

Things to Consider Before Starting a Business

1. Good Reasons to Start a Business

Examine your goals and expectations before you decide to become your own boss. "Hope springs eternal in the human breast," said English poet and essayist Alexander Pope several centuries ago. He wasn't describing people expanding or starting a business, but he may as well have been. Everyone who goes into business for themselves hopes to meet or surpass a set of personal goals. While your particular configuration is sure to be unique, the following aspirations are common among budding entrepreneurs.

Independence. A search for freedom and independence is the driving force behind many businesspeople. Wasn't it Johnny Paycheck who wrote the song "Take This Job and Shove It?"

Personal Fulfillment. For many people, owning a business is a genuinely fulfilling experience, one that lifetime employees never know.

Lifestyle Change. Many people find that while they can make a good income working for other people, they are missing some of life's precious moments. With the flexibility of small business ownership, you can take time to stop and smell the roses.

Respect. Successful small business owners are respected, both by themselves and their peers.

Money. You can get rich in a small business, or at least do very well financially. Most entrepreneurs don't get wealthy, but some do. If money is your motivator, admit it.

Power. When it is your business, you can have your employees do it your way. There is a little Ghengis Khan in us all, so don't be surprised if power is one of your goals. If it is, think about how to use this goal in a constructive way.

Right Livelihood. From natural foods to solar power to many types of service businesses, a great many cause-driven small businesses have done very well by doing good.

2. Choosing the Right Business

You want to start a business--but what kind? Your business should have a solid chance at a profit--but it should also suit your particular skills and strengths. One of the most common questions potential business owners ask is this: What business should I start? The answer is always the same--start a venture that you know intimately already. No business exists that is so foolproof that anyone can enter and make a sure profit. On the other hand, a skilled, dedicated owner often can make a venture successful when others have failed. Remember, your potential customers will exchange their money only for the conviction that you are giving them their money's worth. And that means you'll need to know what you're doing. While this point should appear obvious, sadly--it isn't.

Are You Choosing a Risky Business?

When considering the businesses you know, it is helpful to know how well they typically fare. For instance, these businesses have higher than average failure rates:

- computer stores
- laundries and dry cleaners
- florists
- used car dealerships
- gas stations
- trucking firms
- restaurants
- infant clothing stores
- bakeries
- grocery and meat stores.

If your business idea is on this list, it doesn't mean you should abandon it automatically. However, it should remind you to be extra critical and careful when preparing your plan. There are successful business people in every category listed, just as there are people who have failed in each of them. Many people enter businesses they know little or nothing about. For example, Mike opened an automobile tune-up shop at a time when, seemingly, such a shop couldn't miss. He knew a good deal about running a small business, had a personality well suited for it and could borrow enough money to begin. The end of what turned out to be a very sad story is that it took him two years and \$30,000 to get rid of the business. Why? Because in his hurry to make a profit, Mike overlooked several crucial facts.

The most important of these was that he knew virtually nothing about cars and he didn't really want to learn. Not only was he unable to roll up my sleeves and pitch in when it was needed, he didn't even know enough to properly hire and supervise mechanics. In short, Mike made a classic mistake--he started a business in a "hot" field because someone was foolish enough to lend him the money.

How can you apply this lesson to your situation? Let's say you've heard pasta shops make lots of money and you want to start one. First, if at all possible, get a job working in one, even if you work for free. Learn everything you can about every aspect of the business. After a few months, you should be an expert in every aspect of pasta making, from mixing eggs and flour, flattening the dough and slicing it into strips.

Ask yourself whether you enjoy the work and whether you are good at it. If you answer "yes," go on to the second important question: **Is the business a potential money maker?**

You should have a pretty good answer to this question after working in the field for a few months. If you're unable to find employment in the pasta business, make a tour of delicatessens and shops that make their own pasta. Interview the owners. To get reliable answers, it's best to do this in a different locale from the one in which you plan to locate.

Small business owners are often quite willing to share their knowledge once they are sure you will not compete with them. There is a management philosophy that says that **a good manager doesn't have to know every job, only how to get other people to do them. That approach may work well in a large corporation but for a small business, it's dangerously naive. In short, don't start your small venture until you know it from the ground up.**

And take this literally. If you're opening a print shop, you should be able to run the presses and do paste-up and layout, as well as keep a coherent set of books. If it's your elegant little restaurant and the food isn't perfect, you're the one who either improves it in a hurry or goes broke. If you don't want to or can't pitch in, you should think twice about starting that kind of business.

