

Protection of Trademarks

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Generally, a trademark is a sign which could distinguish the goods and services of one trader from that of others. A trademark can be words, indications, designs, colours, sounds, smells, the shape of the goods or their packaging or any combination of these. It must be capable of being represented graphically in order to be registered as a trademark.

Though the registration of a trade mark is not mandatory, it is advisable to do so. If a trade mark is infringed, the owner of the registered mark is entitled to protection under the international convention and local law.

On the other hand, an unregistered right has to resort to the common law of passing-off suit. Firstly, he has to establish that he enjoys sufficient reputation for the unregistered right in Hong Kong or in overseas.

Then, he has to prove that the infringer had made certain misrepresentations that caused confusions in

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the minds of the relevant persons who would acquire such goods or services. The costs and effort needed to enforce one's rights in an unregistered mark are greater than that in a registered trademark.

A trademark may be licensed and the licence must be in writing. Again, the registration of the licence with the Trade Marks Registry is not mandatory. But, the failure to register a licence may seriously affect the rights of the licensee in the legal suit on infringement against subsequent parties who acquire interest in the mark without knowledge of the licence, and the damages or accounts of profits recoverable from the suit .

The proprietor of a registered mark should also keep proper control over the use of the mark to preserve its quality and value, and avoid excessive use.

A business or company name is not an indication of trademark rights or the rights to use the name as a trademark in promoting or dealing in goods or services. Moreover, a company name registered with the Companies Registry or a business name registered with the Inland Revenue Department is not the same as a trademark registration with the Trade Marks Registry.

Things to avoid on registration:

1. Must be distinctive. Your mark must clearly distinguish your goods and services from that of other traders.
2. Not Descriptive. Words that describes the quality, purpose, quantity or value of goods and services, and the use of geographical name in the mark will likely be objected by the Registry.
3. Must not be easily confused with a well-known term or customary language of the trade.

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- ▶ Incorporation and company secretarial services
- ▶ Handling tax investigations and field audits
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Plan Your Financial Needs

BY ANNIE K.Y. CHEUNG

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Some SME business owners may be too optimistic on their future financial needs and projections, and do not anticipate and adjust their financial burdens until an urgency situation arisen.

Good financial plan should be conservative and realistic.

To make your financial forecasts more reliable and useful, your forecasts should:

1. Break your financial target into realistic achievable goals with a clear deadline.
2. Use the most current and accurate information of the business and in the industry.
3. Provide reasons and explanations on your assumptions.
4. Support your forecasts with documentation such as capital expenditure budget, projected income statement and cash flow, etc.
5. Where possibly, adjust your financial forecasts under various contingencies to see whether the projections are possible as well as reliable and accurate.
6. If additional funds are needed, you can separate the cash flows into "operating projections" and "capital needs", and identify how the additional funds will be used.



Hints: If you are inviting new investors, your financial statements indicate past performance. More important, potential investors may look to your company's projected financial statements to see if your business is a good investment.

You probably need two types of projected financial statements in order to give them a clear understanding of the value of your business: (1) annual projections for a period ranging from one to five years; and (2) a detailed monthly cash budget for the first year.

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Hong Kong Update:

The Hong Kong SAR Government and the Central People's Government has agreed on further services liberalization under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) on 29 July 2008.

Under Supplement V to the CEPA, there are further 29 liberalization measures covering 17 services sectors, including conventions and exhibitions, banking, construction and related engineering services, social services, tourism, accounting, and medical and dental services.

Hong Kong service suppliers will be allowed to provide services incidental to mining (confined to exploration of oil and natural gas only), and related scientific and technical consulting services (prospecting and surveying services for iron, copper and manganese).

In education, Guangdong will be delegated with approval authority on applications submitted by Hong Kong institutions to set up schools for the children of Hong Kong people.

In future, there will be further enhancement on the co-operation in branding, trademark, e-commerce in the area of trade and investment facilitation.

All the services liberalization measures will come into force on 1 January 2009.

Hong Kong Tax Reminder: Profits Tax Returns

Due date

- | | |
|-------------|--|
| 15 Aug 2008 | Extended due date for "D" code returns. (i.e. Accounting year ended between 1 December 2007 - 31 December 2007) |
| 31 Oct 2008 | Deadline for submitting further extension list for "M" code current year loss cases. (i.e. "M" code cases refer to those Accounting year ended between 1 January 2008 - 31 March 2008) |
| 15 Nov 2008 | Extended due date for "M" code returns. |
| 13 Feb 2009 | Final extended due date for "M" code current year loss cases. |

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