

Branded

Your brand is one of your most important assets. When starting out you need to make sure you can use it and that you have protected it. Too often clients have not done this when starting out and it comes to haunt them. In the worst case scenario, they have to rebrand and pay damages for infringing prior rights.

In South Africa, there are two registers affecting brands – the company name register and the register of trade marks. Having a name available for use as a company name does not mean that you can use it as your brand. For example, companies can own brands which are not part of their company names and which would not appear on the register of companies at cipc.

Before choosing a name to use as a brand it is critical to first have a search conducted at the trade mark office (in addition to applying for the name as a company name if it is also to be used as a company name). This would make sure that the mark is in fact available for use without infringing somebody else's rights.

It is also important to note that there are forty five different classes of goods and services for which brands can be registered as trade marks. This means that even if a chosen name is not available as a company name, it may still be available as a brand – if your goods and services for which the name will be used are sufficiently different from those of the prior company which is using the same name.

Once the name has been chosen and cleared for use as a brand, it is critical to protect this – primarily as a trade mark. This prevents others from using the name for the same or similar goods and services, which obviously protects your brand identity. A registered trade mark also has a number of other benefits, such as being an asset in its own right which can be valued and bonded (like physical property), can be licensed out (for example a franchise or a brand extension), and in certain circumstances can also go on your balance sheet. Without trade mark registration, none of these benefits are available.

Your brand may also consist of a logo, ie not merely be a name. Again, it is critical to ensure that the logo is in fact available for use by first having a trade mark search done. If available, it must be filed to be protected and enjoy the benefits mentioned above.

If a third party designed the logo, it is also critical to ensure that you obtain ownership of the copyright in the logo by entering into a written agreement with the designer. This is a specific requirement of the Copyright Act and if there is no such agreement, the copyright stays with the designer. Copyright is an additional right to a trade mark, but can be very useful as a means of enforcing your rights and protecting your brand identity. It does not have to be registered and is enforceable in many countries around the world.

Taking these simple preliminary steps when starting out a new business venture will ensure that your goods and services are properly branded, and that your brand is strong and secure.

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