

The right name for start-ups - what you need to know

What to consider when choosing a name for start-ups? Where are the dangers lurking? And what are the steps to be taken before and after choosing a name? Basically, the process can be divided into 5 steps:

1. **Positioning.** What kind of business will my company be and how do I differentiate myself from others? Answering these questions has only indirectly something to do with naming, but it is important for every entrepreneur and should be thought through and answered in detail before the decision on a name is made. Start-ups sometimes fail because they have not thought through their business idea precisely and do not have a clear picture of their unique selling points, their target group/s and the messages to be communicated. Experience has shown that business ideas are promising, if they have a narrow focus, address a clearly defined target group and the specifics of their business concept can be summed up in a few words. Only when you have defined your offer precisely, you should start the next step - the search for a suitable company name.
2. **Name search and selection.** Not being aware of the multi-layered framework conditions of trademark law, the long-term enforceability of a name and the availability under trademark law, paths are often taken which are not very promising. In order to avoid this, it should be clarified in advance whether you are aiming for regional, national or even international applicability. After all, the name must be communicative, i.e. linguistic, in all target markets and must not lead to misinterpretation. Once the language area has been determined, the next step is the customization for the target group. For example, if you work in a very specialised technical B2B environment, it can be assumed that the target group understands English. If, on the other hand, you offer a far-reaching B2C product with a mobile phone app, the target group will be much larger and much more complex in terms of their socio-demographic characteristics. In principle, there are four types of names which can be distinguished and which must be considered separately with regard to their linguistic and trademark usability:

- **acronyms** - abbreviations like IBM, BMW or GE (General Electric)
- **descriptive names**, such as Kinderschokolade or VW Transporter
- **associative names**, such as Milka Lila Pause or Toyota Funcruiser
- **artificial words**, such as Raffaello or Renault Twingo

Acronyms require explanation and, due to their brevity, are often difficult to enforce under trademark law because there are too many similar terms. In addition, internet domains are usually not available and it is difficult to charge it with content.

Descriptive names are tempting at first glance because they directly identify the product or a corresponding product feature. The disadvantage is that this restricts international usability and, above all, does not allow trademark protection, because descriptive names cannot be registered as trademarks.

The third group of **associative names** is one of the most frequently used and most preferred for brand development. They can be explained in a product or service environment with limited promotional effort and do not usually cause problems of comprehension. The disadvantage is that, due to the large number of existing similar "name ideas" from other trademark owners, there is a high risk of infringement of older trademark rights.

Invented names, **artificial words**, are most likely to have "unique selling proposition potential" and thus the best chances of being enforceable in the trademark law environment. The disadvantage here is that they require a much greater communicative effort to be charged with content and positioned independently.

3. **Domains.** Domain availability can also be a decisive factor in the choice of the right name. If the .de-, .com-, .net, and if necessary the .eu-domain, is available, it should be reserved in any case, even if you only use one of the URL endings for your company in the long run. Domains that at first glance seem to be taken, however, are usually reserved only "in stock" and can be purchased for sometimes small amounts of money.

4. **Trademark search.** It is often assumed that one call to the national Patent and Trademark Office is sufficient to check whether an identical name already exists in the product or service environment. This assumption is wrong - the user of a new brand name has to make sure that there are no older third party trademark rights, i.e. registered trademarks, in the identical or similar field, which conflict with the intended product or service fields. In concrete terms, this means that one must first check in which trademark classes one's own products and services can be found. There are 45 trademark classes in Germany and almost all other countries: 1 to 34 are product classes, 35 to 45 are service classes. Within these classes a trademark search for identical and similar older trademarks must be carried out. Through our Business Unit trademarkCHECK a third party trademark search can be commissioned at low cost. This search will find all registered trademarks and all those that present a potential risk in the area of similarity.

5. **Trademark protection.** As soon as steps 1 to 4 have been successfully completed, it is only a small step to either establish the name as a company trademark, e.g. when founding a limited liability company, or to apply for appropriate trademark protection at the national Patent and Trademark Office. There you have to pay a fee for the application, e.g. at the German Patent and Trademark Office € 300 for the application in up to 3 classes. After a three-month period without any oppositions having been received, e.g. because of its possible descriptive character, trademark protection in Germany is granted for ten years. If you prefer to take the step towards trademark protection together with a lawyer, an additional fee is due for advice. This is well invested money, however, as a lawyer can help you to select the list of

goods and services within the respective class and answer any questions you may have. Once the positioning, name search, securing of domains and trademark rights have been successfully completed, the name should be a stable foundation for the long-term success of the newly founded start-up.