

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division

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**BEFORE YOU APPLY FOR A TRADE NAME,
TRADEMARK OR SERVICE MARK**

You may initially wonder which of these terms apply in your case. Each of these terms does mean something different and while there are grey areas, it is easiest to see trade names as relating to businesses or entities and trademarks and service marks as relating to the "products" of businesses or entities. If your "product" is goods, you would be applying for a trademark. If your "product" is a service, you would be applying for a service mark. For example, "DCCA, Inc.", a corporation, or "DCCA Co.", a partnership, has registered a trade name "DCCA Manufacturing Co." The corporation or partnership might also apply for registrations for its "DCCA Widgets" (trademark) and for its "DCCA Widget Maintenance" (probably a service mark).

The same basic rules apply to all three types of registrations so while the following commonly asked questions concern trade names, the answers apply to all three registrations.

Does registering my trade name with the Department mean that I own that trade name?

First and foremost, please keep in mind that registration of a trade name with the Department DOES NOT grant you ownership of the trade name. This is probably the single greatest source of confusion, and you can avoid lots of problems later if you understand this at the beginning.

Ownership of a trade name is acquired by using the name before the public. Many and perhaps most trade names in Hawaii are not registered with the state. Nonetheless, by using those names before the consuming public, ownership rights have been acquired.

If registering my trade name does not give me ownership rights, why should I bother with registering the name at all?

As noted above, registration is not required in order for you to own the trade name and you do not therefore have to register the name. The advantage to registering your trade name is that you provide notice to all others that you are claiming the rights to use the name.

The second advantage is that the registration process may let you know about any other person who is claiming the right to use that name. If your name is registered, those who come along later will have notice of your claim. In either case, it can help you avoid legal disputes which may be expensive and disrupt your business.

Will the Department check to make sure that no one else is using the same name that I want to use?

No. The Department will only check to make sure that no one else has a "substantially identical" registration. It is your responsibility to look around the state to ensure that you are not using a name which is already in use or so close to one in use that the public would be confused by the two names. Remember, even if the Department registers your name, you can still be sued by another party for using a name that the other party was using first or one that is so close that it confuses the public.

See reverse side for more information.

Therefore, you must make a careful search in the state to ensure that the name you want to use (or one which is too close to it) is not already in use.

At the back of this material, you will find a list of sources which you might want to check prior to seeking to use a particular name.

If more than one person has chosen the same (or very similar) trade name, who has ownership of the name?

The basic rule is that the first person to make active and continuous use of the name is the person who owns the name.

If I have checked and found no use of the name I want in the state but have also found a registration for that name, can I get the Department to revoke the earlier registration?

Sometimes a person registers a name and then either doesn't use it or uses it for a while and then abandons the name. If a registration is not used for a period of one year, you can petition the Department to revoke that registration. The procedure for doing so is outlined in separate instructions which you can obtain from the Department.

If I want to register a trade name that I have been using for a while and find that someone else has already registered that name, can I get that registration revoked?

If the earlier registration has been abandoned, you can petition for revocation as outlined above. If both parties are using the name, the key question will be which party made first and continuous use of the name. If you believe you are the first to use the name, you can file a petition to revoke the registration on the basis of prior ownership. The procedure for doing so is also outlined in separate instructions which you can obtain from the Department.

If my registration is accepted, how long is that registration valid?

As of July 1, 2003, the law provides that your initial registration is valid for five years. It will be your responsibility to re-register your name before the end of that period, any time during the six months preceding the expiration date. If you renew your registration in a timely manner, your renewed registration will be valid for five years. Please note that the Department does not send out notices to remind you of the expiration date. Therefore, it is your responsibility to remember to re-register. If you forget the expiration date, you may call or visit our office or website. Be aware that if a name does expire, anyone may now apply for that name. So, to avoid any future problems, please remember to renew your registration.

Renewal forms are available at our website www.businessregistrations.com

SOURCES THAT MAY BE CHECKED FOR TRADE NAME, TRADEMARK AND SERVICE MARK USE

1. The current and previous telephone directories of the cities and counties of Oahu, Hawaii, Maui, and Kauai in both the white and yellow pages.
2. The Hawaii State Department of Taxation (check whether a general excise tax license was issued under the trade name). *
3. Polk's City Directories for Honolulu and the counties of Hawaii, Maui, and Kauai (these directories usually contain almost all businesses that operate within the state).
4. The United States Patent and Trademark Office - <http://tess2.uspto.gov/netahtml/tidm.html>
5. Private companies which conduct trade name, trademark and service mark searches (this would be especially helpful if you are considering marketing your product nationally or internationally).
6. Other state and county agencies with which the business you are interested in might have to register such as the Liquor Commission. *
7. Trade bureaus and associations (i.e.: the Hawaii Restaurant Association, the Hawaii Farm Bureau Federation, etc.).
8. Wholesale and retail firms with which the current trade name owner would probably be dealing.

* *In checking with other state and county agencies, please keep in mind that some may not permit telephone inquiries and may require you to go to their offices. Please also remember that certain information may not be available to the public. Each agency can explain its rules concerning the availability of information.*

For any questions call (808) 586-2727. Neighbor islands may call the following numbers followed by 6-2727 and the # sign: Kauai 274-3141; Maui 984-2400; Hawaii 974-4000, Lanai & Molokai 1-800-468-4644 (toll free).

Fax: (808) 586-2733 Email Address: breg@dcca.hawaii.gov

NOTICE: THIS MATERIAL CAN BE MADE AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS. PLEASE CALL THE DIVISION SECRETARY, BUSINESS REGISTRATION DIVISION, DCCA, AT 586-2744, TO SUBMIT YOUR REQUEST.

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