operate could adversely affect businesses who have no intentions of trading anywhere other than in their own local area.

Indeed, when responses to a related statement, that ‘the same business name cannot be registered to different owners in different states and territories’, are taken into account, the extent of misunderstanding of this aspect of business names appears greater. One half (50%) of respondents incorrectly contend that it is not possible for the same name to be registered to different owners in different states and territories. (A corollary of this belief would appear to be that registering a business name in one state or territory permits a business to trade under that name nationally.) Forty-four percent supplied the correct answer on this point, with only 7% indicating that they were not sure.

The following chart (Figure 3) presents three further statements related to the perceived purpose of, and entitlements associated with, business name registration.

Figure 3 – True/False statements



Base: N=267

Particularly stark are the results for the first assertion in this chart, that ‘business name registration protects businesses by stopping other business names from using the same name for

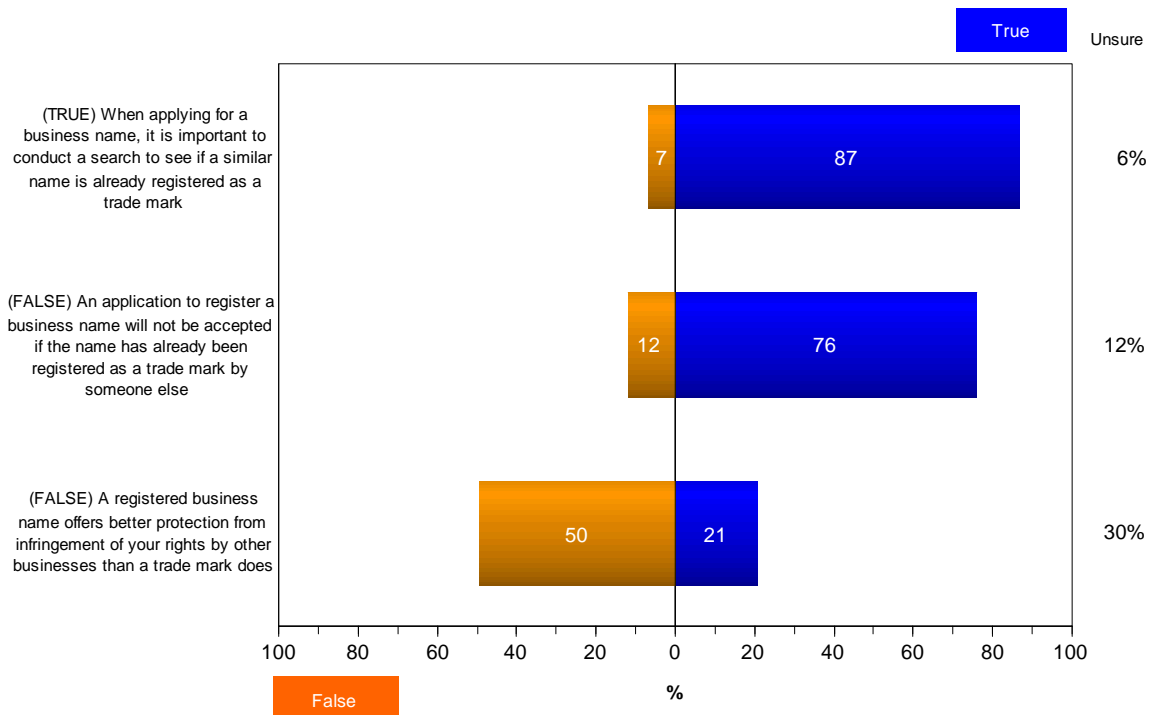
their products and services'. As many as 85% of business owners sustained that this was 'true'. Only 7% provided the correct answer ('false'), and there was very little uncertainty, with 5% 'unsure'. To believe that registration safeguards businesses by actively prohibiting other businesses from adopting the same name for their products or services is to misconceive the fundamental nature of the business names register.

Seventy percent of respondents correctly held that 'business name registration protects consumers by allowing them to identify the owners of a business', with 9% unsure. Given that this is in fact one of the chief purposes of the business names register, it is noteworthy that 20% of respondents believed the statement to be false.

Responses to the third statement in this chart reveal a further misconception about the 'protective' nature of business names. Forty-two percent of business name registrants agreed with the false (and somewhat bold) claim that 'registering a business name means that, even if someone else already uses a similar name for their products and services, you are free to operate without infringing their rights'. Just under half (48%) labelled this statement false, with as many as 10% indicating that they were unsure.

The following chart (Figure 4) presents results for the remaining three true/false statements that participants were asked to consider.

Figure 4 – True/False statements



Base: N=267

If many registrants believe that business name registration offers a kind of protection from infringement of another business’s rights, the overwhelming majority (87%) agree that, when applying to register a business name, it is ‘important to see if a similar name is already registered as a trade mark’. As few as 7% were prepared to sustain the opposite position, with 6% unsure. This finding on its own would appear encouraging. It appears less so when coupled with results for the subsequent statement, that ‘an application to register a business name will not be accepted if the same name has already been registered as a trade mark by someone else’. A sizeable majority of 76% mistakenly believe this to be true. In other words, if 87% believe that it is ‘important to see’ if a name is already a registered trade mark, 76% appear to believe that the ‘seeing’ is already taken care of by the application process.

