

White Paper on
Preventing Trademark Infringement Against
Newly Formed Businesses

Nicolosi & Associates White Paper

Preventing Trademark Infringement Against Newly Formed Businesses

Many years after forming a new business, your company may receive a letter telling you that your company's name is infringing upon another company's name. This could lead to either your company being forced to change its name or undergo litigation. In Illinois, a corporation or a limited liability company registered with the Secretary of State can have a name similar to a company located outside the state. This then leads the prevention of trademark infringement up to the company itself or a corporate attorney.

You will need to obtain a trademark in one of two ways. First, your company name can be registered in the Federal Trademark System. By doing this, you would have exclusive control over that name for usually a 10-year period, which can be renewed every 10 years. If anyone uses a "confusingly similar" name, this is trademark infringement. Second, you can enforce your mark, within your territory, based on common law. Your territory could be considered a geographical area where your name has become familiar with your particular goods or services. However, a company in Washington State could have the same name as a company in Illinois.

When you organize your company, a thorough search is needed to be sure your new company name is not already taken. First, Federal trademarks can be searched. Also, a TESS (Trademark Electronic Search System) search on the internet is needed. Visiting a Patent Library in Illinois can be done as well. Finally, a private firm can be hired to do a search for you. To search for a case law trademark, look at the Secretary of State's website, phone directories, or other legal databases. You may also consider registering an internet domain name to both protect your company's name and use it for marketing purposes.