



Company Name Reservations in a Global Context: Trends and Innovations

Understanding Name Determination: Past, Present, and Future

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Foreword

Company names have long been a cornerstone of company registration, representing not only the identity of a business but also its standing in the marketplace. Entrepreneurs seek to differentiate their company through the use of distinctive, innovative or ‘catchy’ names.

In my career I’ve had the good fortune to have managed both the New Zealand Companies Office and the Intellectual Property Office of New Zealand (IPONZ). These organisations had a strong focus on business names (IPONZ especially, with the management of the trademark register for New Zealand). The issue of names, their suitability, “registerability or not” was a constant source of interest within these registries. In my experience there is nothing that gets registry officials more excited than the processes and arrangements for determining and approving names, I’ve seen some wonderfully animated conversations and international conferences on the theme. What is acceptable to one jurisdiction (or individual) is often different to another.

Historically, determining the suitability of these names has required significant human oversight, especially in jurisdictions where restrictions on offensive or protected words are enforced. This reliance on human intervention has ensured integrity but also presented challenges in terms of efficiency and consistency.

Name decisions are often the subject of complaint, appeal and, on occasion, media interest.

The future, however, holds immense potential. As we move towards fully automated name determination, technologies like artificial intelligence (AI) offer the promise of streamlining the process while maintaining accuracy and fairness. In this white paper, we take a look at the evolution of company name reservations—from their origins to the complexities they still present today. We explore how human judgment continues to play a critical role and how AI can assist in automating name determinations, including navigating the sensitivities around offensive or protected words.

At Foster Moore, we’re committed to shaping the future of business registries by combining the best of human expertise with cutting-edge technological advancements. This paper provides a thoughtful analysis of the past, present, and future of company name determination, offering insights that will help guide registries on the path toward full automation.



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Introduction

At Foster Moore, we've dedicated considerable thought to the evolving landscape of business registries. In recent years, we've seen the critical importance of interoperability in ensuring registers are not only connected but also future-proof. We've also highlighted the need for registries to embrace a clear Target Operating Model, offering a vision that can guide them through the digital future. Digital Identity has been another key area of focus, particularly in relation to the integrity of business registers.

In this white paper, we delve into a fundamental yet often underexplored aspect of business registries: company name reservations or name determination. From its historical roots to modern-day challenges, we examine how jurisdictions like Canada and Australia have approached the complexities of name reservations. We also explore the future—highlighting that some government agencies are already leveraging artificial intelligence (AI) to automate parts of the approval process, speeding up decision-making and improving accuracy in name determinations.

This exploration is not just a technical exercise; it is about ensuring that the very identity of businesses remains secure, consistent, and forward-thinking in an increasingly digital world. Welcome to a discussion that addresses both the legacy and the future of company name reservations.



History of Name Reservations

When one of the authors started working for the New Zealand Companies Office in the early 1980s the induction process involved understanding the benefits of incorporation of a limited liability company. Along with the obvious limited liability, separate legal entity and perpetual succession was the all-important name protection.

The Companies Act 1955 (since replaced, like the author) stated that:

“No company shall be registered by a name which- (a) Is identical with that of a company carrying on business in New Zealand (whether registered in New Zealand or not), or of any other body corporate registered in New Zealand under any Act, or so nearly resembles that name as to be calculated to deceive, except where that company or other body corporate, as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the company by the proposed name will not be contrary to the public interest”¹

Throughout history, business names have held significance beyond mere identification. They serve as a touchstone for company identity, brand recognition, and legal protection. In the early 20th century, various jurisdictions recognized the importance of name protection, enacting regulations to prevent confusion and deception.

Most business registries globally have some form of name protection for the companies they incorporate or register. These names may be granted against a simple set of checks, such as ensuring they are distinguishable from others on the register. To more complex sets of checks, such as in the Bolagsverket in Sweden, where a company name is guaranteed to be unique and is protected by virtue of incorporation. In Sweden a limited company must have a business name registered with Bolagsverket. If approved, the proposed name will be protected in the applicant’s registered line of business throughout the country.

It is common that there is a different set of rules for limited companies (legal entities) and business names (the trading name of an entity or natural person).



Case Study Australian Company and Business Names

This case study is a brief overview of the company and business name registration regime in Australia.

Businesses adopt names to help customers and other stakeholders find, identify and connect with them. Business names can be used to help define and distinguish a business and to impress customers and investors.