The final statement touches on the relationship between business names and trade marks, once again using the language of protection and entitlement. While 50% of respondents were prepared to disagree with the assertion that ‘a registered business name offers better protection from infringement of your rights by other businesses than a trade mark does’, many were uncertain. Indeed, of all nine true/false statements presented in the survey, this one received the

highest percentage of ‘unsure’ responses, with 30% indicating that they did not know the answer. Just over a fifth of registrants (21%) gave an incorrect answer, maintaining that business names offer better protection from infringement of ‘rights’ than do trade marks.

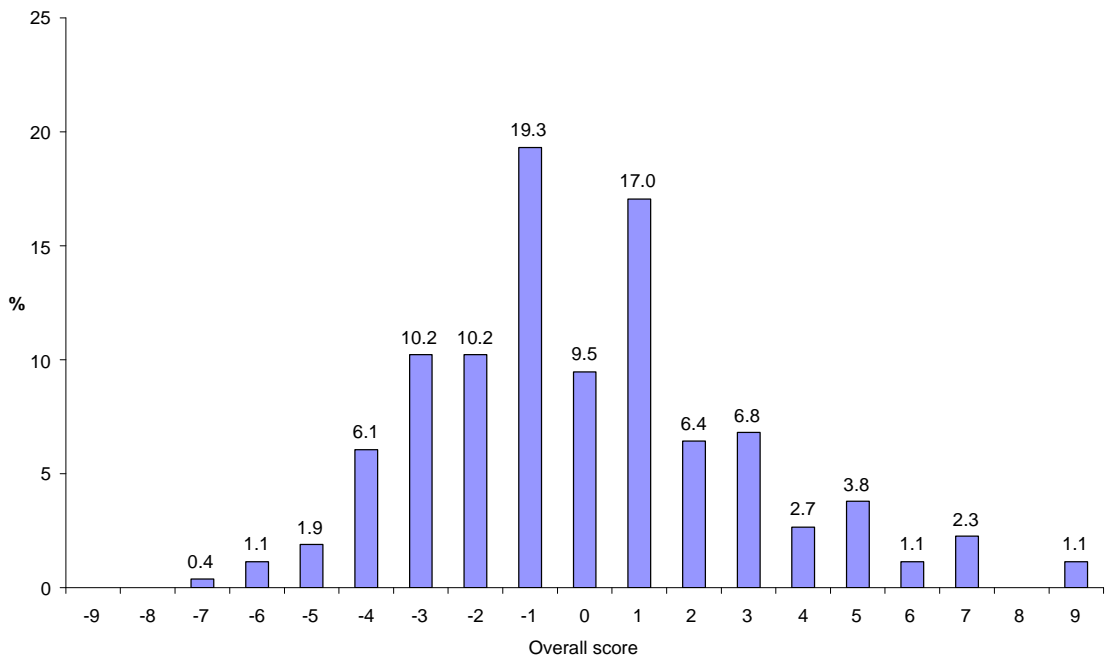
**Overall
knowledge
scores**

Each individual’s responses to the nine true/false statements were scored and tallied to create an ‘overall knowledge score’ for each respondent.

Correct answers were scored as 1, ‘unsure’ answers were assigned no value, and 1 was subtracted for incorrect answers. Differentiating between incorrect answers and ‘unsure’ answers allowed for an appropriate distinction to be made between ignorance and error.

The distribution of overall knowledge scores for the nine true/false questions is presented in the chart below (Figure 5).

Figure 5 – Distribution of overall scores for true/false responses



Base: N=264

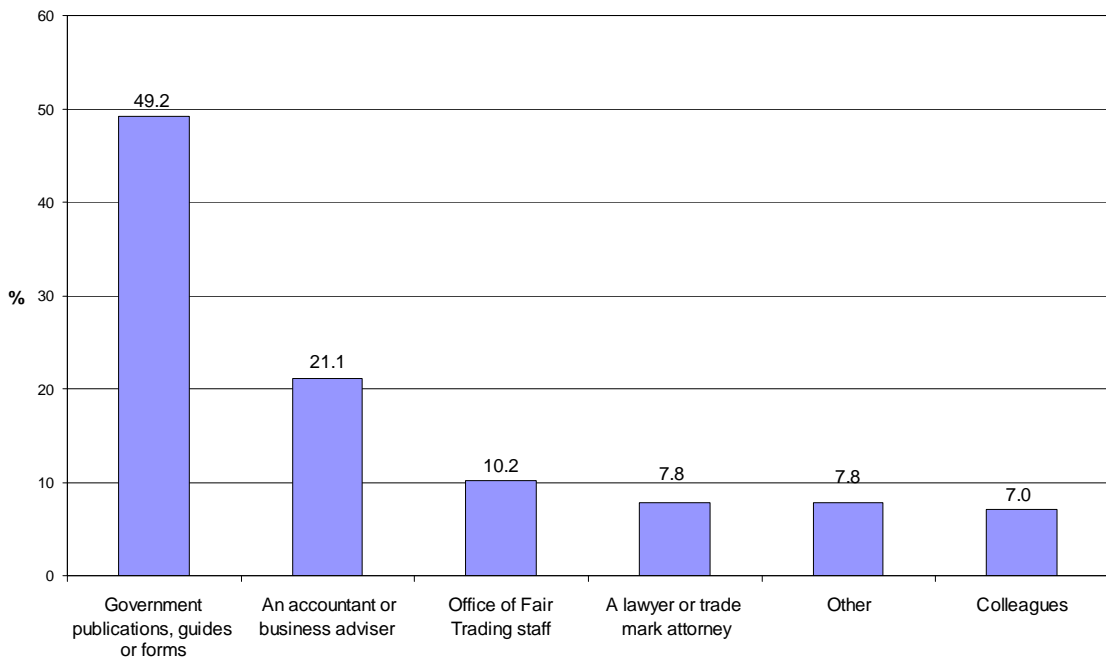
The mean score fell just below ‘zero’, with very few respondents achieving high scores.

