What’s in a Name?

The Ins and Outs of Choosing the Right Name for Your Business

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Introduction

1. The Importance of a Strong Business Name

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In 1994, an entrepreneur chose the name “Cadabra” for his new company. It was meant to be a creative take on the magician’s phrase “abracadabra,” but few people made the connection. When a lawyer misheard the name as “cadaver,” company founder Jeff Bezos knew he had to do something. He changed the name to “Amazon,” and the rest is history.

Amazon has been wildly successful, but about a third of small businesses fail within the first two years, according to the U.S. Small Business Administration. Choosing the right name is one of the most important ways to position your company for success. A great business name can:

• Identify your business and set it apart from competitors

• Create positive feelings among customers and employees

• Make your business memorable

• Allow you to protect your investment through trademark registration and entity formation

Of course, selecting a good name isn’t easy. You must be both introspective and creative. You must do plenty of research and know what will work for you from a legal perspective. The following guide will help you think like a marketing and branding professional, navigate potential legal issues, come up with a list of potential names, and choose a business name that will help your company succeed.
The Importance of a Strong Business Name

A good name tells the world something about your business. It’s memorable. It’s easy to spell and pronounce. It’s different than other business names, but it’s not so odd that you’ll have a hard time marketing it.

To understand what makes a good name, it’s helpful to look at names from a marketing perspective and useful to know a bit about the kinds of names that have strong trademark protection.
The Marketing Perspective

Naming and branding companies charge tens of thousands of dollars to help businesses come up with a name and a strategy to position their company as a brand. A brand communicates your company’s values and tells customers what to expect from you. Your business’s name will be its first impression.

What makes a good first impression? You can just invent a word (like Xerox or Kodak) and make it synonymous with your company, though doing so may require a lot of money to get it out there. Many marketing experts suggest choosing a name that is unique and memorable but that also paints a picture about your company, such as “JetBlue,” “Caribou Coffee,” and “Jamba Juice.” Experts also advise entrepreneurs to avoid generic descriptive names like “Beautiful Nails” or geographic names like “Boston Pizza.” Neither is very memorable or distinctive and geographic names can be limiting if you ever expand your business.

Other things to consider:

• Think of names that are easy to remember, spell, and pronounce. A personal finance software company named Wesabe suffered from a forgettable name that no one knew how to say. Wesabe failed, but its competition, Mint, is still going strong.

• Choose names that have positive connotations and imply action. You don’t want people to think “cadaver” when they hear your business name.

• Avoid acronyms that no one outside the company will understand.

• When in doubt, shorter is better.

• Using the name of the company’s founders may not be the best option unless you are a professional services firm, a well-known figure in the community, or a celebrity.
• Stay away from confusing names. “Fifth Third Bank” defies math logic.

• Choose a business name that is easy to type as a domain name (e.g., yourbusiness.com) and that will not have unintended meanings when you eliminate the spaces between words. “Speed of Art” can look disturbingly like “Speedo Fart” when you run the words together in a domain name (www.speedofart.com).

• Visualize how the name will look on a logo or website. Say it out loud a few times and see if it sticks.

• Look at names of other businesses and think about which ones you like, don’t like, and why. This may help provide some insights for your own company.

There are many ways to approach the naming process. In chapter two, you'll answer a few marketing and branding questions to dig deep in to your company and what it stands for. Getting a better sense of your company’s values and personality will help facilitate a productive brainstorming session to find a name that fits with your company and makes a good impression on your future customers.

When in doubt, shorter is better.
Understanding Trademarks

It’s important to understand a little bit about trademarks before you choose a name. You may want to eventually register for one and it’s critical you don’t choose a name that infringes on another company’s trademark.

A trademark identifies a product or service as yours and not someone else’s. They’re important in this context because they give you legal authority to stop other people from using your name to promote similar products or services.

You can get a relatively weak form of trademark protection just by using your name in your business or registering it with your state. Company names can be trademarks, but not all names qualify for federal or state trademark protection. For stronger, nationwide trademark protection and the right to enforce your trademark in federal court, you’ll need to register it with the U.S. Patent and Trademark Office. Federal trademark registration puts people on notice that your name is a registered trademark, reducing the chance that another business will try to use it.

