

PROTECTING YOUR CORPORATE 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 that have already been registered. A NUANS search report is required to be done prior to registering your corporate name. Corporate forms for filing are the: Articles of Incorporation, Notice of Address and Notice of Directors. 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 confusingly similar to the corporate name that is registering. 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:

1. To file a Corporate Income Tax statement with Revenue Canada on earnings of the corporation.
2. To register a Annual Return with the Provincial Registry. (You can think of it as similar to renewing your personal drivers license.) The Annual Return lets the government know that you still want to be actively doing business in Alberta. The Annual Return lists director/shareholder changes, address changes and is signed/dated by at least one of the directors of the corporation. Failure to file a Annual Return results in your corporation being struck off the registry. If you move prior to your anniversary date of when you incorporated you should file a address change at least two months prior to your anniversary date so that the government can mail out the Annual Return to you. If you are not actively doing business – it is cheaper to file the Annual Return rather than finding out that the Registry has struck you off their records. To Revive your corporation will cost you the same as purchasing a new corporation plus you will be paying the Annual Returns that are owing.
3. 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. The minutes of this yearly meeting is held around the anniversary date of incorporation – is signed and dated and entered into the minute book.

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?
7. What kind of insurance coverage will be needed?
8. What kind of terms and conditions will you agree to and with whom?
9. What is the time period covered in the agreement?

For additional ideas on what to consider when drafting up a Unanimous Shareholder Agreement go online and do a search.

TO REGISTER A ALBERTA CORPORATION, TRADE NAME OR PARTNERSHIP

CONTACT US AT: CANADIAN CORPORATE & TRADE NAME SEARCHES 12722-127 STREET,
EDMONTON, ALBERTA T5L 1A5 PHONE: 780-413-9022 TOLL FREE IN ALBERTA 1-800-268-7054
FAX: 780-413-0166 OR TOLL FREE FOR CANADA 1-888-371-2851

TO REGISTER FOR A NON-PROFIT

WE CAN PROVIDE THE NUANS REPORT THAT IS REQUIRED PRIOR TO REGISTERING. IN
EDMONTON. GO TO THE BROWNLEE BUILDING ON THE CORNER OF 97 STREET AND 103 AVENUE
IN EDMONTON TO REGISTER. CORPORATE REGISTRY PHONE NUMBER IS 780-427-2311 OR 1-800-661-
3723

TO REGISTER FOR A TRADE MARK or COPYRIGHT

We can do a Trade Mark Nuans report for you prior to registering your Trade Mark.

You can go online to register at www.strategis.ic.gc.ca or contact a Trade Mark lawyer to register for you.

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