Hobby Businesses

Things to think about if you want to start a small business based on an activity near and dear to your heart. For many small business owners, their business is more a labor of love than a reliable source of income. This is most often the case when the owner has other means of financial support--such as a regular job or a working spouse--which allows the microbusiness to continue even though it makes little or no money.

These types of tiny businesses are usually run from home (renting an office would be too expensive) and are often based on activities near and dear to the owner, which has earned them the nickname "hobby businesses." There are as many types of hobby businesses as there are hobbies. A basement jewelry studio, a jazz band for hire, or an antique refinishing business might all qualify. The owners would probably continue to make jewelry, play jazz or restore antiques on their own time and money, but are trying to turn their hobbies into profitable businesses.

Making the Most of a Losing Business

For most regular businesses, more than a year or so of losing money is a cue to close up shop. But if you love doing whatever you're doing, it might make sense for you to stick with your losing business rather than fold it up. That's because an unprofitable business can be a tax shelter.

If you have another source of income, the losses from your hobby business can be used to offset your other taxable income. Business losses—including everyday expenses and depreciation on capital assets—can often be deducted from your other taxable income. That can not only lower the amount upon which taxes are calculated, but also may drop you into a lower tax bracket. Of course, most entrepreneurs would much rather earn a healthy profit than lose money with their business. And the savings made possible by a tax shelter do not always justify continuing a marginal or losing business. But they definitely can make a difference when you're deciding whether or not it's worth it to keep your unprofitable—but enjoyable—business going.

For example, take the case of Kay and her husband Reza. Reza earns a salary as a chef in a local restaurant, and Kay is a magazine editor. They file joint tax returns. Kay has a passion for plants, and decides to try making a business of selling some of the hundreds of plants she grows and propagates in her backyard greenhouse. After she spends thousands of dollars on exotic plants and better lighting equipment, the greenhouse heater goes on the fritz and over 300 of her expensive exotic plants die. Her expenses for the year total nearly \$10,000, and she has sold only \$200 worth of plants. The silver lining for Kay and Reza comes at tax time, when they deduct the \$9,800 loss from their joint taxable income of \$105,000. By reducing their joint taxable income to \$95,200, they not only are taxed on less income, but their tax bracket is reduced from 31% to 28%.

Proving Your Business Is a Business

If you consistently use your business as a tax shelter, deducting your losses from your other income year after year, you'll likely catch the attention of the IRS. So before you start claiming deductions for the costs of your favorite art projects or toy car collections, make sure your venture will pass IRS scrutiny and qualify as a real business. Unsurprisingly, you're not allowed to deduct expenses from your favorite activities—only expenses of a legitimate, profit-motivated business. If you're audited, you'll have to prove to the IRS that your hobby is in fact a legitimate business.

Thankfully, the IRS's definition is fairly broad. Basically, any activity engaged in to make a profit counts as a business. In other words, you need only prove to the IRS that you're trying—not necessarily succeeding—to make a profit with your venture. The IRS uses a few different criteria for deciding whether or not your business truly has a profit motive.

The main test for profit motive is called the "3-of-5" test. If your business makes a profit in any three out of five consecutive years, it is legally presumed to have a profit motive. You may be surprised—and relieved—to know that the amount of the profit is irrelevant; if you earn only \$1 profit in your business year, you've officially had a profitable year.

While the IRS gives a lot of weight to the 3-of-5 test, it is not conclusive. In other words, if you flunk the 3-of-5 test, you still may be able to prove that your business is motivated by profit. You can use virtually any kind of evidence to illustrate your efforts to conduct your activity as a business in pursuit of profits. Business cards, a well-maintained set of books, a separate business bank account, current business licenses and permits, and advertising or other marketing efforts will all help to persuade an IRS auditor that your activity is in fact a business.

Watch Out for Local Rules

Lots of small business people are surprised to find out that state and local regulations for small businesses can be more of a bear than IRS rules. If you sell tangible products, you may be subject to state sales taxes. Also, many cities impose taxes on small businesses and require them to go through some sort of registration process, and counties often have similar requirements for businesses in rural areas. Technically, these rules apply to any money-making activity within the area—even if the hobby business doesn't intend to claim any federal or state tax deductions. In practice, many tiny hobby businesses—so tiny that the word "business" seems excessive—might be able to get away unnoticed. Even so, you should be aware that depending on your local rules, you may be penalized if you're caught doing business without having gotten the permits or licenses required by your state or local government. These penalties may include fines and any back taxes that apply.