4.2 Trade mark searching

Advice Registrants were asked whether, when applying to register their business name, they were ‘advised at any stage to conduct a search to see if a similar name was already registered as a trade mark’. Just under half of respondents (49.4%) recalled being advised to conduct a trade mark search. Approximately two-fifths (41.6%) indicated that they had not been advised, with a further 7.9% unable to say whether they had been advised or not.

The 49.4% who recalled receiving advice to conduct a trade mark search were asked to indicate the sources from which they received this advice. Their responses are presented in the chart below (Figure 6).

Figure 6 – Sources of advice to conduct a trade mark search



Base: N=128

The most common source of advice was government, through publications (49.2%) and Office of Fair Trading staff (10.2%). Accountants and business advisers (21.1%) were the next largest group, with lawyers and trade mark attorneys at 7.8% and registrant’s own colleagues at 7%. The ‘other’ category included such responses as ‘the media’ and ‘family members’.

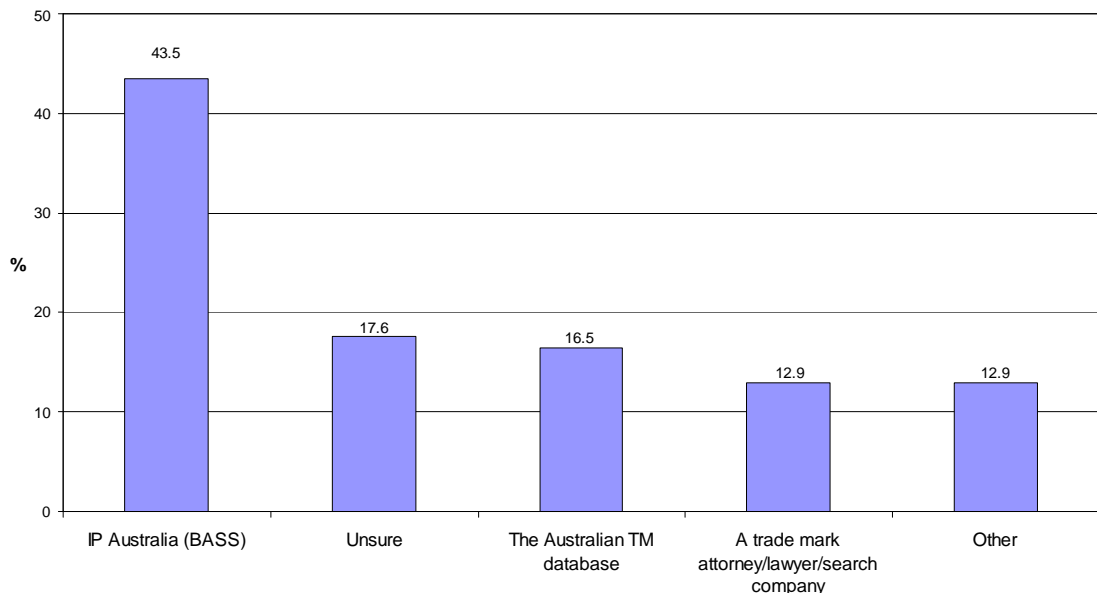
Conducting a search

The questionnaire went on to ask registrants whether they had conducted a trade mark search or had one conducted on their behalf. Almost a third (32.7%) reported having conducted a search. The majority 60.5% indicated that they had not, with 7.8% unsure.

Of those who indicated having conducted a search, 17.6% admitted that they were unsure how the search was conducted. In light of this figure and the finding reported above, that 76% of registrants assume that ‘an application to register a business name will not be accepted if the same name has already been registered as a trade mark by someone else’, it would not be unreasonable to conjecture that the percentage of respondents who report having conducted a search, or having had one conducted on their behalf, may actually be less than 32.7%. This figure would of course best be understood to represent the proportion of respondents who *believe* that a trade mark search has been conducted on their behalf.

When asked how their search was conducted, 43.5% indicated that it was conducted through IP Australia. The following chart (Figure 7) presents results for a range of search options.

