



Business Names Take On A New Meaning



Business names have taken on a new meaning since the implementation of the Companies Act and the Consumer Protection Act. The overall purpose behind both pieces of legislation is to promote compliance with the Bill of Rights in the application of both company and consumer law.

FREEDOM OF EXPRESSION:

"...Everyone has the right to freedom of expression, however this will not extend to propaganda for war, incitement of imminent violence or advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm" (SA Bill of Rights).

As long as your company name is not used to constitute propaganda for war, incitement of imminent violence or hatred you basically have "carte blanche" to use any name you wish for your business.

Your company name can include any letters, numbers or punctuation marks, and round brackets used in pairs to isolate any part of the name.

It can be in any language and can consist solely of symbols, such as @, &, % or a – or even a +. In theory then, your business name could be.... #@% (Pty) Ltd.

The use of symbols in your company name has, however, not yet been practically implemented by the Commission, however they have undertaken to issue a formal publication setting out the requirements for use of symbols and special characters in names within the next few years.

Some restrictions are still in place in that the name must not mislead anyone into thinking the business is associated with any other business, or an organ of state, or falsely suggest that the business is owned by persons having any particular educational designation. It also cannot be confusingly similar to any corporate name, or trademark.

PROTECTION OF THE CONSUMER

In order to address the problem of unscrupulous suppliers operating through a series of 'trading as' business names, the CPA has introduced certain provisions:

Easy identification of the supplier:

Registration of your trading name (via the Commission portal) will be required where:

1. You are trading as a sole proprietor under your personal name, e.g. John Smith but you are trading as Fantastic Plumbing;
2. You have a registered company and you trade under a different name.

No registration will be necessary where:

1. You are trading with your full personal name, as is reflected on your identity document;
2. Where you have been actively conducting business under your business trading name for a period of at least one year before the date on which the Minister announces that the business trading name provisions are in effect (which will not be sooner than 1 April 2012).

The Commission has discretion to cancel the registration if it has reasonable grounds to believe that you have not been carrying on business under that name for a period of at least six months. Thus it is important not to stop trading under a business name for more than six months, as you may risk losing the right to use the name.

Even although you may not be required to register your trading name with the Commission, or until such time as the applicable regulations have been promulgated, you may wish to voluntarily register your business or trading name as a defensive name at the Commission in order to ensure that it is at least on the public database.

"What's in a name? That which we call a rose by any other name would smell as sweet." - Shakespeare