3. Why You Need to Write a Business Plan

If you think only Type A personalities compose business plans, you're wrong. Talk to a random sample of successful business owners, and you'll be amazed at how many even the most laid-back took the time to put their business plans into writing. If you're truly determined to succeed, you'll follow their example. Why? Because without a plan, you're leaving far too many things to chance. Just as a blueprint is used to ensure that a building will be structurally sound, a business plan will help you see whether your business will be financially able to stay afloat.

The idea of a business plan is simple: to bring together in one document the key elements of your business. These include what products or services you'll sell, what they'll cost to produce and how much sales revenue you expect during your first months and years of operation. Most important, your plan will help you see how all the disparate elements of your business relate to one another, which will allow you to make any necessary alterations in order to maximize your business's potential to turn a profit.

Business plans are often written by business owners who want to borrow money or attract investors. This is good as far as it goes lenders or investors do want to understand as much as possible about how a business will work before deciding whether to back it financially. Unless you're prepared to show them a well thought-out plan for how you expect your business to become profitable, you won't have much chance of convincing them to finance your project.

But creating a business plan is just as good an idea if you don't need to raise start-up money. The discipline involved in developing financial projections such as a break-even analysis and a profit and loss forecast will help you decide if your business is really worth starting, or if you need to rethink some of your key assumptions. As any experienced businessperson will tell you, the business you decide not to start (often because a business plan doesn't pencil out) can be more important to your long-term success than the one you bet your economic future on.

4. The Essentials of a Business Plan

All business plans need to show two things: that the business idea is a good one, and that the numbers show a profit. All good business plans have two basic goals: to describe the fundamentals of your business idea, and to provide financial calculations to show that it will make good money. But, depending on how you intend to use it, a business plan can take somewhat different forms.

- If you will use your plan to borrow money or interest investors, it should be carefully written and edited to sell your vision to skeptical people. Normally this means that it should include a persuasive introduction and request for funds, in-depth market research information, an evaluation of your main competitors, your key marketing strategies, and a management plan. In addition, it should contain detailed financial information, including your best estimates of start-up costs, revenues and expenses. Finally, since your plan will be submitted to people you don't know well, the writing should be polished and the format clean and professional.
- If your plan will primarily be for your own use that is, if you don't need to raise money don't worry so much about making a sales pitch or slick presentation. But don't skimp when it comes to doing your numbers. The last thing you want is to experience the very real misery of starting a business that never had a chance to make a solid profit.

Plan to get the help you need. Not all business people are great writers. But excellent writing skills can be a big help in creating a compelling business plan. Consider paying a freelance writer with small business savvy to help you polish your plan. Similarly, if you are challenged by numbers, find a bookkeeper or accountant to provide needed help.

Describing the Business, and Yourself

The first several sections of your plan should describe the beauty of your business idea. If you will show your plan to potential lenders, investors or people you want to work with, show them that you've hit upon a product or service that customers really want. In addition, you want to show that you are exactly the right

person to make your fine idea a roaring success. Your goal is to have them say, "Wow! What a great business idea! And yes, I see exactly why Carlos Burns is the ideal person to make it a big success."

To accomplish these goals, you should include the following:

- a statement of the purpose of your business
- a detailed description of how the business will work
- an analysis of your market
- an analysis of your competitors
- a description of your marketing strategy, and
- a résumé setting forth your business accomplishments.

Again, depending on how you intend to use your business plan, you may be able to skip some of these elements. For example, if you don't need to raise start-up money and are writing a plan mostly for your own use, you may decide to skip the résumé of your own business accomplishments. But think twice before you leave out too much. Any new business will need to introduce itself to loads of people suppliers, contractors, employees and key customers, to name a few and showing them part or all of your business plan can be a great way to do it.

Making Financial Projections

Besides describing how your business will work, including how it will reach plenty of customers and fend off competitors, you'll also need to do some number crunching to show that it will in fact turn a profit. All the rosy descriptions in the world won't make your business a success if the numbers turn up red. Projecting the finances of your business may seem intimidating or difficult, but in reality it's not terribly complex. Basically, it consists of making educated guesses as to how much money you'll need to spend and how much you'll take in, and using these estimates to calculate whether your business will be sufficiently profitable.

