

# High Tech Counsel Corner

What is in a name? For businesses, it turns out that there may be quite a bit in a name - and in the way that name is used. Often, the legal principles involved can be confusing. Here is a hypothetical that highlights some of the issues:

A client forms a New Hampshire limited liability company called "Joe Dirt Cleaning Services, LLC" to offer professional cleaning services. The company's stationery and business cards include "JOE DIRT" and the business address, while the website and the business brochure use "JOE DIRT" to describe the company's cleaning services.

Under this hypothetical, the "Joe Dirt" name is being used in three distinct ways.

The name is part of the name of the limited liability company. This legal entity is the "person" under the law that has the capacity and authority to transact business, enter into contracts and incur liability.

The company's business cards and stationery use "JOE DIRT" to identify the business (and to avoid using the full name of the company). Used in this manner, "JOE DIRT" is a trade name of the company - that is, a name (other than the registered entity name) used to conduct business. New Hampshire law requires a trade name to be registered with the New Hampshire Secretary of State so that the trade name can be identified with the natural person or legal entity using it. While it is fine to use the name in this manner (IBM does it all the time), it is advisable to use the full legal name when the company enters into contracts.

On the company's website and in its brochures, "JOE DIRT" is being used as a service mark to identify the services provided. The client is trying to create a commercial impression in the market tying "JOE DIRT" to professional cleaning services. To protect this use, the client should consider registering the name as a service mark with the U.S. Patent & Trademark Office. Used in this manner, the name may acquire significant value as intellectual property of the business which is worth protecting.

The various legal implications arising from the use of a name are not always obvious. We encourage you to seek advice from knowledgeable and experienced legal counsel to make sure you are taking the necessary steps to protect yourself and the names you may be using.



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