Federal Trademark Protection is obtained by registering a trademark with the U.S. Patent and Trademark Office (USPTO). Benefits include:

- A legal presumption that you own the mark and have a right to use it nationwide in connection with the goods and services listed on the trademark application
- A listing of the trademark in the USPTO’s database
- The ability to enforce the trademark by suing in federal court
- The ability to use the coveted ® symbol in connection with your registered mark
- Easier obtainment of trademark registration in foreign countries

State Trademark Protection for a business name is obtained by forming a business entity or by registering the name as a trade name with the state. It is weaker than federal trademark protection in the following ways:

- It protects a trademark only within the state in which it is registered
- The trademark will be listed in the state’s business name database, but not in a nationwide database

Common Law Trademark Protection arises from using a trademark in business. It is the weakest form of trademark protection, limited to the geographic area where the mark is used. For example, if you operate a business in Los Angeles, you may have a common law trademark in your business name. However, the trademark may only extend to the L.A. area and you may not be able to stop a similar business in San Francisco from using a similar name.
To be eligible for federal trademark registration, your business name must be distinctive and unlikely to be confused with an existing trademark. The more distinctive your name, the easier it is to get trademark protection.

**Names that are strongest and easiest to trademark:**

- Made-up names, like Xerox, Kodak, and Ikea.

- Names that use an existing word to describe an unrelated product or service. Amazon falls into this category, as does Apple, which can be used for both computers and a record label, as they are unrelated products.

**Other names that offer trademark protection:**

- Suggestive names that describe qualities of a business or product without actually naming it. For example, Under Armour got its start selling athletic base layers that you wear “under” your other clothes; “armour” suggests the product’s protective qualities. Other examples of suggestive names include JiffyLube and PayPal.

Trademarks fall into one of five categories, ranked from strongest to weakest:

1. **Fanciful**
   Made-up names (Kodak)

2. **Arbitrary**
   An existing word used to describe an unrelated product or service (Apple)

3. **Suggestive**
   Describe the qualities of a business without actually naming it (Under Armour)

4. **Descriptive**
   Names that identify a product and add a descriptive adjective (Beautiful Nails)

5. **Generic**
   Common, everyday words that identify a particular good or service (a donut shop named Donuts)
Names that are weak or unprotectable:

- Names that merely describe a product or service, like “Yummy Donuts” or “Beautiful Nails.” These names simply identify your product (donuts) or services (nail care) and add a descriptive adjective. Such names are only eligible for a trademark if you can show that they have been used for so long that they have become synonymous with a particular product or service. Better options might be a made-up name like “Floorbly,” a name incorporating an unrelated word, or a name like “Tasty Bite,” which suggests something about your donuts without actually calling them “donuts.”

- Geographical names, like “L.A. Donuts” that are merely geographically descriptive, or are misleading.

- Common, everyday words that are generic and just identify a particular good or service, like “Donut” for a donut shop, or “Software” for a software development company.

In chapter three, we’ll get into how you can conduct some preliminary research to see where your potential name fits in and how to make sure you’re not infringing on someone else’s name.

The more distinctive your name, the easier it is to get trademark protection.
Now we’re getting to the fun stuff. The next few exercises will help you get to know your company a little better and how to create a list of names that you’ll use once you get into the research.
Step 1: Know Who You Are

Before you make a list of possible names, spend some time thinking about your company.

• What does (or will) your company do?

• What is the unique selling proposition you will use to differentiate your business from others who offer the same type of products or services? For example, are you faster or more reliable, or are your products better designed or less expensive?

• Who are your target customers or clients? What is the most important thing for them to know about your company? What problem are you solving for them?

• What are your company’s core beliefs?

• Where do you fit in with your competitors?

• What kind of image do you want to project?

• What is your company’s personality? If your company was a person at a dinner party, what would it talk to other guests about? How would others see your company?

Your answers can help you see how to position yourself as a brand and market yourself as a business. They may provide important clues about the type of name you might choose and your answers might even surprise you! Try to avoid trends in naming and stick to what is true for your business. If your company was a person at a dinner party, what would it have to say?

Try to avoid trends in naming and stick to what is true for your business.
Next up is to create a long list of possible contenders. Try not to get too attached to any one name, as your favorite might prove unavailable because of trademark, domain name, or business entity issues once you do some research. But the naming process will be quicker and easier if you already have some good alternatives. And don’t worry at this point about whether someone else is already using the name—we’ll dive into that in the next chapter.

• Take one minute to quickly write down anything that comes in your head. Anything—no judgement. Go as fast as you can and see what comes up.

• Invite some employees, friends or relatives to a brainstorming session. The goal is to generate ideas—not have a contest—and the session will be most productive if you focus on creating as many names as possible and avoid discussing them until later. You don’t want too many cooks in the kitchen, so choose only a few of your most trusted confidants.

• Think of words that are associated with the qualities you want your name to emphasize, such as reliable service, delicious food, or cutting-edge innovation.

• Use a thesaurus to find synonyms for words that best describe your values and unique selling proposition.

