

May 2010

Registering your business name

A business name is the name under which a person or other legal entity carries on its business.

Under the Business Names Act 2002, if you choose to carry on your business under a name that is not your own name you must not start using the name until it is registered with the NSW Office of Fair Trading. For example, if your name is 'Joe Smith' and you wish to trade as 'Joe Smith' you do not need to register that name. However, if you wish to trade under the name 'Joe Smith's Hardware' you will need to register that name.

Before you choose your business name, you should check the Australian Securities and Investments Commission (ASIC) National Names Index to see if your proposed business name already exists. You can access this service through the ASIC website <http://www.search.asic.gov.au/gns001.html>

Be aware though that a nil response from this search does not necessarily mean that the Office of Fair Trading will register your proposed business name.

The Office of Fair Trading may refuse to register a business name in some circumstances, for example where the name:

1. is the same as an existing registered business, company or incorporated association name,
2. is considered 'undesirable' for registration,
3. is likely to cause confusion during an inspection of the Register of Business Names, or
4. contains foreign language characters.

Not registering your business name is not only a breach of the Act it is also a risk to your business. For example, if you trade as "The Powder Factory", but do not register the name there is nothing to stop a new business, or a competitor, registering the name and stopping you using it.

It is important to note, however, that registering your business name does not give you any proprietary rights to that name, it only entitles you to use it. Only a trade mark can give you proprietary rights in relation to a name. If you do want exclusive use of your name now and in the future you should consider registering a trade mark.

To register a business name, download and complete an *Application for registration* of a business name form from the Office of Fair Trading web site at blis.fairtrading.nsw.gov.au and lodge it with the NSW Office of Fair Trading.

Once your business name is registered you need to ensure that the business name is displayed at all times, so as to be noticeable to the public, at every place where the business is carried on under that business name.

The certificate of registration must also be displayed so as to be noticeable to the public at the principal place of business.

Your business name must also be printed exactly as registered, on every business letter, invoice, receipt, or other document used by your business.

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If you intend to trade or open a place of business in a state or territory other than New South Wales, you need to ensure your business name is also registered in that state or territory.

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For further information on this issue, please see the contacts below.

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