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

These terms have different meanings, and while there are grey areas, “trade name” can be described as relating to the business or entity, while “trademark” and “service mark” refer to the “product(s)” of the business or entity. If your “product” is considered a good(s), you would apply for a trademark. If your “product” is a service, you would apply 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 refer to trade names, the answers apply to all three types of registrations.

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

Registration of a trade name with the Department DOES NOT grant you ownership of the trade name.

This is often a major source of confusion, as ownership of a trade name is acquired by using the name before the public. Many trade names in Hawaii are not registered with the state, however, 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 for you to own the trade name. A benefit of registering your trade name is to provide notice to all others that you are claiming the rights to use the name. Going through the registration process may also let you know if there is anyone else who is claiming the right to use that name. Once your name is registered, those who come along after you will have notice of your claim. In either case, it can potentially help you avoid legal disputes.

*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 there is no “substantially identical” registration. It is your responsibility to ensure that you are not using a name that is already in use or so close to one in use that the public may 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.

*Continued on next page.*

Page 3 of this Information Form contains a list of sources that you can use to check on a particular name prior to seeking use and/or registration of that name. Take your time to do a careful search in the state to ensure that the name you want to use (or one that is too close to it) is not already in use.

*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, 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. For instructions on this procedure, please contact 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. For instructions on this procedure, please contact 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. Re-registration can be submitted at any time during the six months preceding the expiration date and will be valid for another five-year term.

Initial filings filed online through [Hawaii Business Express](#) can receive free email reminders. Anyone can also sign up for email reminders through the "[MyBusiness Notifications](#)" page on Hawaii Business Express. There is a \$2.50 fee per year per name or mark to subscribe. Renewal reminders are sent 180, 90, and 30 days prior to the expiration date.

To find information on trade name, trademark or service mark registrations, visit <https://hbe.ehawaii.gov/documents/search.html>.

Renewal applications can be filed online on our website, <https://hbe.ehawaii.gov/BizEx/home.eb>

**Sources to check for Trade Name, Trademark and Service Mark usage include, but are not limited to:**

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

*\* 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.*

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For any questions, call (808) 586-2727 or email [breg@dcca.hawaii.gov](mailto:breg@dcca.hawaii.gov)

**NOTICE: THIS MATERIAL CAN BE MADE AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS. PLEASE CALL THE BUSINESS REGISTRATION DIVISION SECRETARY AT (808) 586-2744 TO SUBMIT YOUR REQUEST.**

**ALL BUSINESS REGISTRATION FILINGS ARE OPEN TO PUBLIC INSPECTION. (SECTION 92F-11, HRS)**