In Australia there are national databases of names maintained by the Government that can be searched by the public. This helps users identify who is behind a business, whether it is a company or other structure.

Contrary to what some may think, a business name and a company name are not synonymous. The key difference is that a registered business name is the name a venture operates under. A company name, however, identifies a legal entity on its own.

In Australia there is a longstanding national requirement to identify a company name upon registration as a legal entity, or to use the Australian Company Number as the name. A company must include the legal terms or abbreviations 'pty' and/or 'ltd' at the end of the name. For example, *JKL Registries Pty Ltd*.

A separate national requirement since 2012 exists to register other business names used in conducting business. For example, '*JKL Registries Pty Ltd*', might trade under multiple additional names such as '*Registry Solutions*' and '*JKL Security*'.

The requirement to register a business name extends beyond companies (legal entities) to other trading structures such as individuals, partnerships, sole traders, joint ventures, and trusts². For example, Sally Jones might be a sole trader operating her florist business under the name '*Sally's blooms*'. She doesn't need to register a business name if she only wished to trade under '*Sally Jones*'.

The Government applies different rules, both underpinned by legislation, when reviewing and approving company and business names. The rules reflect that business names have a high consumer protection focus and the tests go further towards reducing the confusion that almost identical names can create.

For companies, the key test is known as the 'identical test'. That is, subject to exceptions, you can use a name that is not identical to an existing company or business. This means that two different companies will be permitted to have names that are almost the same but for the smallest of variations. For example, '*JKL Registries Pty Ltd*' and '*JKL Registries plus Pty Ltd*'. This test is objective.

Business names are subject to additional tests that are more subjective in nature to pick up on similarities. For instance, the rules can disregard where a word is in the plural or singular, the use of spaces, and certain symbols and punctuation marks, the order of words, the use of www and so on. For instance, 'at' and '@' might be considered the same. It's important to note that most checks are automated, with some names referred for manual review. There are services to enable businesses to self-check available and similar names, as well as review and appeal processes in place. A key requirement is that a business name holder have an Australian Business Number (ABN). This is a unique 11-digit number that identifies a business to the Government and community.

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The last thing a business wants is for third parties to claim that they are operating a new business with reliance on their reputation, through a similar name. The registration of a business name doesn't prevent others with a similar name or trademark from acting against the business. It is the business' responsibility to be aware of similar names and trademarks. Trademarks can be searched via the Intellectual Property office.

More information on the Australian system, including all the detailed rules, exceptions and processes can be found at www.asic.gov.au, and www.business.gov.au, www.abr.gov.au and www.ipaustralia.gov.au.

Canada – an attempt at a federal name determination

There are 10 Provincial, 1 Federal and 3 Territorial business registers in Canada. How does that country manage name determination?

Federally incorporated corporations, not-for-profit corporations and cooperatives must comply with certain naming requirements under the Canada Business Corporations Act, the Canada Not-for-profit Corporations Act and the Canada Cooperatives Act. In addition, each Canadian Province and Territory has similar naming requirements under the respective legislation governing business corporations, not-for-profit corporations and cooperatives.³

A name must:

1. be distinctive;
2. not cause confusion with any existing corporate names, business names or trademarks;
3. contain a mandatory term such as Inc., Ltd. and so on, if required;
4. not contain any prohibited terms;
5. not suggest crown, governmental or institutional sponsorship or control; and
6. not be misdescriptive or misleading.

The NUANS (New Upgraded Automated Name Search) system is a Canadian government-operated database and search system that is used for conducting name searches for corporations, businesses, trademarks, and other entities. It is primarily used to ensure that the proposed name for a new corporation or trademark does not conflict with existing names on record.⁴

In Canada, there are 2 different kinds of reports: a NUANS biased report; and a provincial name report. The NUANS database provides name search reports for the following jurisdictions: Canada (Federal); Ontario; Alberta; New Brunswick; Nova Scotia; and Prince Edward Island. For all the other provinces (B.C., Quebec, Manitoba, Saskatchewan and Newfoundland & Labrador), each require a name search report from their respective provincial database and registry and NOT from the NUANS database.



