

Company names and their limits

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Last year a prominent business writer, when writing about failed finance company Provincial Finance Company Limited, confused that company with another company of the same name, but which had been struck off in 1996.

This highlighted one of the problems in New Zealand about the limitations of company names as a means of identifying a particular business, and the fact that there is no business name registration system in New Zealand.

In New Zealand, registering a company under a particular name merely means that no other company can be registered with that exact name while the first company is registered. Once that company is struck off or its name changed to something else, the name becomes available again. The Companies Office will also register other unrelated companies with very similar names, provided the names are not identical.

Also, as there is no business name registration system, such as that which applies in Australia, it is not possible to search and find on a register any business which is not registered as a company, such as a partnership or a sole trader, or a company which is using a different name in the marketplace to that under which it is registered.

Company names therefore have very limited usefulness as the means of securing to a business the exclusive use of a particular name.

In order to protect the name under which a business trades, the most effective method is to register a trade mark under the Trade Marks Act 2002 for the most significant features of that name, provided the name meets the requirements for registrability (principally that it is distinctive and not the same as or confusingly similar to an existing registered trade mark in the same field), or to register a logo incorporating the company name if the name is not registrable as a trade mark on its own.

When choosing a business or company name, it is important to check not only the Companies Register for names identical or almost identical to the proposed name, but also the Intellectual Property Office register of trade marks.

It's also advisable to do some marketplace and internet based searching, to ensure no-one else has already started using the name that has been chosen. Failure to do so could mean wasted investment in that name and a forced name change at a later stage.

Interestingly, the United Kingdom has recently introduced a system similar to that which used to apply in New Zealand, before companies law was reformed in 1993. Under the English system it is possible for an existing company to object to registration of a name which is too similar to its own.