Needless to say, predicting and planning the finances of your business is an important task, not just to attract investors, but to demonstrate to you and your family whether or not your business idea will fly. If your first projections show your business losing money, you'll have an opportunity while still in the planning stage to make sensible adjustments, such as raising your prices or cutting costs. If you neglect to make tight financial projections, you won't realize your plan is a money loser until you actually start losing money. At that point, it may be too late to turn things around.

Nonetheless, many new entrepreneurs avoid crunching their numbers, often due to fear that their estimates will be wildly off-base and yield useless results. This is a poor reason to avoid forecasting your finances. If you do your best to make realistic predictions of expenses and revenues and accept that your guestimates will not be absolutely correct, you can learn a great deal about what the financial side of your business is likely to look like in its early months and even years of operation. Even a somewhat inaccurate picture of your business's likely finances will be much more helpful than having no picture at all.

5. How to Describe Your Business

When describing your business in a business plan, don't assume your reader will fill in the details. When writing a convincing business plan, an important task is to clearly and exhaustively describe your business and exactly what it will involve. Let's say you want to open a restaurant. What will you serve? What will your sample menu look like? What equipment will you need? Note that including french fries means you'll have to install french-fryers, grease traps in the sewer line, hoods and fire extinguishing systems. On the other hand, by not serving fried foods you will save a lot of money in the kitchen, but maybe you'll go broke when all the grease addicts go next door.

Or suppose you want to sell VCRs, video games or video camera equipment. Do you plan to have a service department? If so, will you make house calls, or only accept repairs at your store? What sort of security

system will you install to protect your inventory? What about selling component sound systems or home entertainment centers? What about competition from nearby retailers?

Answers to these types of questions will be crucial to the success of your venture and to writing your business plan. Long experience tells that you need a written document--even if you're sure you know exactly what your business will do.

With this foundation document to refer to, you are less likely to forget your good plans and resolutions in the heat of getting your business under way. Any changes you later make can be made both consciously and with consideration.

To write a complete description of your proposed business, follow a few simple suggestions.

Identify Your Type of Business

Find the business category listed below that most closely matches your business. You'll use the description that follows as a reference when you describe your own business.

Retail. Retail businesses buy merchandise from a variety of wholesalers and sell it directly to consumers. Supermarkets, mail order catalog merchants, computer stores, dress shops, department stores and convenience marts are retailers.

Wholesale. Wholesalers buy merchandise from manufacturers or brokers and resell the goods to retailers.

Service. People with a particular skill sell it to consumers or to other businesses, depending on the skill.

Manufacturing. Manufacturers assemble components or process raw materials into products usable by consumers or other businesses.

Project development. Developers create and finish a saleable commodity by assembling resources for a one-time project.

Write a Problem Statement

Successful businesses share a common attribute: They do something useful for their customers. One way to determine what is useful for your customers is to identify and describe the problem that your business will solve.

For example, a window washing service solves the customer's twin problems of wanting clean windows but lacking either the time or physical ability to clean windows himself. If you accurately understand your customers' problems and needs, your business will have a better chance of success. For example, here's a problem faced by a customer of a pizza-by-the-slice stand: "I'm hungry and I don't have much time or money, but I'm tired of hamburgers and want a change of pace. Also, I'd like to be able to specify the exact ingredients I want in my meal. And, it would be really swell to have a glass of wine or beer with the meal."

Now, think about your customers for a minute. What is the problem that you solve for them? Take a sheet of blank paper or open a computer file and write out your description of the problem your business solves for its customers. This statement will become part of your completed business plan.

Describe Your Business Operations

Next, describe how your business will solve your customers' problem. Take your time and do a thorough job. It's very likely that the first time you attempt this task, questions will occur to you that you didn't consider previously. If so, figure out a good answer and rewrite your description. The important thing is not how long it takes to do this, but that you end up with a realistic, well-thought-out business description. After all, it's cheaper to answer questions and solve problems on paper than it is with real money.

Your business description should explain exactly what you will provide for the customer as well as what you'll exclude. Each of the choices you make in your business description will affect the amount of money you'll need to start or expand and how much sales revenue you can expect.

Consider the following series of questions when writing your business description. These questions apply to most small businesses. Feel free to skip any questions that don't pertain to you.

