

## Don't leave trademarks unprotected

Getting Started Intellectual property is often a new company's most valuable asset, but many entrepreneurs fail to take its defence seriously, planting the seeds for possible legal conflicts

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Marie-Claude Giguere's business was rolling along when she ran into a major snag: another company challenged her corporate name, saying it had staked a claim to it first.

Giguere helps seniors to find services so they can stay in their homes or relocates them to retirement residences.

"I envisioned having to change my letterhead, my business cards," Giguere said of the call she got a year ago saying her business name was illegal.

Luckily for Giguere, she was able to avoid legal wrangling by making a slight modification to the French version of her name. But she had to consult several professionals to straighten things out.

Too many entrepreneurs make the mistake of cutting corners when it comes to protecting the intangible assets of their business, known as intellectual property. But a company name, coveted invention or original creation can add as much value to a small business as more concrete assets.

Giguere, a recreologist, was working as director of activities in a seniors residence when she got the idea for her business.

"I'd heard that the service existed, but had heard a lot of negative comments about how it was done," she said of assisting seniors.

Motherhood also pushed Giguere into becoming an entrepreneur: her employer balked at letting her work part-time after she had her first child.

Working from home, Giguere launched Helping Seniors/Services d'aide aux aines six years ago.

The bulk of her business is relocations. Giguere researches and visits all types of private residences in the greater Montreal area and, for a fee, helps seniors and their families make a good choice of living environment.

Giguere filled out the paperwork herself and registered her company's name and logo with the federal agency responsible for trademarks, one kind of intellectual property.



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Marie-Claude Giguere (right) thought her business's name and logo were protected after she registered them with Ottawa. But she ran into problems because an Ottawa charity had used a similar trademark. Giguere, whose business advises seniors on home services or relocating, speaks with Margaret McCardel-Smith at her house.

A trademark is a word, symbol, picture, design or combination of these features that is displayed to distinguish a product or service.

Having registered, Giguere thought she was protected. Wrong. An Ottawa charity called Help the Aged/Aide aux aines (Canada) said Giguere's name was too similar to theirs.

As Giguere discovered, the Canadian system is essentially a "first come, first served" one, where the first person to use a trademark, even if they haven't registered it, has priority.

Giguere turned to trademark agent Jessie Belot to sort things out.

"It's not the responsibility of the government to check all the names that exist, only to check if it exists in their register," Belot said.

"As an agent, I have ways of checking outside the government registry."

So why register a trademark? Registration, good for all of Canada for 15 years, makes it easier to prove your priority in the event of a dispute, Belot said.

As a general rule, a trademark will be disallowed if it creates confusion in the mind of the public because it is too similar to an existing mark.

Belot estimates the cost of registering a trademark, including searches and professional fees, at between \$1,000 and \$1,300.

Lawyer Dany Perras said a mistake too many entrepreneurs make is underestimating the value of their intellectual property, which is known as IP.

"They think it's not important because it's often not tangible," said Perras, who runs a workshop on IP for Youth Employment Services, a job search and business skills agency in Montreal.

Properly protected IP not only increases your company's value, Perras said, it can become a source of revenue through licensing or distribution agreements.

Aside from trademarks, a second important category of IP is patents. A patent is a right given by the government to an inventor to take legal action to stop others from making or selling the invention.

Patents are only granted for inventions that are novel, useful and not obvious to someone skilled in the field.

Since the information required in patent applications is detailed and technical, it is best to consult a patent agent.

You should apply for a patent before offering your product for sale or making it public, experts advise.

The cost of securing a patent, which depends on the complexity of the invention, can be from \$5,000 to \$50,000, Perras said.

The third main type of IP is copyright. Artists and authors have the exclusive right to reproduce and disseminate their work or allow someone else to do so.

Materials that are protected include musical compositions, books, works of art and computer programs.

In Canada, copyright comes into existence automatically on creation of the work; there is no legal requirement to register.

Nonetheless, you may voluntarily register, which gives you a certificate showing ownership of the work.

The fourth major type of IP involves industrial designs.

These are original shapes, patterns or ornamentation applied to a finished article. Examples include decoration on a spoon handle or the shape of a table.

Unlike copyrights, industrial designs must be registered to be protected.

Dany Perras said that, short of registering an invention, entrepreneurs can obtain some protection by means of non-disclosure agreements signed by potential investors, partners and employees.

More information on IP can be found online at Industry Canada's Canadian Intellectual Property Office: [www.cipo.gc.ca](http://www.cipo.gc.ca).

Entrepreneur Giguere said she would advise business owners to do a proper search with professional help to see if they have any IP that needs to be registered.

"It turned out OK," she said of getting tripped up by trademark rules. "But it could have been a lot worse."

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