

## **What are the risks of Company Names versus Trading Names?**

There are risks associated with the different ways you structure your business. Knowing the best option for you, along with the ways to protect your business name from being used by other companies or entities is the topic of this post.

### **What is a Company Name?**

Company names are names of businesses registered at the Companies Office pursuant to Part 4 of the Companies Act 1993 (“the Companies Act”). If you wish to limit the liability of the business’ shareholders, register as a limited company, for example: Bob’s Burgers Limited. It’s the “Limited” at the end of the business name that lets you know the type of entity or business structure you’re dealing with.

Everything that is written, sent, issued, and signed on behalf of the company that represents or creates a legal obligation of the company, needs to contain the full company name with “Limited” at the end. If not, the person issuing or signing documents or communications on behalf of the company will be exposed to potential personal liability claims. Yes, really.

We’re often approached by clients seeking to recover funds from a third party who’s arguing that the contract was between their company and our client. But when the third party’s business card, letterhead or invoice hasn’t included the word “Limited” then we are able to sue the third party, requiring they pay from their personal assets.

### **How is a Trading Name different?**

Trading names are often used by sole traders and partnerships, but may also be used by companies. Confused? It’s okay, we’ll explain. A trading name can be any name, as long as it isn’t the same name or a confusingly similar name to another entity (more below). It can be used in all business documents and doesn’t have “Limited” at the end of it. But where a trading name is being used by a company, everything including the business card, letterhead, invoice and email correspondence, still needs to show the true entity behind the trading name (in the small print is okay).

Let’s say your company is called Lollies Limited but you trade as Delicious Sweet Shop. Your public facing brand shows “Delicious Sweet Shop” but should also show “Lollies Limited, trading as Delicious Sweet Shop” somewhere on your documents. Again, this informs people of the legal entity behind the brand they are dealing with and prevents personal liability claims.

### **Protecting your company or trading name**

The registrar of the Companies Office will not register a name which is identical to any

other company name or reserved company name. However, very similar names are registered, such as by the addition of a year: Bob's Burgers Limited and Bob's Burgers (2007) Limited. This example is considered sufficient enough to differentiate these companies.

But be careful because using another entity's company name as your trading name may breach the Fair Trading Act 1986 (for misleading and deceptive behaviour), constitute a trade mark infringement (in the case of a registered trade mark), or constitute the tort of passing off (pretending to be someone else to take business away from them).

Trading names don't have the added protection of registered company names. But you could protect your trading name by registering it as a trade mark. For example, Dancing Dogs Limited might trade mark DANCING DOGS.

**Before deciding on a Name, background check it**

Making a naming error at the start of your venture can be very costly, so before deciding on a name, research your market. Start with a trade mark search at the Intellectual Property of New Zealand website, followed by a company search on the Companies Office website. Then search Google and the Yellow Pages, to ensure that your company name and brand will not infringe on the intellectual property rights of other entities. This also helps you to avoid "brand dilution", with a similar competing name.

We have had clients who instructed their accountants to form a company without undertaking these background checks, only to receive a cease and desist letter from a similarly named competitor. They've then incurred legal fees and rebranding expenses, all of which could have been avoided, by performing these simple steps and/or speaking to us first.

When starting a new venture, our Commercial Team can help ensure that everything is set up correctly and that your interests are protected. Talk to us today.