- What problem do I solve for my customers? (You answered this question in detail above.)
- Who is my typical (target) customer?
- How will I communicate with my target customer?
- What products and/or services will I provide? Are there any products or services my customers may expect me to provide that I don't plan to provide?
- Where will my business be located?
- Where will I buy the products I need?
- What hours will I operate?
- Who will work for me and how will they be paid?
- Who will handle critical tasks like selling, ordering, bookkeeping, marketing and shipping?
- How will I advertise and promote my business?
- What are the competition's strengths and weaknesses?

How am I different from the competition, as seen through the eyes of my customers? (Make sure that you answer this question from a customer's perspective and not from an owner's point of view.)

To sum up, writing a precise description of your business is an essential part of the business planning process. Make sure you've considered as many details of your operations as possible, well before you open your doors.

6. Will Your Business Make Money?

Learn how to determine your break-even point.

Some people have a bigger problem than others when opening a new business. These are folks who are positively enamored with their business concept and are desperately eager to begin. They are so smitten and eager to start, they have no patience with the economic realities involved in their business. If you recognize this tendency in yourself, it's extra important that you prepare a financial forecast carefully and pay attention to what it tells you. This step tells you whether your idea is a sure winner, a sure loser, or, like most ideas, whether it needs work and polishing to make it presentable.

How can you tell if your business idea will be profitable before you implement it? The honest answer is, you can't. This essential fact that makes business scary. It also makes it adventurous. After all, if it were a sure thing, everyone would go into business.

Just because you can't be sure you will make money doesn't mean you should throw up your hands and ignore the whole problem. You can and should make some educated guesses. Think of them as SWAGs (Scientific Wild Ass Guesses). The challenging part is to make your profit estimate SWAGs as realistic as possible and then make them come true.

The best way to make a SWAG about your business profitability is to do a break-even forecast. Although a break-even analysis or forecast can never take the place of a complete business plan, it can help you decide if your idea is worth pursuing.

Most financial backers expect you to know how to apply break-even analysis to your business. Your backer may ask what your profits will be if sales are slightly higher or lower than your forecast.

Many experienced entrepreneurs use a break-even forecast as a primary screening tool for new business ventures. They won't write a complete business plan unless their break-even forecast shows that the sales revenue they expect to obtain far exceeds what they need to pay all the bills. Otherwise they know their business will not last very long.

In essence, a break-even analysis involves making the following estimates and calculations:

- **Sales revenue.** This consists of the total dollars from sales activity that you bring into your business each month, week or year.
- **Fixed costs.** These are sometimes called "overhead" and you must pay them regardless of how well you do. Fixed costs don't vary much from month to month. They include rent, insurance and other set expenses.
- **Gross profit for each sale.** This is defined as how much is left from each sales dollar after paying for the direct costs of that sale. For example, if Antoinette pays \$100 for a dress that she sells for \$300, her gross profit for that sale is \$200.
- **Break-even sales revenue.** This will be the dollar amount your business needs each week or month to pay for both direct product costs and fixed costs. It will not include any profit. You owe it to yourself do this analysis as one of the first steps in your business planning process.

7. Definitions Behind Business Name Jargon

A quick cheatsheet that explains the most arcane words involved in business names. Now when those around you start talking funny, you'll know what they mean. One reason the law of business names often seems confusing is that the subject is riddled with lots of arcane and often overlapping legal jargon. For example, local, state and federal agencies often use different terms to describe the same or very similar legal concepts. Here's a brief rundown of the terms you should understand.

The term "**legal name**" means the official name of the entity that owns a business. The legal name of a sole proprietorship is simply the full name of the owner. If a general partnership has a written partnership agreement that gives a name to the partnership, then that name is the legal name. Otherwise, the legal name of the general partnership is simply the last names of the owners. And for limited partnerships, LLCs and corporations, the legal name is the name registered with the secretary of state.

A **trade name** is the name of the business itself, which may or may not be the same as the legal name of the owner(s). John O'Toole's Classic Cars, Amoeba Records and Nolo.com are examples of trade names. You see trade names on business signs, in the telephone book and on invoices. In many transactions, such as opening a bank account or applying for a loan, you'll need to provide both the legal name of the owner(s) and the trade name of the business.

The term "**fictitious business name**" is used when the trade name is different from the legal name of the entity (individuals, partnership, LLC or corporation) that owns the business. For instance, if John O'Toole named his sole proprietorship Turtle's Classic Cars, the name "Turtle's Classic Cars" would be a fictitious business name because it does not contain his last name, "O'Toole." A fictitious business name is sometimes called a DBA name. DBA stands for "doing business as," as in: "John O'Toole, doing business as Turtle's Classic Cars." If your business uses a fictitious business name, you need to register it with your county.

