

## Differences between trademark, trade name and company name

Although they are related to the identity of a company, **trademark, trade name and company name are not the same.**

### Difference between trademark and trade name

The **trademark** and the **trade name** are different distinctive signs that fulfill complementary functions in the business field.

The **trademark** identifies and distinguishes products or services in the market, allowing consumers to recognize their business origin.

The **trade name** identifies the company itself as an economic subject in the commercial traffic and serves to distinguish it from other companies that carry out identical or similar activities. The trade name does not distinguish products or services, but the company itself that carries out the business activity. It may coincide with the trademark or be completely different.

Although both distinctive signs **can (and must) be registered in Spain before the Spanish Patent and Trademark Office (SPTO)**, they have different purposes: the trademark protects “what is sold”, and the trade name protects “who sells it”. Moreover, as we will see below, the same company/entity may have several products with different trademarks under a single trade name.

In any case, the content of both rights is very similar and **both are enforceable against third party registrations, or third party uses**, of both trademarks and trade names. In fact, there are legislations that do not contemplate the trade name registration modality, in which the registration of the trademark for services appropriate to the activity of the company or entrepreneur would be sufficient.

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## How to know if it is a trademark or a trade name?

**It is difficult to distinguish a trademark from a trade name**, the differentiation is minimal, especially in the case of service marks and when the same term is used in advertising, signs or websites.

Is the distinctive sign used to identify specific goods or services? If the sign appears on packaging, labels, window displays, product advertisements or service catalogs, we are usually talking about a **trademark**.

Is the distinctive sign used to identify the company as such and to differentiate it from the competition, and does not refer to a specific product or service? If the sign is used as a commercial identity to present itself as a company to customers and to differentiate it in commercial traffic, the option of a service mark or trade name is possible, but, in this case, it seems that the most appropriate figure would be that of the **trade name**.

## Difference between commercial name and company name

The **company name** is the official name of a commercial company that identifies it as a legal entity, i.e., it is the name under which the company conducts legal transactions and appears in official documents.

It is the name that the company reserves in the Commercial Registry as part of the incorporation process, which culminates with the registration of the company in the Commercial Registry.

On the other hand, the **trade name**, as we have already mentioned, is the distinctive sign that the company can use to identify itself to the public and in its market concurrence. In Spain, this name is registered before the Spanish Patent and Trademark Office (SPTO), and may or may not coincide with the company name.

Until the amendment of the Trademark Law in 2001, the registration of the trade name for the stated corporate purpose was mandatory, as was the required match between the name of the applicant entrepreneur and the trade name applied for (principle of truthfulness).

## Why is it important to know these differences?

It is important to know the difference between trademark and trade name, on the one hand, and company name, on the other hand. **The company name does not confer the right of opposition**, under corporate commercial law, to prevent acts of use of said name by third parties, **whereas the right over the trademark and trade name does allow action against such acts**, and even against the adoption of a company name that is identical or confusingly similar to a registered trademark or trade name.

Imagine registering in Spain a company with a corporate name, but not registering the trademark: another company could legally use an identical or similar name on its products if it first registers it before the SPTO, **but not as a corporate identifier, but as a commercial, mercantile identifier of, for example, the services that make up the corporate purpose of the company.**

### Do you want to register your trademark or trade name in Spain?

At **UNGRIA** we have a team of trademark attorneys that can help you [register a trademark and trade name in Spain](#):

- We conduct an exhaustive search to identify possible conflicts with already registered trademarks or trade names;
- We prepare a detailed legal analysis on the chances of success of the registration;
- We manage the entire registration process;
- We monitor the use and registration of similar trademarks or trade names to protect the exclusivity of our clients' rights;
- We monitor our clients' trademarks and trade names throughout their entire legal life;
- We handle the timely renewal of a trademark or trade name;
- We have trademark attorneys who can provide legal advice and represent our clients before the courts, if necessary.

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