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Here's how the NUANS system works for corporate names and trademarks:

1. **Name Search:** When a person or entity wants to register a new corporation or trademark in Canada, they must conduct a NUANS search to check if the desired name is available and does not conflict with existing names.
2. **Conflict Check:** The NUANS system compares the proposed name against a database of existing corporate names, business names, and trademarks in Canada. It looks for similar-sounding names and variations, as well as any potential matches that could lead to confusion.
3. **Report Generation:** After conducting a NUANS search, a report is generated that lists existing names that are similar to the proposed name. This report helps the applicant assess the likelihood of their proposed name being accepted for registration.
4. **Decision-Making:** Regulatory authorities, such as provincial or territorial corporate registries, use the NUANS report to make informed decisions on whether to approve the registration of a new corporation or trademark. If the NUANS report indicates potential conflicts, the applicant may need to modify the proposed name to avoid confusion.
5. **Validity Period:** A NUANS report is typically valid for a limited period (often 90 days) from the date of issuance. This means that the proposed name must be submitted for registration within the validity period of the NUANS report.

Canada – Protecting corporate names Federally and Provincially

Incorporating federally under the Canada Business Corporations Act (CBCA) provides a greater degree of protection for corporate names than Provincial incorporation. While federal corporate name protection is somewhat limited, it is second only to trademark protection, in terms of its scope for protecting business names (a registered trademark provides a greatly expanded set of legal protections for the name). Because of the scope of corporate name protection provided under the CBCA, proposed corporate names are thoroughly scrutinized by Corporations Canada according to strict name granting guidelines. As a result, many names that would be acceptable for corporate registration provincially are rejected by Corporations Canada as being too vague or non-distinctive.⁵

It should be noted that although regulations in both federal and provincial jurisdictions require that a corporate name not be identical to, or confusingly similar with, an existing corporate name or trademark, these regulations are applied quite differently in each jurisdiction. For instance, in some Provinces, a proposed corporate name is likely to be acceptable unless it is identical to an existing one. The onus is on the incorporator to determine confusion.

When this is compared to the name-granting system used by the federal government, which uses government examiners to determine confusion using more rigorous standards, it becomes evident that many corporate names which are acceptable for Provincial registration may be rejected for federal incorporation.

Protected words/ names

It is common for jurisdictions to protect some types of names. Commonly this is done through legislation. Words that might denote a relationship to a government, royal or international body are often protected. Examples such as using the word Olympic⁶ are restricted to companies that have received permission from the International Olympic Committee.

Codifying these words into the name determination systems used to manage the checking and approval of names is relatively straight forward of course. What is less easy to manage are proposed names that might be considered offensive.

Offensive words / Cultural and contextual offense

Many jurisdictions have statutory prohibitions against the registration of names that are considered “offensive, obscene, contrary to public policy or likely to cause offence to any particular religious group or section of the community”.

Company registries have, on occasion, allowed offensive or controversial names to be registered, often leading to public backlash or confusion. For example, the UK’s Companies House has approved names like *‘The Book Slut Ltd’*, despite rejecting many others with similarly provocative language, such as *‘Egg Slut’*, which was deemed too offensive to register under that name, leading to the company being listed under a different corporate entity name.⁷

Another notable example includes variations of *‘Cosa Nostra’*, the Sicilian Mafia’s name, which have been submitted several times, including for a fashion brand, only to be rejected for their criminal connotations.

Some names that were rejected due to offensiveness include *‘Pervert Cat Ltd’*, *‘Shit Creek Paddle Company Limited’*, and *‘Go Fudge Yaself Ltd’*, as part of Companies House’s rigorous filtering process aimed at maintaining decency in business names.

These cases illustrate that while registrars generally aim to prevent offensive names from being approved, the interpretation of what constitutes “offensive” can sometimes lead to surprising discrepancies.

Business registers have long codified lists of known offensive words, profanities or phrases that fall short of the offensive test. The emergence of AI and large language sets means that patterns or phrases that might have previously only been recognisable to a human operator can now be flagged and surfaced by AI tools.



Company names vs Trademarks

Overall, the checks taken by a business registry aim to ensure that the proposed company name is unique, legally permissible, and not misleading to consumers or the public.

It's not a matter of one being better than the other, as they serve different purposes.

A company name is the legal name of a business entity and identifies the company for legal and administrative purposes. It is often used for branding and marketing purposes as well, but it does not necessarily offer legal protection for the name itself.

On the other hand, a trademark is a symbol, word, or phrase (colour, sound or smell) that is used to identify and distinguish goods or services offered by a particular company from those of other companies. Trademarks offer legal protection for the name or symbol itself, and can be registered with government agencies for greater protection.

So, a company name is important for legal and administrative purposes, while a trademark is important for branding and protecting intellectual property. Both are important for different reasons. In fact, many companies register their company name as a trademark to protect their brand and identity.