When a business incorporates, it must choose and register a corporate name, usually with the secretary of state. Similarly, a limited liability company (LLC) must register an LLC name and a limited partnership (LP) must register an LP name. Corporate, LLC and limited partnership names must have the approval of the

secretary of state (or whatever other state office oversees corporations, LLCs and limited partnerships) before they will be registered. If a corporation, LLC or limited partnership operates under the same name registered with the secretary of state, then the corporate, LLC or limited partnership name will also be both the legal name and trade name.

A **trademark** (sometimes called simply a mark) is any word, phrase, design or symbol used to market a product or service. Technically, a mark used to market a service is called a service mark, although the term "trademark" is commonly used for both types of marks. Owners of trademarks have legal rights under both federal and state law, which give them the power in some cases to prevent others from using their trademark to market goods or services. For more information see the Trademark area of Nolo's Legal Encyclopedia.

The term "**business name**" tends to be a catch-all term referring to all the names used in business--the name of a business itself, a corporate name, a fictitious business name and the names of a business's products and services. When we use it--or when you see it someplace else--keep in mind the difference between the various types of business names.

8. Are You Legally Permitted to Use Your Chosen Business Name?

When deciding whether to go ahead and use a name you've picked, your first step depends on whether you plan to incorporate your business. If you do, you should check with the Secretary of State's office in your state capital to see whether your proposed name is the same or confusingly similar to an existing corporate name in your state. If it is, the Secretary of State will not let you register it as your corporate name, so you'll have to choose a different one. If you don't plan to incorporate, check with your county clerk to see whether your proposed name is already on the list maintained for fictitious or assumed business names in your county. In the few states where assumed business name registrations are statewide, check with your Secretary of State's office. (The county clerk should be able to tell you whether you'll need to check the name at the state level.) If you find that your chosen name (or a very similar name) is listed on a fictitious or assumed name register, you shouldn't use it.

But beware--even if you are permitted to use your chosen name as a corporate or assumed business name in your state or county, you might not be able to use the name as a trademark or service mark in either area. To understand what all this is about, consider the three potential functions of a business name:

- a business name may be a trade name that describes the business for purposes of bank accounts, invoices and taxes
- a business name may be a trademark used to identify and distinguish products sold by the business (for example, Ford Motor Co. sells Ford automobiles), and
- a business name may be a service mark used to identify and distinguish services sold by the business (McDonald's Corporation offers McDonald's fast food services).

While your state's corporate or assumed business name registration offices can legally clear the name for the first purpose, they do not speak to the second and third. For example, you may get the green light from your Secretary of State to use IBM Toxics as your business name (if no other corporation in your state is using it or something confusingly similar), but if you try to use that name out in the marketplace, you're asking for trouble from the IBM general counsel's office.

To find out whether you can use your proposed name as a trademark or servicemark you will need to do what's known as a trademark search. This involves checking all state and federal trademark registers and, because trademarks exist without being registered, trade directories, major cities' yellow pages and other sources likely to turn up a similar name used by a competing business. To accomplish this you can, for a small fee, use an Internet-based service, such as www.micropatent.com, to do a preliminary (direct hit) search.

Assuming your chosen name isn't being used by a competitor, you can then consider whether it's worthwhile to hire a professional search service to do a more in-depth search. A good trademark search service is offered by the Sunnyvale Center on Innovation, Invention and Ideas at www.sci3.com. Assuming

you find that the name is available and your service or product will be marketed in more than one state (or across territorial or international borders), it is wise to file an application with the U.S. Patent and Trademark Office to reserve the name for federal registration. For more information see the Trademark area of Nolo's Legal Encyclopedia.

9. Naming Your Business in the Information Age

When choosing a perfect name, the Internet requires you to think globally.

Even a year or two ago, naming your business was pretty much a local affair. Choose a snappy name, check to see that no one else is using it in your city, town or state, register it as an assumed business name with your county clerk or state Secretary of State, and that was it. Now, thanks to the Internet, naming your business can have national and international implications.

Catching Customers on the Web

It seems as if every advertisement now ends with an invitation to reach the business at "www-dot-something-dot-com." The www stands for World Wide Web, which is part of the Internet, a vast network of computers all over the world.