Figure 7 – Channels through which a trade mark search was conducted



Base: N=85

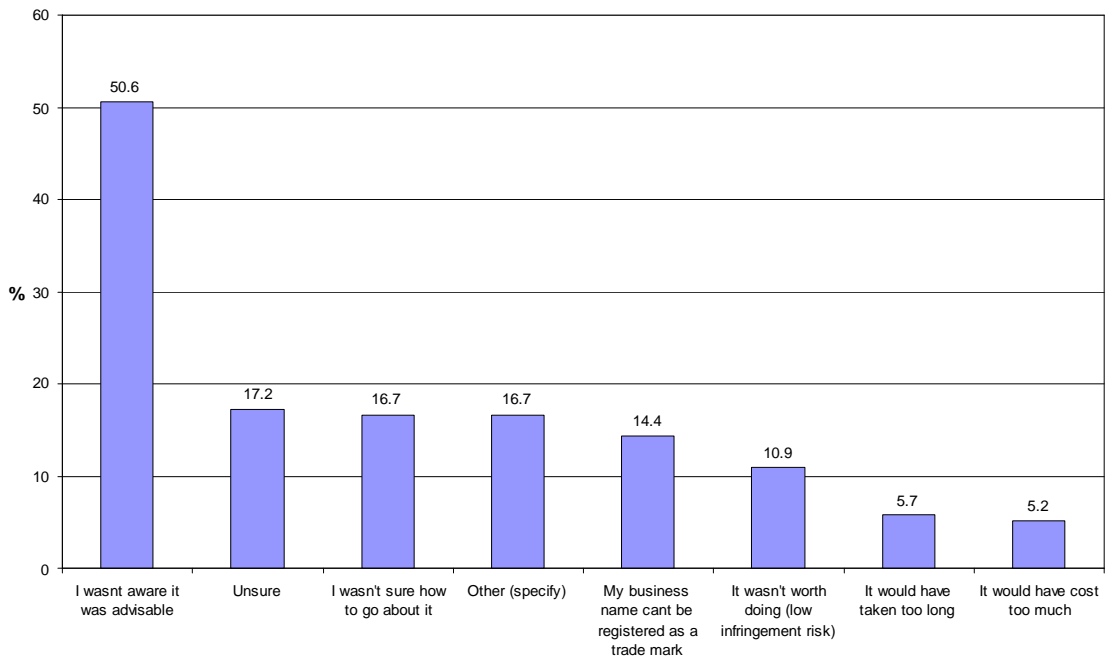
The ‘other’ category notably included such informal channels as private internet searches and personal scanning of news, advertising and other media, suggesting that the technical meaning of

the term ‘trade mark search’ was not understood by some respondents (as may also be the case for some ‘unsure’ respondents).

Reasons for not conducting a search

Those who reported not having conducted a search were asked to indicate their reasons. The reasons given were subsequently coded, with results presented in the following chart (Figure 8).

Figure 8 – Reasons for not conducting a trade mark search



Base: N=174

One half (50.6%) of respondents indicated that they were ‘not aware it was advisable’, with 17.2% unsure why they did not, and 16.7% not sure ‘how to go about it’. The belief that one’s business name ‘can’t be registered as a trade mark’ was a reason for 14.4% of respondents. Only 5.2% stated that the cost had dissuaded them, with slightly more respondents (5.7%) concerned that ‘it would have taken too long’. While only 2.2% stated that they had ‘assumed the Office of Fair Trading was responsible for searching and notifying’, this may be an unspoken assumption for others, who indicated they were not aware it was advisable to conduct a trade mark search (findings reported above for the statement that ‘an application to register a business name will not be accepted if the same name has already been registered as a trade mark by someone else’ may lend support to this conjecture).

4.3 Trade mark registration

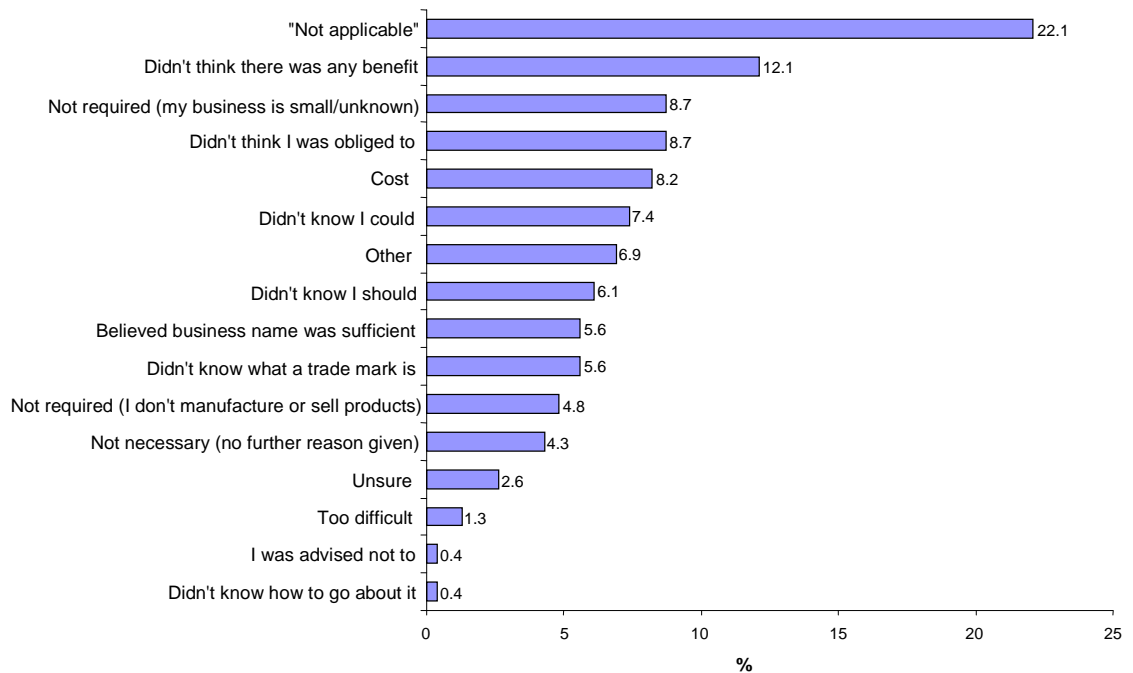
When asked whether they had registered their business name as a trade mark, only 9.8% reported having done so. The great majority (83.8%) indicated that they had not, with 6.4% unsure. Of the 9.8% (or 25 business name registrants) the main reasons for conducting a search were:

- Greater 'security' through legal protection
- Planning for future growth
- Building and protecting a brand
- Protecting a logo

Reasons for not registering a trade mark

When the question was put 'what was your main reason for choosing not to register your business name as a trade mark?' 22.1% of respondents wrote 'not applicable' or 'NA', perhaps indicating either that they did not wish to provide an answer, could not say why, or literally did not think trade mark registration 'applied' to their circumstances. The following chart (Figure 9) shows main reasons for choosing not to register a business name as a trade mark.

