

“ Plain speaking legal advice ”

**Whose Name is it Anyway?**

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Have you found that another business is seeking to profit from the goodwill in your brand or the reputation of your business?

The opportunistic registration of a company name, similar to that of your business, is one way this can occur.. The effect of such registrations may be two fold. Firstly, the reputation of your business may be damaged if the quality of the goods / services supplied by the registrant do not meet the high standards of your business, and secondly, the fact that the trade is going to a competitor will have a direct impact on the profitability of your business.

Fortunately some very useful provisions of the Companies Act 2006 have just come into force, enabling businesses to object to the opportunistic registration of company names.

Objections may now be filed with the Company Names Tribunal where:

- (i) a company name is registered opportunistically, and it is either the same or is a name associated to a name in which the applicant has goodwill, or
- (ii) third parties are likely to be misled into believing that there is a connection between the company and the applicant's business because the names are so similar.

A registration is likely to be held to be “opportunistic” where it can be shown that the purpose behind the registration is to force a business to buy the name off of the registrant

If the applicant is successful, the registrant will be ordered to change the company name to one which is not so similar to that of the applicant's business and / or does not infringe the goodwill associated with the applicant's business.

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The introduction of these new provisions is a huge benefit to brand owners, who were left shaken last year by a European Court of Justice ruling that the registration of a trademarked name as a company name did not amount to a breach of the trademark provided that the name is only used to identify the company and is not used to identify goods or services.

Businesses (which do not have to be registered as companies to benefit from the protections) will now be able to take action quickly and cheaply under the Companies Act to object to opportunistic registrations in the battle to preserve valuable brand strength and reputation.

If someone is taking advantage of your brand or if you would like to discuss any of the points raised above, please contact a member of the company / commercial team on 0118 977 4045 or e-mail [corporate@herrington-carmichael.com](mailto:corporate@herrington-carmichael.com)

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