Businesses, large and small, are rushing to the Web because with a website, they can reach potential customers all over the world. Anyone, anywhere, whose computer is connected to the Internet can visit a website and see what the business has to offer. The Web has become a kind of international yellow pages, converting local businesses into national or international ones.

Choosing a Name with the Web in Mind

If you are starting a business, you may well want to establish a website--if not right now, then when your business is up and running--to showcase your goods or services. It's important to name your business with that thought in mind.

Just a year or two ago, in pre-Web days, all you would have had to be concerned about, legally, was choosing a name that wouldn't confuse customers in the geographic area you planned to serve.

There were just a few fairly obvious rules to follow, such as not using a name that someone else was already using in that locality, or aping a famous name. (Just ask a business that called itself "McSomething's" how long it took to get a threatening letter from McDonald's legal office.)

But the Web ignores local, state and national boundaries. If you're planning to establish a presence on the Web, you'll be sending your business name all over the country. So before you start using a name, and investing time and money in making it well known, you should search the entire country for identical or very similar business names. This process is known as a trademark search. (A business name is a "service mark," which is a kind of trademark.) You can do a search yourself or hire a professional search firm, which usually costs several hundred dollars. (See Conducting a Trademark Search in the Trademark area of Nolo's Legal Encyclopedia.)

Even if you aren't interested in the Web, remember that other businesses--thousands of them--are. So you should still do a national trademark search when naming your business. A business may already be using the name you're considering. And if it markets its goods or services on the Web, it can later force you to change your business name, since its marketing territory will overlap with yours and customers might be confused. The fact that you registered your business name with the local county clerk or as a corporate name with your state won't protect you against an aggressive Web marketer who was using the name before you did.

Looking Beyond the States

As more businesses establish sites on the World Wide Web, choosing your business name may even involve international trademark issues. For instance, if your business name appears on the Web, you may

run into a problem if it conflicts with a trademark registered in another country. The Web makes such disputes more likely because it makes discovery of the conflict more likely.

Most industrialized countries, including the United States, have signed international trademark treaties that make it possible for trademark owners in one country to enforce their rights against trademark owners in another country. Because the Web is so new, it's not yet clear how big a problem this will be for U.S. trademark owners.

Your best strategy for finding a name that does not conflict with an international trademark is to conduct a thorough international trademark search. This is likely to cost some money, because it is hard to do yourself. However, as the world becomes smaller and smaller, an international search will make more and more economic sense.

Choosing Your Internet Address

When you're playing around with a proposed business name, you should also investigate whether you'll be able to use it in your Internet address.

Each website has its own address, which includes something called a "domain name." For example, the address of the Nolo website is <http://www.nolo.com>. The "nolo.com" part of Nolo's address is the domain name.

Using all or part of your business name as your domain name makes your website easier for potential customers to find. Because Nolo uses its business name as its domain name, it is easy for people who know the Nolo name to find our website.

On the other hand, many businesses are choosing to select names for their websites that indicate the type of commerce being offered. For instance, Peet's Coffee not only uses its business name (peets.com) but also uses coffee.com. Both domain names point to the same site. Both names, however, do not receive the same level of trademark protection. [Coffee.com](http://coffee.com) is a "generic" mark under basic trademark rules. Simply put, the name speaks for itself. In contrast, "Peet's" is more distinctive because it is not immediately associated with coffee. Distinctive names like "Peet's" for coffee are given maximum protection under U.S. trademark laws, while generic names, like "coffee," are given no trademark protection at all. (For more on domain names and trademark strength, see Domain Names and Trademark Law in the Internet Law area of Nolo's Legal Encyclopedia.)

To obtain a domain name, you need to register it with one of the many registries that have been accredited to handle domain name registrations by a new international group in charge of domain name registrations, called ICANN. A list of these registries is available through www.interring.net. If you don't want to do through the process of choosing a registry, we recommend Network Solutions at <http://www.nsi.com>. This a relatively easy process.

The same domain name cannot be issued to more than one person or entity. Each domain name must be unique, so for the most part, it's first come, first served. To see if someone else is using the domain name you want to use, enter your proposed name in the registry search box. You will be told whether your choice is available.

To go one step further, you may also want to find out whether someone else has a similar--not just an identical--domain name. For instance, if the distinctive part of your proposed business name is Briarwood, think twice about using it if you discover a website with the address Briarwoody.com.

