What’s in a name? Quite a bit actually...

ASPD member Amanda Maskery talks about the importance of choosing a name for your brand and making sure you protect it once it’s yours

When launching a new dental practice, one of the first things you will need to deal with is your name. Your name is your “brand”. It is the most powerful marketing tool you have. For this reason, it is imperative to check that the name is free to use and once you have, to protect your brand as much as possible.

Checking your name
Before you settle on a name, you must check to see if anyone else is using it. You must check the registers at Companies House and the Intellectual Property Office (IPO) and you should also check other directories such as Yell to ensure that no other practice is trading under that name.

You must do these checks before you decide on a name. If you do not, you may find that you spend large amounts of money on designing your logo and producing new brochures/signs/letterhead, only to find that someone else is already using that name and you have to re-brand.

Do you use someone else’s name or logo (or something that looks or sounds similar to that name/logo), they may take action against you for infringement. If successful, the claimant can ask the court for an injunction, damages, delivery up of all the infringing materials and even an account of the profits you have made by trading under that name.

Protecting your brand
Once you have done your checks, the next step is to protect your brand. One of the strongest forms of protection is to register your brand as a trademark.

A trademark is a sign capable of being represented graphically and which distinguishes the goods and/or services of one trader from those of another. It may consist of words, designs, shapes, colours and sounds.

In order to register your trademark, you must apply to the IPO. In order for you to register it, a trademark must be distinctive for the goods and services you will be providing. It must not describe your goods and services or any characteristics of them, for example, a dental practice would not be able register its name as “The Dentist”, as this just describes the service offered by the practice.

The Trademarks examiner will check your mark to make sure that it is registerable. He will then check the Trademarks Register to see if there are any earlier trademark registrations that look or sound the same or similar to the one that you wish to apply for. The examiner will write to the owners of those marks, notifying them of your application. You mark is then published in the Trademarks Journal and there is a period of two months during which third parties may object to the registration of your mark. If no objections are made, the mark will be registered and it will be protected for 10 years from the filing date. It can then be renewed for further periods of 10 years on payment of renewal fees.

It is a common myth that registering a company or limited liability partnership at Companies House automatically means that you have a registered trademark.

This is not true. In order to register a trademark you must separately apply to the IPO.

Do I need to register?
No, but if you do not register your trademark, you will only be covered by the law of “passing off”. To succeed in a passing off action you would have to show that your business has substantial goodwill attached to it. You would also need to prove that you have suffered damage. In practice, this is difficult to show, particularly if you are a new or small business. Pursuing a passing off action can be time consuming and expensive.

Registering your trademark is an easier (and often cheaper) way of protecting your mark. If your trademark application is successful, you will have a monopoly right in the UK to use your trade mark on the goods and/services for which it is registered. You can out the ® symbol next to your mark; this warns others that your mark has been registered.

Some examples of dental practices that have registered trademarks include James Hull & Associates and ADP Dental Company Limited.

Having a website
These days, most businesses have a website which has been put together by a web developer. The web developer will often register your domain name for you.

You must ensure that the web developer registers the domain name in your name. If the developer registers the site in his name, he will be the registered legal owner of the domain name and will be able to deal with it as he wishes. This may lead to problems in the future when you come to sell or transfer the domain name.

As clients, we don’t tend to think about the importance of branding. However, in business, an effective brand strategy will give you the edge over competitors. Your brand may be the single most important asset that your practice owns. It is well worth protecting.

About the author
Amanda Maskery is an associate at ASPD member Sintons LLP. ASPD members offer professional, objective and practical advice and services, based on experience within the industry, to dental practices and other businesses within the dental sector. ASPD members include solicitors, accountants, banks, financial advisers, valuers and sales practices, insurance brokers and leasing and finance companies. For further information on the ASPD, its members and services, call 0800 458 6773 or visit www.aspd.co.uk.