

## Setting up in Business – Protecting your Rights

(The First of a Series of Three Articles)

### **WHAT'S IN A NAME?**



If you are setting up in business, whether as a sole-trader, partnership or as a company, you will need a trading name.

Generally there are no restrictions on the choice of name; although there are certain words and phrases which cannot be used without DTI permission. These are words like “British”, “International” or “Group” which suggest size, words such as “Chartered”, “Association” or “Council” which suggest authority or words such as “Chemist”, “Dental” or “Nurse” which suggest a profession.

If you intend to register a company, the Registrar of Companies will not, of course, allow it to be given the same name as one already on the Register. However, companies can be registered with very similar names. If a company trades under a name other than its corporate name, it must prominently display its full corporate name.

Hence, whether a business is being set up as a company or not, care must be taken to ensure that the name and any logo does not infringe the rights of another existing business.

Another business may have a registered trade mark, and then it is possible to do a search at the Trade Mark Registry to check in advance. But even if the existing business has not, the law will still protect its goodwill and reputation against “passing off” – where there is a confusing similarity between a newcomer and an established business.

The scope of passing off is quite wide and can protect business names, unregistered trade and service marks and the general “get-up” of a business (i.e. its logo and livery). In fact it covers anything that is distinctive of a business’s goods, services or business.

Of course the upside of this is that as your own business continues to trade and becomes established, it too will come to acquire a goodwill and reputation protected in law (see the next article for information on how to protect by registration).

If you would like more information about any of the issues raised in this Article, please contact Terri Corti at the Company/Commercial Department Nockolds Solicitors, 6 Market Square, Bishop’s Stortford, CM23 3UZ, Tel: 01279 755777 Fax: 0870 0526846 e-mail: [tc@Nockolds.co.uk](mailto:tc@Nockolds.co.uk).