



BUSINESS LAW IQ

Disclaimer

The information herein is intended to provide general information only and does not constitute legal advice. The user is cautioned not to rely on this information. Please consult a lawyer to review your circumstances and provide advice tailored to your situation.

*All names are fictional. Any resemblance to actual circumstances is purely coincidental and unintentional. Names have been changed to protect both the innocent and the guilty.

What's your Business IQ?

1. I have been in business for a few years now. My accountant tells me that there is no great tax advantage given the level of profit I'm earning. What's the point.?

The point is that if your business gets sued by a supplier, customer or anyone else you've dealt with in your business, then you are getting sued personally. When you operate as a sole proprietorship, you are the business. That means that your personal assets – your house, your savings, your car – are all vulnerable. An incorporation allows you to protect your personal assets. Depending on the business, you may have additional liability as a director (for example, for employee's wages, deductions etc).

** The primary advantage to incorporating a business is that its shareholders are not liable for the debts and obligations of the corporation. A shareholder's liability is limited to the amount of money which has been invested in the corporation by the shareholder. Except in some very limited circumstances (such as where a personal guarantee is signed by a shareholder), creditors have rights only against the corporation and not against the shareholders. In contrast, a sole proprietor or a partner could potentially lose personal assets beyond those invested in the business.

2. I incorporated my company under the name Red Fish Clothing Company over ten years ago and I operate one store. I've just received a letter from someone in Alberta who says they own the trade-mark "Red Fish" for clothing and that I have to change my name. That can't be right.

Unfortunately, it is right. A corporate name – whether provincial or federal – is trumped by a trade-mark registration. Don't count on your corporate name as absolute protection because that is not the case.

3. I downloaded some "free" images from a site online for my business website. Now I've got a letter from some big outfit in the United States telling me I owe them thousands of dollars in copyright royalties. How can this be? Will they sue me?



Be wary of sites offering “free” graphics. Read the fine print. Many sites offer ‘free’ downloads for personal use but demand payment for commercial use. Ensure that you have permission from the copyright owner, and if you can’t do that, understand that you are at your peril.

4. I have a temp business called ABC Elite Personnel Services. I’ve been in the business for years. I heard from a friend that there is an ABC Elite Training opening up Toronto with big ideas about franchising. I called them to ask about the name they are using but I heard nothing. Now I have found out that they have filed a trade-mark application. I had the name first. Isn’t it mine?

That remains to be seen. If their TM application is successful, you may find yourself looking for a new business name. Yes, you may be able to stop them, but it requires you to prosecute an “opposition” in the Trade-marks Office. Unfortunately, that is an expensive and time-consuming process not unlike litigation, including the possibility of appeals. If your opponent is well-funded, you may be fighting about it for years.

5. Apparently I can’t file an opposition to the ABC Elite Training trade-mark application because the application was filed over a year ago and the deadline has expired. Now what?

Now you have the pleasure of litigating the issue in the Federal Court of Canada with all the expense that entails.

6. I am organizing a fashion show featuring several local businesses. We made a CD of different popular songs to accompany our models as they walk down the runway. I had a call from some outfit called “SOCAN” telling me that I pay royalties for using their music. Is that true?

Yes. That’s true. SOCAN is a “copyright collective”, an organization charged with the task of collecting royalties for songwriters. Member songwriters sign over their copyright to SOCAN in exchange for SOCAN collecting royalties on their behalf. If you use music as part of your business or functions, you must obtain a SOCAN performing rights licence.

7. Music is everywhere these days – restaurants, gyms, public events, ring tones – are all those uses covered too?

Yes. The copyright owner has a right to control the use of his or her musical work and that includes performance in public in any manner. The SOCAN tariffs cover many uses including: restaurants and lounges; receptions, conventions, assemblies and fashion shows; sports events; parks, parades, streets and other public areas; telephone music on hold; fitness activities and dance instruction; skating rinks; exhibitions and fairs. The list goes on.