Trademarks provide broader protection than a registered company name because they cover not only the name but also logos, symbols, and other distinctive elements associated with the brand's goods or services. A company name registration only protects the name in the context of identifying the business entity within its jurisdiction, while a trademark offers nationwide or even international protection, preventing others from using similar marks that could cause confusion in the marketplace.

In a recent Court of Appeal decision in Tanzania the Court clarified that the registration of a company name does not automatically confer an exclusive right to the use of that name as a trademark. It emphasised that the rights obtained through company incorporation under the Companies Act are distinct from the rights acquired by registering a trademark under the Trade and Service Marks Act (TSMA). The exclusive right to use a trade or service mark in Tanzania is acquired through formal trademark registration.

In Tanzania the Court found that the registration of a company name does not automatically grant the right to use it as a trademark. This is significant and sets clear boundaries between the registration of company or business names and the registration of trademarks, and their legal consequences.⁸

However, exceptions to this rule include cases where common law trademark rights exist, as businesses can acquire certain rights through actual use without formal registration. Additionally, in some countries, a well-known company name might receive protection even without a trademark, especially if it has built significant goodwill in the market.

Registries occasionally get the decisions wrong

There are several documented cases where registrars or company name authorities have made questionable decisions, leading to confusion or disputes over company names. One example involves the UK's Company Names Tribunal, which handles complaints about opportunistic registrations. In the case of *'Botanica Agriculture and Extraction Ltd'* versus *'Botanica Ltd'*, two companies had similar names, which led to a legal dispute. The

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tribunal initially rejected the complaint, but the High Court later determined that the timing of goodwill establishment had been misinterpreted, causing the case to be reopened.⁹

Another notable example is when a company named ‘Sue Ryder Bad Limited’ was registered, clearly conflicting with the established charity ‘Sue Ryder’. This resulted in legal action, with the tribunal ruling that the newer company had to change its name, as it was likely to mislead the public into thinking it was associated with the charity. The tribunal emphasized the importance of protecting established goodwill from confusingly similar names.¹⁰

In other jurisdictions, such as Australia, similar issues have arisen. The Australian Securities and Investments Commission (ASIC) has faced disputes when registering business names that are too similar to existing ones, potentially misleading consumers. ASIC has guidelines to prevent this, but enforcement has not always been foolproof, resulting in disputes over the use of similar business names.¹¹

These cases highlight that registrars sometimes fail to prevent the registration of misleadingly similar names, leading to legal challenges and highlighting the importance of clear naming rules and timely enforcement.

Unforeseen issues with company names

In 2020, a notable incident occurred when Companies House in the UK approved a company name that was effectively a potential software hack.

The name included special characters, which could be interpreted as code injection or lead to vulnerabilities in web-based systems that interact with the registry. The name in question was registered as ‘<script SRC=HTTPS://EVIL.COM> LTD’, which, when processed by a web interface, could potentially execute malicious scripts, a form of cross-site scripting (XSS) attack.¹²

This raised serious concerns about the security protocols in place at Companies House and how such an obvious flaw in the system could allow potentially dangerous names to pass through unnoticed. The incident sparked discussions about the need for better safeguards in the company registration process to prevent names that could exploit system vulnerabilities.

Looking Forward

The future is AI?

The concept of black box and white box algorithms underscores a new paradigm in AI—one where transparency may not require a compromise in accuracy. (Want to cite the HBR article on AI And Machine Learning¹³)

Historically, tech leaders have assumed that the better a human can understand an algorithm, the less accurate it will be. But is there always a trade-off between accuracy and explainability? The authors tested a wide array of AI models on nearly 100 representative datasets, and they found that 70% of the time, a more-explainable model could be used without sacrificing accuracy. Moreover,



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in many applications, opaque models come with substantial downsides related to bias, equity, and user trust. As such, the authors argue that organizations should think carefully before integrating unexplainable, “black box” AI tools into their operations, and take steps to help determine whether these models are really worth the risk before moving forward.