Figure 9 – Reasons for choosing not to register a business name as a trade mark



Base: N=231

4.4 Experiences of conflict

Respondents who had first registered their current business name ‘more than a year ago’ were asked whether they had ‘ever experienced conflict between their business name and a trade mark registered by another business (or vice versa)’.

More than two-thirds (68.3%) of respondents reported first registering their current business name over a year ago.¹ Of these, 10.5% reported having experienced some form of ‘conflict’, a term which was broadly interpreted by respondents, and not limited to the explicit context in which the question had framed it (business names vs. trade marks).

The full range of situations described is listed below.

- Notified of potential trade mark conflict (action was not pursued) (n=4)

¹ It is interesting to note that this figure is higher than the proportion of ‘renewals’ in the sample, which, given exact registration dates provided in the database from which the sample was drawn, it might be expected accurately to reflect. This disparity may be due to the wording of the question, ‘when did you first register your current business name’, which does not screen for the possibility that ‘new business names’ in NSW were first registered more than a year ago, outside NSW, or that a business name has been ‘renewed’ after a period of lapsed registration, and was therefore ‘first registered’ over a year ago.

- Notified of potential trade mark conflict (a solution was negotiated) (n=3)
- Administrative difficulties were caused by mistaken identity (supply, invoicing and postal errors) (n=3)
- Another company used or benefited from a similar business name (n=3)
- Conflict with existing business names arose when entering other states to trade (n=3)
- Another company registered my existing business name as its trade mark (n=2)
- Tried to register as a company name the business name I 'own' but was refused (n=1)
- Other businesses have tried to use my trade mark – legal costs incurred to defend it (n=1)

Respondents were given the opportunity to report their experience in as much detail as they liked. The following quotes illustrate the range of scenarios listed above, and provide an indication of the frustration and disappointment experienced by some business name registrants.

“We were using a business name (registered in NSW and the same name as our company name (ASIC) but were contacted by a trademark attorney in W.A to say that we were in breach of trademark law as his client had it registered. That is when we first became aware of the need to search databases. Fortunately, we were able to negotiate without penalty but have had to change our name - invoices, brochures, uniforms, forms, signs, vehicle, sign-writing, pre-printed stationery, reputation! A costly exercise!”

“Another business registered with an additional letter, but the same first name. They are in the same motel industry and spread the word that we were bankrupt and had sold them the business. They were hoping to gain our many years of good reputation. They did and it was allowed.”

“I had my pharmacy registered as 'XYZ pharmacy' for several years when someone else started to use the same name. I confronted them and they simply changed their name to 'XYZ prescription centre'. I was disappointed that my registered name could be so easily manipulated but decided it wasn't worth the effort to pursue the matter further.”

“A Victorian company operating in NSW. This was when I found out that state registrations are just a money-rising venture by the states, and that no protection applies to any registered business owner. All smoke, mirrors and revenue raising.”

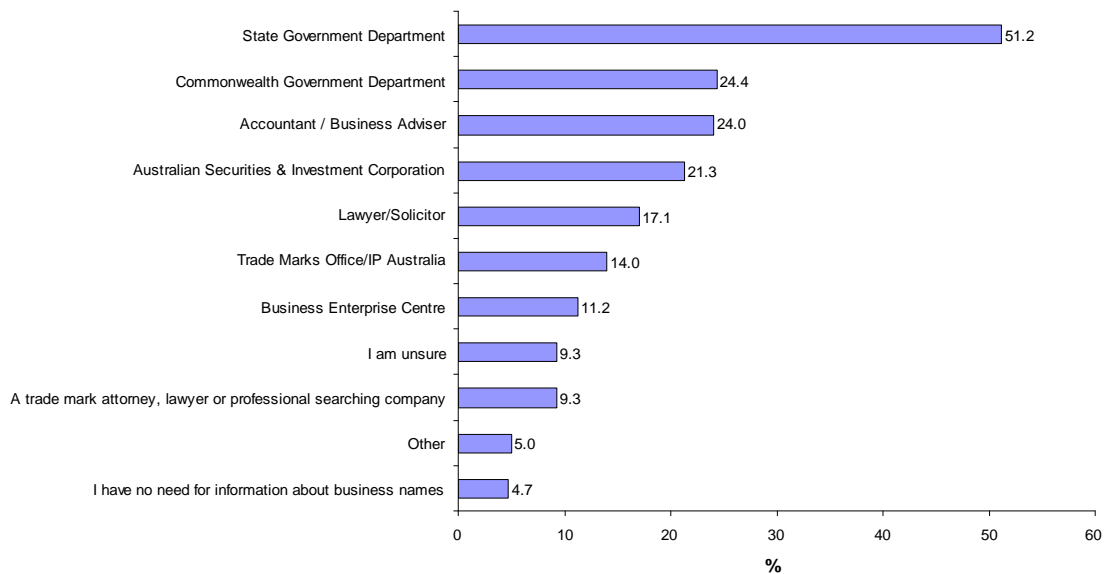
“Businesses seek to register our name/mark in areas outside those in which we are registered. We have opposed registration, resulting in our incurring significant legal costs to try to protect our name/mark.”