• Put words together to form creative business names. For example, UpWork is a website that connects freelancers with people who need work done. “Up” is a positive word that implies growth or increased income, while “work” describes what the site sells.

Have a working list? Good. Let’s use it to research.
By now, you may have gone over your list a few times and even have a couple of favorites. Before you make a choice, it’s crucial to investigate those names further. There are several reasons why a name that sounds great won’t be the best choice:

- If another business in your state is already using the name, you may not be able to use the name when you form a business entity, such as a corporation or LLC.
- If it infringes on another trademark, you could wind up in expensive litigation or have to change your name.
- If the name is too similar to another business name, it can confuse customers and make it hard to market yourself.
- If you can’t get a domain name that matches your business name, customers may have a more difficult time finding your site.

Research can be time-consuming, but so are the consequences of a poorly chosen name. If you don’t have time to do the research yourself, there are companies that can conduct name research at relatively affordable rates.
The Value of the Right Domain Name

Your domain name is both your website address and the way people will search for and find your business online. Marketing experts advise having a dotcom domain name that matches your business name to ensure your domain is easy to remember and use. Some people try to get around this by using creative spellings, adding extra words, or using a different extension (e.g., .net, .biz), but this tactic isn’t as effective as a .com domain that’s the same as your business name. Amazon might not be as successful if its domain name were Amayzhon.com, Amazonshoppingplace.com, or Amazon.info.

The quickest and easiest way to narrow your list of potential business names is to eliminate those for which you can’t get a matching domain name. Even if you don’t care about your domain name, the research will show whether other businesses are marketing themselves online with the name you want to use.

To research domain names, type your proposed business name into your internet browser with “.com” on the end and see what comes up. If it’s someone else’s website, you aren’t going to be able to get that domain name. If your browser can’t find or load a website, look up the domain on whois.com to see if it is already registered to someone else. If you don’t want to do this yourself, there are companies that provide domain name research services as part of a comprehensive trademark search.
Business Names and State Law

You might already be thinking about creating a formal business entity, so it would be a good idea to know if your name is even available.

Establishing a formal business entity, such as a corporation or an LLC, can help protect you from personal liability and will prevent another business from forming in your state under the same name. (In some states, you can receive state trademark protection without forming a business entity, simply by registering your business name as a trade name or “dba,” which is short for “doing business as.”)

To form a business entity, the name you choose must be available in your state. The exact definition of an available name varies from state to state, but generally it means that your name must be different than the name of any other business that is formed in or registered with the state. Many states also restrict the use of certain words, such as profanity or misleading terms (e.g. the word “bank” to describe a business that’s not a financial institution).

States generally don’t allow two separate businesses to use the same name. In some states, names must be “distinguishable on the records” from each other. In other states, names can’t be the same as or “deceptively similar” to existing business names.

Even when they use the same language, states have different ways of interpreting the restriction. For example, in Colorado, two businesses can be formed with the same name if they have different business identifiers on the end, such as ABC Inc. and ABC Incorporated. In Ohio, that’s not true, because the state does not view identical names as “distinguishable” just because they have different business identifiers.

Many states also restrict the use of certain words to avoid objectionable language or misleading the public. Common restrictions include:

- No profanity
- No racial, ethnic, or other types of slurs
- No names that imply affiliation with a governmental entity
- The word “bank” may be prohibited or may require prior approval from a financial institutions board
- Additional naming requirements imposed by certain professions, such as law and dentistry

Visit your state business registration websites for specific information about naming restrictions in your state.
How to Find Out If a Name Is Available in Your State

1. Identify the state where your business will be headquartered.

2. Look online for the website of the state agency responsible for business filings and read about any restrictions your state has on business names. In most states, the Secretary of State or Department of Commerce handles business filings, so try searching for one of those first. If that doesn’t work, look on your state’s general website or call and ask, if necessary.

3. Find the web page for business name searches (usually named something like “name availability search”) and type your potential business name into the search bar.

4. Review the results. Your search should give you a list of businesses with names that are the same as or similar to your potential name.
   - If the search results show another business with the same name, the name is not available to use. In some states, you can use a name that is already taken if you get written permission from the business that had the name first.
   - If the search results show businesses with similar names, you can still use the name, but you might not want to. Make a note of similar-sounding business names. If you think the similarity might be a problem, visit those business’s websites and ask yourself whether a customer might confuse your business with theirs.

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Conducting Trademark Research

Back to trademarks. You’ll likely want to register for one in the future to protect your investment. As we discussed earlier, a name must be distinctive and cannot be confusingly similar to an existing trademark. A name is deemed confusingly similar if it looks or sounds like another trademark and applies to a similar type of goods or services, thereby creating confusion for potential customers.