Although you can register a domain name that is similar to an existing name, you may still be vulnerable to a charge of trademark infringement because of the likelihood of customer confusion--confusion that could hurt your business, too. (See Domain Names and Trademark Law for more information about avoiding customer confusion.) As you can see, settling on a domain name raises the same issues as does deciding on a proposed business name.

It was predicted, 35 years ago, that electronic communications would one day conjoin the entire world into a "global village." Television began that process, and the World Wide Web has nearly completed it. Now your business can be viewed as the equivalent of one more blanket spread in a village square that, without

barriers, extends from California to Maine, from England to Singapore. The name you give your business must distinguish your blanket from the millions of other blankets in that square.

10. The Myth of Advertising's Effectiveness

It's ironic that advertising can be so expensive while yielding such poor results.

The argument made by the proponents of advertising is almost pathetically simple-minded: If you can measure the benefits of advertising on your business, advertising works; if you can't measure the beneficial effects, then your measurements aren't good enough. Or you need more ads. Or you need a different type of ad. It's much the same type of rationalization put forth by the proponents of making yourself rich by visualizing yourself as being prosperous. If you get rich immediately, you owe it all to the system (and presumably should give your visualization guru at least a 10% commission). If you're still poor after six months, something is wrong with your picture. It reminds us of the man in Chicago who had marble statues of lions in front of his house to keep away elephants: "It works," he said; "Ain't no elephants in this neighborhood."

Paradoxically, even though some small business owners are beginning to realize that advertising doesn't work, many still advertise. Why? For a number of reasons: because they have been conditioned to believe that advertising works, because there are no other models to follow and because bankers expect to see "advertising costs" as part of a business proposal.

It's important to realize that your judgment regarding advertising is likely to be severely skewed. You have been surrounded by ads all your life and you've heard countless times that advertising works. To look at advertising objectively may require you to re-examine some deeply-held beliefs.

According to E magazine, advertising budgets have doubled since 1976 and grown by 50% in the last ten years. "Companies now spend about \$162 billion each year to bombard us with print and broadcast ads; that works out to about \$623 for every man, woman and child in the United States" ("Marketing Madness," May/June 1996). Information Resources studied the effect of advertising and concluded, "There is no simple correspondence between advertising and higher sales....The relationship between high copy scores and increased sales is tenuous at best." Or as George Orwell said, "Advertising is the rattling of a stick inside of a swill bucket."

To illustrate how pervasive the "advertising works" belief system is, consider that if the sales of a particular product fall off dramatically, most people look for all sorts of explanations--without ever considering that the fall-off may be a result of counterproductive advertising.

Skeptics may claim that you simply can't sell certain consumer products--beer, for example--without an endless array of mindless TV ads. We refer these skeptics to the Anchor Steam Brewing Company of San Francisco, which very profitably sold 103,000 barrels of excellent beer in 1995 without any ad campaign. They believe in slow and steady growth and maintain a loyal and satisfied client base.

Even apparent successes may not be what they seem. The California Raisin Advisory Board ran an ad campaign that produced the most recognized ad in the history of advertising. In the mid-1980s its advertising agency, Foote Cone and Belding, used the first popular national clay animation campaign. (Claymation is a trademark of the Will Vinton studios.) The annual budget was over \$40 million. The dancing raisins and their song "I Heard It on the Grapevine" created such a popular image that sales from dolls, other toys, mugs and secondary products generated nearly \$200 million in revenue and resulted in a Saturday children's television program using the raisin characters. Raisin sales went up for the first two years of the campaign, largely because cold breakfast cereal marketers were so impressed with the popularity of the ad campaign that they increased the raisin content of their raisin cereals and joined in the advertising.

After four years, the dancing raisin campaign was discontinued. Sales were lower than before the ads started (Forbes, June 17, 1996). By the early 1990s, the California Raisin Advisory Board had been abolished.

What Does Advertising Do?

"What 'work' does advertising do and how well does it do it? Aside from comforting purchasers by assuring them they made the right choice, aside from comforting CEOs and employees that their work is important, and aside from certain unpredictable short-term increases in consumption, most advertising does not perform as advertised. Take away the tax deductions that corporations get for advertising, and most expenditures would dry up overnight. "Although elaborate proofs of advertising's impotence are available, the simple fact is that you cannot put a meter on the relationship between increased advertising and increased sales. If you could, (ad) agencies would charge by how much they have increased sales, not by how much media space they have purchased." --James B. Twitchell, *Adcult USA* (Columbia University Press, 1996)