“Conflict was in relation to registration of the same business name in different states. All states registered except for WA. Legislation should be national rather than governed by state bureaucracy.”

4.5 Sources of information and advice

Business names When asked where they would seek further information about business names if they wanted it, the majority of respondents (51.2%) indicated that they would approach a state government department. A quarter (24.4%) said they would approach a Commonwealth Government department.

Figure 10 – Preferred sources of further information (business names)

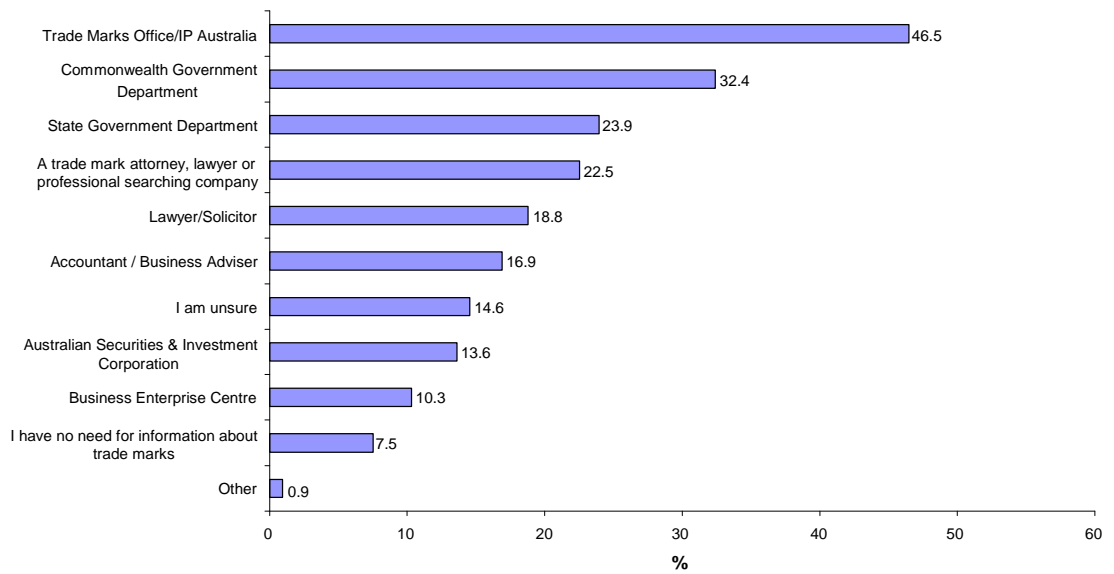


Base: N=258

Trade marks When asked the same question about trade marks, 46.5% of respondents indicated that they would seek information from IP Australia. Given the IP Australia branding associated with the survey (and the approach letter signed by the Director General of IP Australia), it is plausible to suggest that the research exercise may have artificially

inflated this figure by increasing awareness and establishing a strong association. Overall, however, government sources were again clearly highlighted as the main sources of information about trade marks, as can be seen in the following chart (Figure 11).

Figure 11 – Preferred sources of further information (trade marks)



Base: N= 258

Conclusions and recommendations

Overall, there is evidence of both ignorance and misunderstanding of the nature and purpose of business name registration. Findings suggest that there is not only a degree of uncertainty but also a range of widely and mistakenly held beliefs. Most significantly, it appears that business names are thought of by many not simply as ‘business identifiers’ but as a form of entitlement, an active title that is owned more or less exclusively by a business, and one that confers rights upon and protects its owner. More particularly, mistaken assumptions include that a business name gives one a ‘right to trade’ (in your own, and perhaps also in other states); that business names are exclusive, even across state and territory boundaries; that one ‘owns’ a business name; and that business names offer a form of ‘protection’ against other businesses.

Trade marks are thought to be important, and most think it is important to take them into consideration when registering a business name. As far as can be gauged from a questionnaire of this length, however, trade marks do not appear to be well understood by many. The belief that trade marks confer rights and impose limitations does not appear to be accompanied by a sound understanding of what those rights and limitations actually are.

There also appears to be a widely held belief that state business names offices ‘do more than they actually do’ during the business name registration process. Importantly, there appears to be a broad assumption that the process of business name registration ‘automatically’ includes a trade mark search, and a belief that the mere act of registration (involving a fee paid to a government office) must necessarily offer an entitlement and afford a form of protection.

In the absence of clear information to the contrary, this would appear, on the face of it, to be a perfectly natural assumption. One might argue that it is deeply counter-intuitive to think that by obeying one form of law or regulation, in registering a business name, and proceeding to trade under that name, one could actually risk breaking another law, by putting oneself at risk of trade mark infringement.

It appears that few businesses have registered their business name as a trade mark. Although a greater number report having conducted a search, there is reason to believe this may be based on the false assumption that a state business names office has conducted a search on their behalf. There is uncertainty about the nature and purpose of trade marks – and consequently about why one should, how one can, and indeed (for some) whether or not one can register a business name as a trade mark.

