



Industry Canada

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Choosing a name....

... for your
federally
incorporated
company

When you apply to incorporate a company under the **Canada Business**

Corporations Act, you may choose to use a corporate name or have a number name assigned to you. Although incorporating under a name involves additional effort and expense, there are advantages to doing so.

A corporate name is an important aspect of corporate communication and advertising today and may be a very valuable asset. It tells people who you are and will often embody the goodwill that you have built up with your customers and suppliers.

An approved federal corporate name offers an extra degree of protection of your rights to that name. Specifically, federal incorporation allows your business to operate using its corporate name right across Canada, which is important if you decide to expand your business to other provinces or territories.

Choosing a name

Your name must meet certain requirements before it is approved by the Corporations Directorate:

- ▶ The name must be distinctive.
- ▶ The name must not cause confusion with any existing name or trade-mark.
- ▶ The name must include a legal element.
- ▶ The name must not include unacceptable terms.

Distinctiveness

It must be easy to distinguish your proposed name from the names of other businesses that carry on the same activities. Your name will not be distinctive if it merely describes those activities. The name "Car Manufacturer Inc." lacks distinctiveness since it describes the activities of all car manufacturers.

You can achieve distinctiveness in a number ways. One of the most common is to include an element that makes it distinctive. "Carwash Incorporated," for example, is too general, but "East Side Carwash Incorporated" is distinctive.

Made-up words also give a name distinctiveness. They can be a combination of two dictionary words such as "Infotech" or something completely new such as "Xerxos." Unusual names are highly distinctive and are given greater protection because they are unique.

Confusion with other names or trade-marks

It is to your advantage to learn about possible name conflicts as soon as possible. If your name is too close to an existing corporate name or trade-mark, the owner of that name or trade-mark could launch a court action to compel you to stop using your name and perhaps even to pay damages.

For many people, the prospect of discovering that their business name may be confused with another is intimidating. This is particularly true if you have invested considerable

time and effort in coming up with a name or have been operating under the proposed name for some time before incorporating. The federal name approval process helps you to avoid this problem by identifying potentially confusing names or trade-marks in a federal database of names and ensuring that you satisfy yourself that confusion is not likely.

In assessing whether confusion is likely, the Corporations Directorate looks at all circumstances, including a comparison of the goods, services and operating area of your proposed business with those of existing businesses. While name approval from the Corporations Directorate does not guarantee that you are not violating the rights of another firm or individual, it significantly reduces your risks.

You must submit a NUANS (Newly Upgraded Automated Name Search) report as part of your application to use your corporate name. A NUANS search compares your proposed name with a federal database of names that includes trade-marks, provincial and federal corporate names and most provincially registered business names (except those in Quebec).

Legal element

The accepted way to include a legal element in a corporate name is to add a term to the end of the name such as Limited, Incorporated or Corporation, or contractions of these such as Ltd., Inc. or Corp.

Unacceptable terms

Unacceptable terms fall into three categories. First, there are terms that imply connections that do not exist. Your corporate name cannot suggest, for example, that you are a branch of the government or that you offer services or products governed by financial legislation, such as trusts, loans, insurance and banking.

The second type of unacceptable term is one that falsely describes your business. You cannot, for example, include terms that suggest that your company is selling cars when it is really selling only tires.

Finally, obscene terms or terms that suggest that your business provides obscene, scandalous or immoral services are not allowed.

Applying for a corporate name

The most important part of your name application is a NUANS report. There are several types of NUANS reports and the one you need for federal incorporation is a Canada-biased report. A Canada-biased report means that the proposed name was searched against all the names found in the database, not just names registered in a particular province. Private businesses known as search houses will do the appropriate search and give you the NUANS report for a fee. You can find a search house by looking in the Yellow Pages under "Searchers of Records," "Incorporating Companies," "Incorporation" or "Trademark Agents."

The NUANS report is valid for 90 days. If you do not submit your application for incorporation within that period, you must get a new report.

You may submit your proposed name along with your application for incorporation or you may ask, by fax, for pre-approval of your proposed name. If you choose to submit your name along with your complete application, please be aware that if the Corporations Directorate rejects your proposed name, the entire application will be refused. A pre-approved name can prevent this situation from happening. There is no fee for this service. Fax your application to (613) 941-5782.

Your application for pre-approval or for incorporation should be as complete as possible. If your first application is rejected, you may reapply with additional information later, but it is easier, and less expensive, to include all the relevant information the first time. Information considered relevant includes descriptions of your product or service, your customers and where your business will operate.

The Corporations Directorate publication *Name Granting Guidelines* features more information about NUANS and the requirements for corporate names. To ensure that you have included all the relevant information, you may want to use the *Corporate Name Information Form* found in Annex D of *Name Granting Guidelines* and submit it with your name application.

Keeping your good name

The name approval process does not guarantee protection against names or trade-marks existing at the time the name is approved. While the NUANS search report is usually very reliable, the NUANS system is not foolproof. The responsibility for ensuring your business name does not infringe on the rights of others is yours alone. It is also up to you to make sure that no new business names or registered trade-marks infringe on your rights.

Not-for-profit corporations

Generally, names for federal not-for-profit corporations must meet the same requirements as for federal business corporations except the legal element requirement. However, not-for-profit names may receive a slightly more liberal interpretation with regard to distinctiveness since they are typically more general and descriptive than business names.

No publication or information issued by the Corporations Directorate is intended to replace professional advice.

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Frequently asked questions

Can I use my own name in the corporate name?

Yes, personal names are sufficiently distinctive and are acceptable in a corporation's name.

Generally, however, you cannot use your name alone as the name of the corporation. "Jill Jones Ltd." is not acceptable but "Jill Jones Consulting Ltd." is. No consent is required if you are signing the incorporating documents or if you will be a director of the new corporation. Otherwise you will have to provide such consent.

My business already has a name but is not incorporated. Can I continue to use this name if I apply for federal incorporation?

All corporate names must satisfy the federal corporate name requirements. However, this does not prevent your corporation from carrying on business using the present name in the province where the name is registered.

For more information...

The following publications and forms are available free from the Corporation Directorate's Information and Publication Unit at (613) 941-9042 or on the World Wide Web (<http://strategis.lc.gc.ca> — once you are connected to *Strategis*, click on "The Marketplace: Services, Laws and Regulations" and then on "Corporations Directorate").

- ▶ *Name Granting Guidelines*
- ▶ *Incorporation Kit* (includes the forms required for incorporation)
- ▶ *Small Business Guide to Federal Incorporation*

A voice information service with recorded messages that may answer your questions on names is available at (613) 946-0147 or (613) 946-0148. You can also obtain a print version of these messages on the World Wide Web or by contacting the Information and Publication Unit.