

Protect your brand, and your wallet

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IT'S YOUR BRAND, OR IS IT?

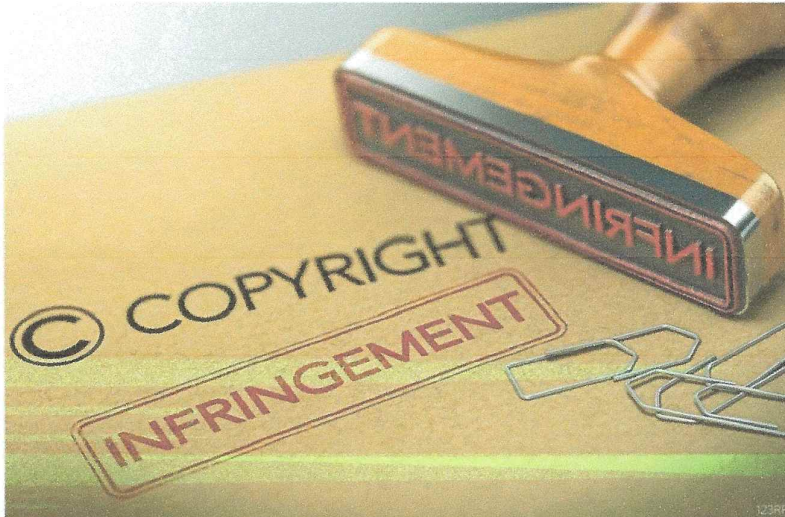
One of the first things most new businesses do is choose their "brand".

Some brands might be developed for special occasions. Rainey Collins, for example, turned 100 in March and so we developed a special 100 year logo.

Many people think that once you have your brand it is protected. However, it is not widely known or understood that reserving a company name and obtaining rights to use it with the Companies Office does not give you full and exclusive rights to use it.

The Companies Office, when approving a company name, will approve it on the basis that it is "different enough" from other registered companies. However, its guidelines on what is "different enough" are not the same as assessing whether it infringes another's rights in the name/brand.

For example, although we have operated under the brand RAINEY COLLINS for many years, the Companies Office would allow the incorporation of companies with a similar name. Despite their allowance of these company names, use of them would still be in breach of our trademark.



We are seeing a flurry of new businesses being challenged in their continued use of their company name because it breaches existing businesses' trademarks. These challenges either result in legal fees to defend the brand, or the extra costs involved with re-branding, which can be particularly hard to handle when in start-up mode.

Prior to entering the market, and incorporating your company with your preferred business name, seek advice as to

existing similar or identical trademarks, and have your adviser undertake comprehensive marketplace searches so you can avoid costly challenges to your brand following your significant investment in it.

AVOID COPYRIGHT INFRINGEMENT

In New Zealand, from the moment you create, publish or perform an original creative work it is automatically

protected under the Copyright Act 1994. Generally, you as the author have exclusive rights such as to use, publish, copy or sell your work for the life of the author plus 50 years.

Copyright law prevents others from copying, showing, performing, communicating, or adapting your work, or a substantial part of it, without your permission. Additionally, it also grants you moral rights to object to any derogatory treatment of your work.

If you decide to use a substantial, distinctive, or important part of someone else's copyright work, it is recommended to contact the owner of the copyright work to obtain their written permission before you use it. In some cases the author may require you to pay a fee to license their copyright work for a particular purpose. In some situations permission is not required where the copyright has expired and the work is now in the public domain.

Copyright work can also be used for fair dealing to criticise, review, news report, educational purposes, or private study.

Where copyright has been infringed, courts can grant remedies such as preventing the person from using the copyright work, or making an order to pay damages and account for profits from the misuse of the author.

It is important to remember you cannot just replicate any person's work, because it is protected by copyright. If you are unsure whether you are infringing on copyright you should seek legal advice, as the costs of getting it wrong can be very significant.

Column courtesy of RAINEY COLLINS LAWYERS phone 0800 733 484 www.rainey-collins.co.nz. If you have a legal inquiry you would like discussed in this column please email Alan on aknowsley@raineycollins.co.nz

