



## North Carolina Law Life

# Why Registering Your Company Name with the Secretary of State is not Enough

**By: Donna Ray Chmura. *This was posted Tuesday, March 23rd, 2010***

I got a panicked call the other day from a new client – another company was using her company’s name and neither the [North Carolina Secretary of State](#) nor the state [Attorney General](#) would help her. She could not understand why the Secretary of State would let someone name their business something that was virtually identical to hers. Some of her customers called in confusion; others likely do not realize the difference and are being diverted to the other company.

What she had protected was her trade name. What was being infringed was her trademark. Many entrepreneurs don’t understand the difference, and if they don’t consult with a [trademark attorney](#), valuable intellectual property can be left unprotected.

A trade name is the company name that is registered with the Secretary of State. To be registered, the name has to be different (by as little as one character) from existing company names. That is why we can have all the following company names in the North Carolina Secretary of State database:

Acme Cleaners, Inc.  
Acme Cleaners & Laundry, Inc.  
Acme Cleaning, Inc.

Although the Secretary of State allows all of these companies to co-exist, it will be impossible for the potential customer who just spilled black coffee on his trousers to distinguish which Acme Cleaners is the one on the corner when he looks them up in the phone book.

Using the name in commerce to designate your company as the source of a good or service, is use as a trademark (or brand name). This is governed by a whole other regulatory scheme that is completely independent from the Secretary of State. A company’s trademark may be the same as its trade name, but they are often different.

<http://www.nclawlife.com/>

[Richmond](#) • [Blacksburg](#) • [Fredericksburg](#) • [Research Triangle](#) • [Melean](#)

Copyright Sands Anderson Marks & Miller, PC.

THE INFORMATION CONTAINED IN OUR WEB SITE DESCRIBES LEGAL MATTERS HANDLED IN THE PAST BY OUR ATTORNEYS. OF COURSE, THE RESULTS WE HAVE ACHIEVED DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. BECAUSE EACH MATTER IS DIFFERENT, OUR PAST RESULTS CANNOT PREDICT OR GUARANTEE A SIMILAR RESULT IN THE FUTURE.

Trademarks can be:

- words (MICROSOFT, KRAFT);
- stylized words (COCA-COLA in script, FORD in the oval);
- symbols and designs (LEVI'S stitch, CHEVROLET logo);
- shapes (CADILLAC fins, PEPPERIDGE FARM goldfish);
- letters (IBM, CNN);
- numbers (409 cleaner, CHANEL No. 5 perfume, FORD 150 truck);
- telephone number combinations (1-800-MATTRESS, DIAL-LAWYERS);
- abbreviations (COKE, BUD, VW);
- slogans ("YOU'RE IN GOOD HANDS WITH ALLSTATE," "WHERE'S THE BEEF?");
- colors (pink for OWENS CORNING insulation);
- container shapes (COCA-COLA bottle);
- building designs (MCDONALD'S restaurants, FOTOMAT kiosks);
- clothing (DALLAS COWBOYS cheerleader outfits);
- sounds (NBC chimes, MGM lion's roar); and
- even fragrances (scented yarn).

If you don't check the trademark availability of your business name before adopting it (in addition to the availability at the Secretary of State), there are a couple of ways you can hurt yourself: you might be one of 15 Acme Cleaners (hard to distinguish yourself in the marketplace) or you may adopt a name that infringes a third party's prior use (and have to bear the costs of changing your name and re-launching your brand).

If your brand name is important to you, you should think about obtaining a [federal trademark registration](#) to give yourself the exclusive right to use your trademark throughout the United States and to stop others from using a name that is substantially similar to your or likely to cause confusion in the marketplace.

<http://www.nclawlife.com/>

[Richmond](#) • [Blacksburg](#) • [Fredericksburg](#) • [Research Triangle](#) • [McLean](#)

Copyright Sands Anderson Marks & Miller, PC.

THE INFORMATION CONTAINED IN OUR WEB SITE DESCRIBES LEGAL MATTERS HANDLED IN THE PAST BY OUR ATTORNEYS. OF COURSE, THE RESULTS WE HAVE ACHIEVED DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. BECAUSE EACH MATTER IS DIFFERENT, OUR PAST RESULTS CANNOT PREDICT OR GUARANTEE A SIMILAR RESULT IN THE FUTURE.