A minority of businesses have experienced conflict of various sorts between their own and other business identifiers. In a small number of cases this appears to have involved significant consequences, with associated frustration and not a small degree of bitterness at not having been made fully aware earlier of the risks associated with trade mark infringement, or of the degree to which a business name could be contested by competing businesses.

In summary, understanding of registered business names appears to involve an over-estimation of the ‘rights’ value of this fundamental business identifier. This is accompanied by a limited understanding of the nature of trade marks, and mistaken assumptions about the nature of the registration process. Together, ignorance and error may create a false sense of security for many businesses.

While it is beyond the scope of this research exercise to estimate the number of businesses for whom a misunderstanding of the nature of registered business names may have real and significant consequences, there would appear to be no reason why any business owner should exhibit a lack of understanding of what is essentially a business identifier, and one which at present forms a necessary part of the establishment and operation of any business. In addition, a clearer understanding of registered business names and their relationship to other business identifiers would allow businesses to make informed decisions about whether or not they should conduct trade mark searches and register trade marks.

The scenario would also appear to be one in which there are few obstacles to communication. Businesses are likely to be highly receptive to information on this topic: they may indeed even expect to be warned of risks associated with the operation of their business, and informed about their rights and obligations. Findings of this research suggest that business name registrants would be willing to listen to both State and Commonwealth Government departments and agencies, whom they would consider a first port of call for further information on such matters,

were they aware that they needed it. Communication would also be facilitated by the fact that the business names registration process involves a number of well-established and discrete communication channels: over-the-counter and via mail for new registrants; online, via mail, and over-the-counter for renewing registrants.

Finally, it is worth observing that, unlike other situations in which a 'product' may be perceived to offer more than it in fact does, there should be little reason to suppose that increasing awareness will adversely affect the volume of business name registrations, since registration is, under the existing system, a necessary condition in order to trade.



Appendix A

Xx Questionnaire to be inserted

Appendix B

xx July 2005

Dear Sir/Madam,

I am writing to seek your input to IP Australia's 2005 Business Names Survey, in partnership with the NSW Office of Fair Trading. This research study focuses on issues related to business names and trade marks. As someone who holds a registered business name, your views and honest opinions are important to us. Your responses will help IP Australia to understand in greater detail the experience of business name registrants.

The enclosed questionnaire is brief. Should you choose to take part in the survey, you will be able to complete it in around 10 minutes. We encourage you to answer and return the questionnaire in the reply-paid envelope provided, ideally within ten days of receiving this letter.

Our research partners (Eureka Strategic Research and I-View) adhere to the Australian Market and Social Research Society's ethical guidelines. Your responses to the questionnaire will be entirely anonymous and will be considered together with the responses of all other participants.

We hope that you find the exercise stimulating. Should you have any questions about the survey, or require any assistance in completing the questionnaire, please contact the project officer Joseph Falsone on (02) 6247 2700 (reverse charges).

Yours sincerely,



Ian Heath
Director General
IP Australia



IP Australia Business Names Survey 2005

Thank you for agreeing to participate in the IP Australia Business Names Survey, conducted in partnership with the NSW Office of Fair Trading.

This questionnaire should only take up to 10 minutes to complete. When you have answered all relevant questions, please send the questionnaire back to us in the reply-paid envelope as soon as possible (ideally within ten days).

As noted in the covering letter, your responses to the questionnaire will be anonymous and added to the responses of all other participants.

If you have any queries about the survey, please call:

Joseph Falsone on (02) 6247 2700 (reverse charges) at Eureka Strategic Research; or Alison Senti at IP Australia on (02) 6283 2475 during business hours.

1. Please read the following statements carefully and indicate whether you think they are **true** or **false**. Please ✓ **one** box for each statement.

	True	False	Unsure
The same business name cannot be registered to different owners in different states and territories	1 <input type="checkbox"/>	2 <input type="checkbox"/>	97 <input type="checkbox"/>
Registering a business name with a business names office gives you the right to trade under this name	1 <input type="checkbox"/>	2 <input type="checkbox"/>	97 <input type="checkbox"/>
Registering a business name means that, even if someone else already uses a similar name for their products or services, you are free to operate without infringing their rights	1 <input type="checkbox"/>	2 <input type="checkbox"/>	97 <input type="checkbox"/>
If you plan to trade under a business name in more than one state or territory, you must register that name in each state and territory before trading	1 <input type="checkbox"/>	2 <input type="checkbox"/>	97 <input type="checkbox"/>
Business name registration protects consumers by allowing them to identify the owners of a business	1 <input type="checkbox"/>	2 <input type="checkbox"/>	97 <input type="checkbox"/>
Business name registration protects businesses by stopping other businesses from using the same name for their products and services.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	97 <input type="checkbox"/>
A registered business name offers better protection from infringement of your rights by other businesses than a trade mark does	1 <input type="checkbox"/>	2 <input type="checkbox"/>	97 <input type="checkbox"/>
When applying for a business name, it is important to conduct a search to see if a similar name is already registered as a trade mark	1 <input type="checkbox"/>	2 <input type="checkbox"/>	97 <input type="checkbox"/>
An application to register a business name will not be accepted if the name has already been registered as a trade mark by someone else.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	97 <input type="checkbox"/>

2. When applying to register your business name, were you advised at any stage to conduct a search to see if a similar name was already registered as a trade mark?

