

MSA 312 C455



Choosing a name for your business . . .

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Choosing a name for your business. . .

One of the most significant decisions you must make in setting up a new business is choosing a name. Your name is one of your most important business assets and should be chosen carefully.

This brochure describes three types of business names, outlines the research you should do before choosing a name and defines filing requirements as well as how to register a service or trademark.

What is the difference between a trade name and a trademark?

Before you select your business name you need to understand how the kinds of business names differ. Names fall into three categories:

- ▶ **Trade names** identify a **company**, e.g. the "Coca Cola Company" or "Computaire Services." Any type of business may call itself a company (see chart for business types).
- ▶ **Corporate names** identify **corporations**, e.g. "Cabot Corporation" or "Marketing Concepts, Inc." The words "Incorporated," "Corporation" or "Limited" or their abbreviations must appear in a corporate name and may not appear in the name of an unincorporated company.
- ▶ **Trademarks** are any word, name, symbol or device, or any combination of these used to identify the **goods** of a business and distinguish those goods from the goods of others. The word "Kleenex" is a trademark. Similarly, there are **service marks** which may be used to identify and distinguish a business which provides a **service** rather than goods. For example, the word "Greyhound" is a service mark for transportation services.

Before you choose your name

When choosing a name for your business you might want to begin by looking at types of names that are already being used by businesses similar to your own. There are several sources of such information. You can find lists of business names at the Corporations Division of the Office of the Secretary of State, your local city or town hall, in the library, in relevant trade journals and even in telephone books.

As you are considering possible names you must take care to choose a name that is not already

being used by another business. Do everything you reasonably can to assure that yours will be the only business of your type using a particular name.

How to get help from the Corporations Division

In order to check to see if a name is available for a corporation or if the same, or a very similar name, is being used by another corporation, contact the Corporations Division of the Office of the Secretary of State. (See the address and telephone number at the end of the brochure). This division records all the corporate names being used in the Commonwealth. Although some information may be requested by phone, it is best to come in person to check out a name.

A name may NOT be reserved by a telephone request. A telephone inquiry is preliminary only and DOES NOT GUARANTEE AVAILABILITY. The reservation of a name for 30 days becomes effective only upon written request to the division and the payment of a \$10.00 fee (see full fee schedule on back). Upon payment of an additional \$10.00 fee the reservation may be extended another 30 days.

What if another corporation is using the name you want to choose?

You will be prohibited from using a name if another corporation is already using it or one that is very similar. An exception may be made if you are able to obtain a letter of consent from the other

Filings required after

Type of Business	Required State Forms
Corporation	Articles of Organization
General Partnership	—
Limited Partnership	Certificate of Limited Partnership
Business Trust	Declaration of Trust
Sole Proprietorship (with a different name than owner, e.g. Century Co.)	—
Sole Proprietorship (doing business under owner's complete name, e.g. John Smith Co.)	—

*DBA—Business

corporation giving you permission to use the similar name.

After you choose your name

What you must do after you have chosen a name for your business is largely determined by the type of business you have set up. Use the chart below as a check list to determine (1) whether you must file organizational forms with the state, and (2) whether you must file a business certificate in your local community. Remember that many businesses are regulated and that you may need to apply for state and/or local permits or licenses before you begin.

The column labeled "DBA at Local City or Town Hall" refers to a local filing known as a business certificate. This is also called a "dba" which stands for "doing business as." Your business must file a "dba" with the municipal clerk in the city or town where you maintain an office. The fee for this filing is \$10.00. The only case in which you do not have to file a "dba" is when you are doing business as a sole proprietor under you own complete name, such as "John Smith Company."

Your filing of a business certificate at the local level does not protect your name as does a corporate filing or a trademark registration. A business certificate primarily allows consumers and/or creditors to identify the names of the actual owners of a business. Therefore, a city or town clerk may even accept more than one certificate with an identical business name in order to provide this public record.

After your name is chosen

	Filed with the Secretary of State	*DBA at Local City or Town Hall
	X	X
	—	X
Partnership	X	X
	X	X
	—	X
	—	—

business certificate known as "doing business as" (see above).

Registering your trademark — state and federal

You are not required to register your trademark or service mark with any governmental agency. Trademarks are protected under common law. However, by registering your mark you do gain certain exclusive ownership benefits under statutory law. There are both state and federal registrations. You may register your mark in each state in which you use it. If you use the mark in interstate commerce then you may register your mark with the federal government as well.

Federal registrations take six months to a year to become effective. State registrations are usually processed in a matter of days. Therefore, you may want to register at the state level to protect your mark during the federal application period.

► **State registration** — You cannot register a trade **name**, as such, in Massachusetts. However, you may register a part of your name and in certain instances even the entire name as a **trademark** or **servicemark**.

A mark may not be reserved prior to its use; a mark must be **in use** in Massachusetts, even for a very brief period before it may be registered. A mark is then registered by filing the appropriate trademark or service mark registration application form with the Corporations Division. The fee for filing is \$35.00. The registration is effective for ten years and is renewable. Registration protects your mark statewide.

► **Federal registration** — The federal government does not provide for registration of a trade **name**, but as with the states, you may register a **trademark** or **servicemark**. In order to register with the U.S. Patent Office your mark must be in use in interstate, foreign or territorial commerce. A mark is registered by filing the appropriate registration application form with the U.S. Patent Office. The forms differ according to the type of business. Be sure to request forms on behalf of an individual, partnership or corporation, whichever is applicable to your situation. The fee for filing is \$175.00. The registration is effective for twenty years and is renewable. Registration protects your mark nationwide. Forms as well as a helpful pamphlet entitled *General Information Concerning Trademarks* may be obtained from:

The Commissioner of Patents
Washington, D.C. 20231
(703) 557-3158
(617) 223-7121 (*regional office*)

Required filing fees

Business Certificate (<i>locally</i>)	\$ 10.00
Reservation of Corporate Name	10.00
Reservation Extension (<i>additional 30 days</i>)	10.00
State Registration of Trademark or Service Mark	35.00
Federal Registration of Trademark or Service Mark	175.00
Corporate Articles of Organization	(<i>minimum</i>) 150.00
Limited Partnership	150.00
Business Trust	150.00

Helpful publications

The following publications are also available upon request.

When you need information about corporations in Massachusetts — describes information about corporations available from the Corporations Division, and how to obtain it. . . Free plus 20¢ shipping

Organizing a business corporation — an outline of the steps involved

Organizing a non-profit corporation — an outline of the steps involved

Rules and regulations of the Corporations Division — practices and procedures of the Division

Massachusetts corporation laws

These publications may be obtained from:

The State Bookstore
Office of the Secretary of State
Room 116, State House
Boston, MA 02133

Where to go for further information

Michael Joseph Connolly,
Secretary of State

Corporations Division
One Ashburton Place, 17th floor
Boston, MA 02108
(617) 727-9640 (*corporate name*)
(617) 727-8329 (*trademark*)