The specific checks taken by a business registry to determine whether a company name may be used can vary depending on the country or region, but generally involve the following steps:

1. **Availability Check:** The registry checks if the proposed name is already in use by another registered company in the same jurisdiction. If the name is already in use, it cannot be registered by a new company.
2. **Trademark Check:** The registry checks whether the proposed name infringes on any existing trademarks in the same jurisdiction. If the name is similar to an existing trademark, it may not be registered (in many jurisdictions the applicant for a company name is advised that they are responsible for checking the trademark register and are warned that a company name may be challenged by an existing trademark holder)
3. **Legal Restrictions:** The registry checks whether the proposed name violates any legal restrictions or regulations. For example, many jurisdictions do not allow certain words or phrases in company names.
4. **Misleading Names:** The registry checks whether the proposed name is misleading or could be confused with another company. For example, a new company cannot use a name that implies an affiliation with an established company if there is no actual affiliation.
5. **Name Reservation:** In some jurisdictions, a company may be required to reserve its proposed name for a certain period of time before it can be officially registered. This allows time for any objections or disputes to be resolved.

Yes, it is possible for a business registry or registrar to use AI to approve company names. In fact, many government agencies and businesses around the world are already using AI technologies to automate certain parts of the name approval process.

For example, some business registries use natural language processing (NLP) algorithms to analyse proposed company names and check them against existing names and trademarks. AI can also be used to identify potential conflicts or issues with proposed names, such as if a proposed name contains a word that is prohibited by law or regulation.

AI can also be used to speed up the name approval process by automating routine tasks and allowing human staff to focus on more complex cases. Additionally, AI can help improve consistency and accuracy in the name approval process by reducing human errors and biases.

Overall, the use of AI in name approval processes can offer several benefits, including increased efficiency, accuracy, and consistency. However, it's important to note that AI is not a replacement for human judgment and oversight, and should be used in conjunction with human staff to ensure that the name approval process is fair, transparent, and effective.

Yes, AI can be used to identify offensive words or phrases in company names. There are various natural language processing (NLP) techniques that can be used to analyse and classify text data, including company names, and identify offensive language.

One approach is to use machine learning algorithms to train AI models to recognize offensive language based

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on patterns and characteristics of offensive language. The AI model can be trained on a large dataset of labelled examples of offensive language and non-offensive language, and then use this training to classify new examples of language.

Another approach is to use rule-based systems to identify specific words or phrases that are known to be offensive or inappropriate. These rules can be based on predefined lists of offensive words or patterns of language that are commonly used in offensive contexts.

To identify offensive language in company names specifically, a combination of these approaches can be used. The AI system can first check if a company name contains any known offensive words or phrases based on predefined rules. If no such words are found, the AI can then use machine learning algorithms to analyse the name for any other potentially offensive language patterns.

It's important to note, however, that language is complex and context-dependent, and the use of AI to identify offensive language is not always accurate or reliable. Therefore, any AI system used for this purpose should be regularly reviewed and updated by human experts to ensure that it is effective and fair.

Sweden has introduced a tool that allows entrepreneurs to describe their proposed business and an AI application provides them with suggested names for their company. This service is unique from other 'brand idea' tools in that it validates the proposed name against the existing register of companies and asserts that it is registerable.

Conclusions

Company names are here to stay. Despite numerous attempts to introduce numbered companies or streamline incorporation, the identification of companies by their unique names is a core component of business registers.

Automation of business registry services has been going on for many years. Removing paper and replacing it with online forms has seen a significant reduction in the number of staff employed (in data entry roles) in registries. One area that still requires human intervention and therefore impacts on timely incorporation and cost is the name determination function.

The future is bright with the potential of AI, machine learning, and simplified business rules. These advancements will help further automate the name determination process, reducing the need for human involvement and enabling faster, even instantaneous, company registrations. This will ultimately lead to greater efficiency in business registration, benefiting both registries and the businesses they serve.



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Foster Moore®, a Teranet company, – is a global leader and specialist registry software company focused on digital services for modernizing government. For two decades the team at Foster Moore has developed and maintained online business registry systems, and a host of other smaller electronic registries across the globe.



Teranet® is Canada's leader in the digital transformation, delivery, and operations of statutory registry services with extensive expertise in land and corporate and personal property registries. For more than three decades Teranet has been a trusted partner to governments and businesses in building stronger communities and economies. Teranet developed and currently operates Ontario's Electronic Land Registration System and Writs System, Manitoba's Land Titles and Personal Property Registries and Canada's largest integrated Collateral Management System.

At Foster Moore, our software solutions and experienced team are uniquely positioned to help you navigate the complexities of company name reservations and identification. Whether it's overcoming present challenges or preparing for the future with AI-driven automation and digital identity solutions, we offer the tools and expertise to ensure your business registry remains secure, efficient, and future-proof. If you're interested in learning more about how we can support your registry's name reservation processes, reach out to us today.

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