

## **Company names and trademarks: enemy sisters?**

*« My company's name is registered at the Registry of Commerce: I can relax, no-one else can use it. »*

Why doubt it? Hasn't the Registry of Commerce confirmed that, after checking availability, it has accepted this company name?

Yet, contrary to popular belief, registration of one's company name at the Registry of Commerce does not guarantee a real monopoly on the name, in several respects.

### **Protection is limited to locality**

It is often not known that, for company names composed of a family name, the Code of Obligations only reserves exclusive rights in the territory of the locality where the company is located. Sole proprietorship businesses, general partnerships, limited partnerships and limited partnerships with shares are particularly concerned by this restriction. Limited liability companies are also concerned when their company name is essentially composed of a family name. Beyond the communal borders, company managers have to rely on unfair competition regulations, which may be difficult, slow and expensive to implement.

### **Partial protection against identical and similar company names**

When two people bearing the same name each create their own business in the same area, the first to enroll his sole proprietorship name at the Registry of Commerce cannot prevent the second from also using his family name. All that the law offers in such a case is to require the same name holder to add his first name to his sole proprietorship name, or, if by chance he also has the same first name, any other addition enabling the two company names to be distinguished from each other.

### **Limited protection in the case of unauthorised use**

A company name is only protected with respect to other company names. If a company's name is used illicitly in another form (a business sign, business name or trademark), the person responsible for that company again has to rely on unfair competition regulations. All types of businesses are affected, whether they are sole proprietorship businesses or commercial companies, composed of family names or invented names.



*What is the solution to « secure» my company name? »*

The answer to this question can be summed up in one word: a **trademark**. With a trademark it is possible to remove all of the obstacles described above. First of all, the trademark offers its owner protection throughout Swiss territory, and it can even be extended to more than 70 countries because of the existence of an international registration system. Next, trademark rights are governed by the “first come first served” principle. In other words, the first to file his company name as a trademark can prohibit any third party from using the same term for similar goods or services; in the case of an identical or similar name, this means that a third party bearing the same name will not be able to start a business for the same type of goods or services under his own name or, if he was already active before the trademark was registered, he will not be able to extend his field of activity using his name. Finally, registration of a trademark gives its owner a total monopoly for the goods and services concerned. This means that he will be able to take action against any unauthorised use of his trademark without having to establish an act of unfair competition, even against a new company name...

In light of this, we strongly urge business managers to file their company name as a trademark. This can only bring benefits in return for a relatively modest investment. Trademark registration is, however, subject to certain legal and technical conditions, such as, for example, the proper way of labeling goods or services, or requirements relating to the distinctive nature of the trademark. This is why we recommend that you consult an intellectual property professional.