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WHAT'S IN A NAME?

The names used in conjunction with your business can be confusing not only for you, but also sometimes for legal practitioners. There are three types of names that businesses commonly use in association with their business. As defined from a legal perspective they are:

- (1) **Entity Name:** the formal name by which your entity (be it a corporation, limited liability company, limited partnership, etc.) is registered with the Secretary of State's office of the appropriate state of entity formation;
- (2) **Trade Name:** the name under which your entity does business, which name is other than your entity name, the purpose of a trade name being to allow third parties to trace back to the true entity in case of the need to find out the names and addresses of owners, officers, directors, partners, etc., or to bring suit against the entity; and
- (3) **Trademark:** a trademark indicates the source or origin of your particular goods or services to the consuming public. All three of these name types should be registered with the Secretary of State's office. These names may or may not be all the same. For instance, you may be ABC, Inc., doing business as Colorado Widgets, selling Graplink™ brand widgets. Or, as a real life example, the entity may be IBM, Inc., doing business as IBM, selling IBM® brand personal computers.

If you have done some of your own entity formation work in the past, then you need to have your records reviewed to insure that you have done the proper filings with the proper agencies. For instance, a form called the "Colorado Business Registration", has a blank on it for indicating your entity's 'trade name'. However, this form is filed with the Colorado Department of Revenue for purposes of obtaining a tax identification number for your entity for submission of withholding taxes, sales taxes, use taxes, etc. The 'trade name' indicated on this form is merely an identifier for the Department of Revenue to insure that taxes paid are attributed to the paying entity.

This 'trade name' is *not* filed with the Secretary of State and it is not a 'trade name' filing. It is a misnomer on the part of the Department of Revenue which leads to much confusion among entities who believe they have a trade name registration, when in fact they do not.

A corporate name registration does not automatically grant to you the right to do business throughout the state of formation and registration under your corporate name to the exclusion of others. The reason is that the legal reach of a corporate name crosses over that of the legal reach of a trademark. Trademark rights allow the owner of the trademark to use the trademark in connection with the owner's particular goods or services to the exclusion of others in the marketplace. A corporate name registration does not necessarily do that. The distinction is one of fact, that is, what is the manner in which you use your corporate name? If it is used to hold out your goods and services to the consuming public, then your corporate name has also taken on trademark rights. Trademark rights accrue through actual usage of your mark in connection with your particular goods and services. This is known as common law trademark usage and your rights will extend throughout your provable market territory of use. However, a state trademark registration grants to the trademark owner the same rights, yet the registration carries with it an evidentiary presumption that the trademark rights extend throughout the state of registration. The same holds true for a federal or United States trademark registration; however, the evidentiary presumption extends throughout the United States and its territories.

Accordingly, it is to the benefit of your entity that you have all appropriate filings completed for entity name, trade name and trademark (and federal if appropriate) registrations with the Secretary of State's office so that you may best protect and maintain your name to your exclusive use. Goodwill and consumer recognition attach to the name by which you hold your business out to the marketplace and the value of such to a successful business should not be under rated.

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