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The broken telephone between the Companies Register and the Trade Marks Register



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By [SARA-JANE PLUKE](#) And [GEORGIA BARNARD](#)

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23 Aug 2021

The Companies Register and the Trade Marks Register are housed at the same registry, being the [Companies and Intellectual Property Commission](#) (the “CIPC”). However, the registers do not ‘talk’ to each other, in that they are not cross-referenced when one is applying to incorporate an entity or register a trade mark.

Section 11(2)(a)(iii) of the [Companies Act](#) (Act 71 of 2008) provides that a company name must not be the same as or confusingly similar to a registered trade mark, a well-known trade mark or a mark in which an application has been filed for registration, unless the owner of the trade mark has consented in writing to the use of the mark as the name of the company.

When applying to reserve a company name at the CIPC, applicants must complete a CoR 9.1 form and confirm that the proposed name does not include any word, number or other element that constitutes a registered trade mark, well-known trade mark or an application for a registration of a trade mark. However, the CIPC does not consult the Trade Marks Register to confirm the correctness of the applicant’s statement.

This disconnect between the Companies Register and the Trade Marks Register has been the cause of much frustration, not to mention cost for trade mark owners as they have to be especially vigilant and frequently consult the Companies Register to ensure that their trade marks are not being incorporated in the names of companies, the owners of whom have no connection to or authorisation from the trade mark owner.

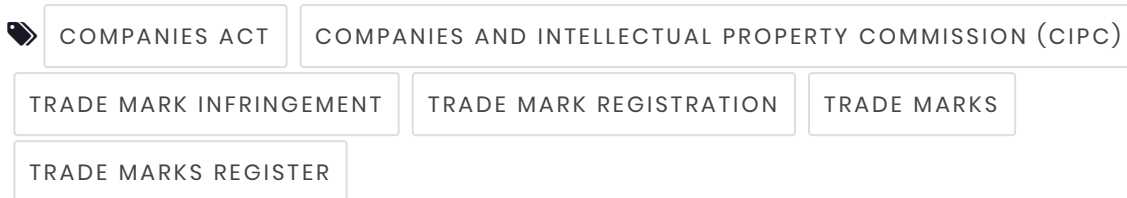
On the other end of the phone, proprietors of newly incorporated companies are shocked and confused when receiving a letter of demand from the owner of a registered trade mark, demanding that they change their company name. The obvious question we receive is, “Why would the CIPC allow us to register a company name when it infringes a trade mark?”

It is therefore recommended that proprietors wanting to register a new company, consult with a trade mark attorney to ensure that its chosen company name does not incorporate a trade mark, to avoid having to change it or defend it in company name objection proceedings before the Companies Tribunal alternatively, face trade mark infringement and / or passing-off actions being instituted by trade mark proprietors.

See also:

- [Changes to the implementation of the CIPC Mandatory compliance checklist](#)
- [CIPC draws up business rescue CPD policy](#)
- [Don't step on my red-soled shoes! Louboutin's Red Sole Trademark](#)
- [Intellectual Property as an economic tool for African small and medium enterprises \(SMEs\)](#)

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[Sara-Jane Pluke](#)

Sara-Jane heads up Eversheds Sutherland's Intellectual Property department and is a specialist in the field. She advises a variety of clients on various aspects of intellectual property, including but not... [Read more about Sara-Jane Pluke](#)

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[Georgia Barnard](#)

Georgia Barnard is an associate Eversheds Sutherland's litigation group and has experience in litigation and arbitration and commercial law. She has experience particularly in collections, insurance, pension, trusts, estates and... [Read more about](#)

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Sara-Jane Pluke

Sara-Jane heads up Eversheds Sutherland's Intellectual Property department and is a specialist in the field. ...



Georgia Barnard

Georgia Barnard is an associate Eversheds Sutherland's litigation group and has experience in litigation and arbitration and commercial law. She has experience particularly in collections, insurance,...

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