A confusingly similar name presents two problems: it won’t be eligible for trademark protection and it may infringe on someone else’s trademark. If you apply for trademark protection and are denied, you lose your filing fee, as well as the time spent preparing the application.

If you’re accused of trademark infringement, you may be forced to change your company name after spending a lot of money and effort to market it. Or you could be among the 3,500 or so trademark infringement lawsuits that are filed in the U.S. each year. Or both. For example, in 2014, Indiana beauty shop owner Chanel Jones was sued for trademark infringement by cosmetics giant Chanel, Inc. Jones had to stop calling her shop Chanel’s Salon LLC in order to settle the case.

To avoid choosing a name that is confusingly similar to another trademark, you must conduct thorough trademark research. Some people try to do this themselves, but many hire a trademark search company or an attorney to do it for them.

To research registered trademarks, visit the U.S. Patent and Trademark Office’s Trademark Electronic Search System, or TESS (tess2.uspto.gov). After typing in your proposed business name, you’ll get a list of registered trademarks as well as pending and abandoned trademark applications.
Because the search only returns “direct hits” (names that include your exact search terms), you will also need to search variations on your proposed business name to uncover trademarks that are similar, but not identical, to the name you are considering. If you find a similar name, you must then look at the class of goods or services listed in the registration to assess whether your products are similar enough to cause confusion.

For example, food blogger Danielle Walker started a blog called, “Against All Grain.” A maker of gluten-free food products “Against The Grain” sued her for copyright infringement. They worked together and settled out of court, so now her blog is called “Danielle Walker’s Against All Grain.” As part of the deal she also had to withdraw her federal trademark application for “Against All Grain.” While it wasn’t the exact name, because both companies focused on gluten-free lifestyle choices, it was enough to cause confusion among consumers and warrant a trademark infringement problem.
Conducting General Research

Researching registered trademarks and state business names is an important start, but it has limitations. Many businesses have valid state or common law trademarks that aren’t registered with the USPTO. And state business name searches won’t identify out-of-state businesses whose names are protected by these trademarks.

For these reasons, a comprehensive trademark search must also include general internet searches of the business names on your list. Type the business name into a search engine and see what comes up. Business directories, such as Yelp and YP.com, and social media searches are another way to locate businesses with similar names.

Ask yourself whether these businesses might pose a problem because they sell a similar product or service or target the same customers.

Here’s what is generally included in a comprehensive trademark search:

- Searching registered trademarks and pending trademark applications for the same or similarly spelled names
- Business name and trademark search for all 50 states
- Search of SuperPages listings for U.S. businesses
- Internet searches for common law trademarks
- Search of domain names with common domain extensions
- For businesses seeking international trademark protection, search of trademarks in other countries
How to Handle Similar Names

A similar—or even identical—name isn’t always a deal breaker. From a trademark standpoint, a business with a similar name may have a legitimate trademark infringement claim only if the similarity is likely to confuse customers about the source of goods or services. “Against All Grain” and “Against The Grain” were confusing because they both dealt with gluten-free products.

To evaluate names that are similar to yours:

• Research what goods or services the other business makes or sells. If the business has a federally registered trademark, this information will be included in USPTO search results. For other businesses, search the internet or business directories.

• Ask yourself whether the other company’s products or services are similar enough that customers might be confused about their source. If the products or services are completely different, you can probably use the name. For example, “Delta” is registered as a trademark for faucets as well as for an airline because no one would expect a faucet maker to fly passenger jets, or vice versa. But “Doorknob Coffee Co.” and “Doorknob Donuts” might be confusing because coffee and donuts are often sold together.

• If you are not sure whether the names are similar enough to cause trademark problems, get legal advice. Making such an assessment often requires expertise and experience, and it is far cheaper to pay a lawyer now than to face a trademark infringement claim later.
Putting It All Together:
Making a Decision

By now you have all the information you need to choose a name that will put your business on solid legal footing and position it as a successful brand. You have a plan for who will make the naming decision and how the decision will be made.
Naming Criteria and Final Choice

You should have one or more names that meet the following criteria for a name that passes legal and marketing muster:

• It reflects your business values

• It has a positive connotation

• It is different than the name of any other business entity in your state

• It is distinctive enough to qualify for trademark protection but not so odd that it will be hard to market

• You can get a domain name

But even with good plans and solid research, committing to a final choice can be tough. There are several ways to approach the decision. Test, test, test! Ask potential customers how they react to each of your names is a good way to weed out those with negative connotations. Or, practice saying each of your names over the course of a few days and think about which one you could most confidently use to promote your business. Write down your name candidates and see how they look in print.

In the end, as long as the name meets the requirements above, you should go with your gut and choose a name that feels right.
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