

Briefly (time has not permitted us to fully consider the matter)we make the following comments:

1. Traditionally a business name registration was a system for determining who trades under a particular name. The system of registration was created before trade marks could be registered for services.

Although not designed as a means of blocking usage of name, indirectly a business name registration has that effect as a business name is required to be registered if it is to be used. We feel there should be an option for using a fictitious name as a trading name. If the name is registered as a service mark under the Trade Marks Act for trade in particular goods or services, then there should be no requirement for that name to be registered as a business name before it can used as a trading name for a business in such goods or services. The entity trading under that name can be determined from the Trade Mark Register.

This would remove the "blocking" element of business names, which can be cheaply and readily set up and pose problems to legitimate trade mark owners wanting to trade under their trade mark as the name of the business.

2. As business names, company names and domain name confer no proprietary rights to a name, a simplified system for legal proceedings should be created whereby trade mark owners or owners of common law rights to a name, can challenge the possibility of usage (as opposed to actual usage) of their trade mark or name in a company or business name or domain name. One of the problems in this area is where the trading name is not in actual use in trade. In such circumstances it is difficult to bring any action to legally challenge the continuing registration of the name in question, as there no infringement, passing off or misleading conduct. The possibility of the usage of the trading name in such manner should be a basis for action in a court of appropriate jurisdiction. Registration of others trade marks etc as trading/domain names is so simple that a legal system should exist which clearly discourages the attempted misappropriation of other people's intellectual property rights.

3. Business names serve a purpose in allowing traders to trade under a fictitious name and not incur significant registration costs. If suggestion 2 above, is implemented, then this system of registration should continue on a State basis as it serves a useful purpose for the small trader. However, a notice should be supplied with the registration certificate to the effect that no legal right to the name is conferred by the registration and stipulating the exposure to action by others in maintaining or using the business name. Such a notice should also accompany company name registrations.

4. A system of advertising company name/business names/domain names before registration as a means of public notice, together with a system for opposition should be considered if there is any cross checks/searches between the various forms of registrations. It should not be simply left to the registration authority to make a decision (to the exclusion of a person adversely affected by the decision) as to whether other rights may be violated. This brings the process more into line with the Trade Mark Registration system.

As an alternative to such system or the conducting cross checks/searches, there could be a requirement for a statutory declaration to accompany an application for registration of a trading name/domain name to the effect that the person applying has conducted trade mark searches and other relevant enquiries and that it appears that no other person has rights in the name or the essential feature of the name. If the declaration is contested by another party at a later date and found to be false in that no proper searches or enquiries were made or that the person should have been aware of the existence of the "rights", then this would a ground for revocation of the registration.

5. There should be an efficient system for cancelling or limiting the area of usage of a trading name/domain name for goods or services in respect of which it has not been used in trade for a stipulated period of time. At present it is simple to maintain a Bank Account or use a name where it is not exposed to the public and rely on such position to justify the continued presence of the registration. The suggestion made would counter a monopoly being created and the system being abused and brings it more into line with the Trade Mark registration system.

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