

Tips for buying a business

ALAN KNOWSLEY
LEGAL MATTERS



A purchaser signed an Agreement for Sale and Purchase to buy an IT business. The business traded under one name and was owned by a company with a similar but not identical name.

The purchaser agreed to buy the trading name as part of the purchase and included a basic clause to that effect in the Agreement for Sale and Purchase. They decided to set up a new company to own the business, which related to their family name and continued to trade under the previous owner's trading name.

Two years later, they heard through their networks that the original seller had set up a new company through the Companies Office with a similar name to the old company and was providing IT services in a similar sector of the market. The clause in the agreement regarding the trading name was very narrow and did not cover any future use of the company name or the use of any

names similar to the trading name.

Customers were starting to get confused as to which business was which and whether the businesses were connected. A company name is different to a trading name. It is very important to recognise the difference when buying a business. A company is a legal entity, which is often used to own a business. Because they are legal entities, companies can do things like enter into contracts and borrow money.

A trading name is the name used for the business in trade and is the name by which customers know the business. It can be a completely different name from the company that owns the business.

The trading name is not a legal entity on its own. When you buy a business, generally you will want to buy the trading name because of the goodwill and customer recognition associated with that name.

Trading names are generally sold with a business as part of the "intangible assets" along with things like customer databases. There are ways to help to prevent the situation above, including:

1. Taking over the vendor's company name or setting up a



Customers might prefer to look for an old business' name.

"When you buy a business, you will generally want to buy the trading name."

very similarly named company name when you buy a business.

2. If you are not taking over the vendor's company name, adding a clause to your Agreement for Sale and Purchase of a Business under which the vendor agrees to change the name of the existing

company; and/or the vendor agrees to grant all ownership and rights to use all names and brand names associated with the business to the purchaser.

3. Protect your trading name and/or company name by applying for a trademark for those names. It is important to be aware that registering a company does not automatically give you a trademark over that name, and vice versa - they are completely separate processes.

In the situation of the purchaser above, option three was unfortunately the only option

available to them, given settlement of the transaction had already occurred. However, it was not guaranteed that they would be successful in obtaining the trademark. There are many different aspects to a business purchase, and the trading name and purchasing entity are both vitally important. It is essential that you take professional advice before you sign an Agreement for Sale and Purchase of a Business, and throughout the process, to make sure you are protected and fully understand your rights and obligations.