

## **PROTECTING YOUR COMPANY NAME**

The granting of a corporate name by the Director under the Canada Business Corporations Act (“CBCA”) generally confers a degree of protection for that corporate name. However, the granting of names under the CBCA does not in itself confer any rights to those names vis-à-vis corporate names or trade names which may have existed at the time of granting but which did not appear on the NUANS search report or which the Director did not, at the time of granting, consider likely to cause confusion. Similarly, the granting of a corporate name may not protect you from earlier or subsequent trade-marks of other parties.

Before an applicant applies for a corporate name, it is important for him or her to ensure that there are no similar existing corporate names, trade names or trade-marks. A NUANS search report, including trade-marks which are registered or proposed for registration, is required to be filed with articles of incorporation, amendment, etc. and is usually very reliable. Since, however, the NUANS system is not fool-proof, the applicant remains responsible for any likelihood of confusion.

Using a corporate name which is similar to a registered trade-mark may result in liability for infringement of the registered trade-mark even if the trade-mark was registered after the corporate name was granted. This is so because, under trade-mark law, the holder of a corporate name bears the responsibility of ensuring that no new trade-marks are registered which are confusing with that name. Information on registered and advertised trade-marks can be obtained from the Trade-Marks Journal distributed weekly by Supply and Services Canada or by conducting a search of one of the various electronic trade-mark data bases. The holder of a corporate name has the right, in certain circumstances, to oppose the registration of a trade-mark or to have a trade-mark registration expunged.

Registration of a trade-mark is the best way to obtain the exclusive right to use the mark in all of Canada in association with the wares and services for which the registration is obtained. While the Trade-Marks Office can provide basic guidance, it is recommended that a specialist (a trade-mark agent or trade-mark lawyer) be consulted. It should be noted that trade-mark registration is not available for corporate names in all circumstances.

### **Responsibilities when Incorporating in Canada**

Each year it is the responsibility of the directors(s) of Incorporated companies to file:

1. A Corporate Income Tax statement with the Provincial Treasury in which the corporate company resides.
2. A Corporate Income Tax statement with Revenue Canada.
3. An Annual Return with the Provincial Registry. Failure results in your corporation be struck off the registry.
4. Every Corporation is required by law to hold an Annual meeting. The Director(s) of the Corporation write or amend the by-laws, answer questions in writing on who will fill the various positions, and set out clear instruction on how the Corporation will function for the coming year.

### **Partnership and Shareholder Agreement**

Before starting a business, consider what is referred to as a working agreement or a Unanimous Shareholders Agreement. All the terms and conditions are put in writing and unanimously agreed upon. Example of things to consider:

1. How will the business be financed?
2. How will profits and expenses be divided?
3. What is the function and responsibility of everyone who is involved?
4. What will happen in the event of the death of a partner?
5. Is there to be a buy back clause?
6. If the partnership fails, is there an agreement on how matters will be resolved?

Ideas on how to draft up a Unanimous Shareholder Agreement prior to seeking legal council can be obtained with the purchase of a book called Incorporation and Business Guide for \_\_\_\_\_ (province name). It is one of many books published by the Self-Counsel series, and can be found in most major book stores. Average cost is \$15.00 Canadian.

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