Yes	<input type="checkbox"/>	<input type="checkbox"/>	➔ Continue to question 3 below
No	<input type="checkbox"/>	<input type="checkbox"/>	➔ Please skip to question 4
Unsure	<input type="checkbox"/>	<input type="checkbox"/>	➔ Please skip to question 4

3. Did you receive this advice from ...

Government publications, guides or forms	<input type="checkbox"/>	<input type="checkbox"/>	1
An accountant or business adviser	<input type="checkbox"/>	<input type="checkbox"/>	2
A lawyer or trade mark attorney	<input type="checkbox"/>	<input type="checkbox"/>	3
Colleagues	<input type="checkbox"/>	<input type="checkbox"/>	4
Other (please write below)	<input type="checkbox"/>	<input type="checkbox"/>	98



4. Did you conduct a trade mark search or have one conducted on your behalf?

Yes	<input type="checkbox"/>	<input type="checkbox"/>	➔ Continue to question 5 below
No	<input type="checkbox"/>	<input type="checkbox"/>	➔ Please skip to question 6
Unsure	<input type="checkbox"/>	<input type="checkbox"/>	➔ Please skip to question 6

5. Was this search conducted through ...

IP Australia (Business Names Assisted Search Service "BASS")	<input type="checkbox"/>	<input type="checkbox"/>	1
The Australian Trade Marks database	<input type="checkbox"/>	<input type="checkbox"/>	2
A trade mark attorney/lawyer/professional searching company	<input type="checkbox"/>	<input type="checkbox"/>	3
Unsure	<input type="checkbox"/>	<input type="checkbox"/>	97
Other (please write below)	<input type="checkbox"/>	<input type="checkbox"/>	98



➔ Please skip to question 7

6. Which of the following best describes your reason for not conducting a trade mark search? Please ✓ **all that apply**.

I wasn't aware it was advisable	<input type="checkbox"/>	<input type="checkbox"/>	1
My business name can't be registered as a trade mark	<input type="checkbox"/>	<input type="checkbox"/>	2
I wasn't sure how to go about it	<input type="checkbox"/>	<input type="checkbox"/>	3
It would have cost too much	<input type="checkbox"/>	<input type="checkbox"/>	4
It would have taken too long	<input type="checkbox"/>	<input type="checkbox"/>	5
The risk of infringement was so low it was not worth doing	<input type="checkbox"/>	<input type="checkbox"/>	6
Not sure why I didn't	<input type="checkbox"/>	<input type="checkbox"/>	97
Other (please write below)	<input type="checkbox"/>	<input type="checkbox"/>	98



7. Have you registered your business name as a trade mark? Please ✓ **one**.



Yes	<input type="checkbox"/>	<input type="checkbox"/>	➔ Continue to question 8 below
No	<input type="checkbox"/>	<input type="checkbox"/>	➔ Please skip to question 9
Unsure	<input type="checkbox"/>	<input type="checkbox"/>	➔ Please skip to question 9

8. What was your main reason for registering your business name as a trade mark? (please write below)

➔ Please skip to question 10

9. What was your main reason for choosing **not** to register your business name as a trade mark? (please write below)

10. If you wanted more information about **business names** or **trade marks**, from whom would you seek it? Please **✓ all that apply** for both the business names and trade marks columns below.

	Business names	Trade marks
Commonwealth Government Department	1 <input type="checkbox"/>	1 <input type="checkbox"/>
State Government Department	2 <input type="checkbox"/>	2 <input type="checkbox"/>
Business Enterprise Centre	3 <input type="checkbox"/>	3 <input type="checkbox"/>
A trade mark attorney, lawyer or professional searching company	4 <input type="checkbox"/>	4 <input type="checkbox"/>
Australian Securities & Investment Corporation	5 <input type="checkbox"/>	5 <input type="checkbox"/>
Accountant/Business Adviser	6 <input type="checkbox"/>	6 <input type="checkbox"/>
Lawyer/Solicitor	7 <input type="checkbox"/>	7 <input type="checkbox"/>
Trade Marks Office/IP Australia	8 <input type="checkbox"/>	8 <input type="checkbox"/>
I have no need for information about ...	9 <input type="checkbox"/>	9 <input type="checkbox"/>
I am unsure	97 <input type="checkbox"/>	97 <input type="checkbox"/>
Other (business names)	98 <input type="checkbox"/>	
		
Other (trade marks)		98 <input type="checkbox"/>
		

11. When did you first register your current business name? Please **✓ one**

In the last year	1 <input type="checkbox"/>	➡ Please skip to Conclusion
More than a year ago	2 <input type="checkbox"/>	➡ Continue to question 12 below
Unsure	97 <input type="checkbox"/>	➡ Continue to question 12 below

12. Have you ever experienced conflict between your business name and a trade mark registered by another business (or vice versa)? Please **✓ one**.

Yes	1 <input type="checkbox"/>	➡ Continue to question 13 below
No	2 <input type="checkbox"/>	➡ Please skip to Conclusion
Unsure	97 <input type="checkbox"/>	➡ Please skip to Conclusion

13. Please describe the situation and its consequences for you and your business. (There is no need to mention specific names.)

Conclusion

Thank you once again for agreeing to take part in this survey. Your responses will remain anonymous and be considered together with those of other respondents. Please place your completed questionnaire in the reply-paid envelope provided and mail it to us as soon as possible (ideally within ten days).