



Protect your name



# Guide to ‘passing off’?

## What is ‘passing off’?

Your company’s name and reputation are its foundations, and vital to your brand. It is important to protect them and ensure that no other business copies them. That is why the law of ‘passing off’ stands: to protect a trader’s goodwill and reputation.

A company commits a passing off offence if it copies another trader’s name (identically, phonetically or through similar spelling), trade mark or distinctive element. Passing off can be committed either intentionally or accidentally. In order to make a successful claim against someone passing off, you would need to show that:

- your business name has been misrepresented
- the misrepresentation has been made to your current or prospective customers
- the misrepresentation damages your business, its reputation or the foundation on which your name has developed.

Any company which commits passing off is legally required to change its name and/or trade mark. In cases where passing off is claimed to be accidental, your case would be successful if the offending company continued to trade despite being aware that they’re ‘passing off’.

## What does not constitute passing off?

At National Business Register, we believe it’s important you know the extent to which your legal rights and responsibilities stretch, especially when it comes to serious legal issues such as passing off allegations. There are some circumstances which do not amount to passing off. For instance, we’d be unable to file a claim if:

- it’s for a different action – for example, if there is a partnership dispute
- your trading name is identical or confusingly similar to an existing trade mark and we were not instructed to carry out a trade mark search
- you are involved in a contractual dispute or matters where a contract is in force
- you are involved in a conflict with previous business partners, employees or employers
- you are involved in a conflict between relatives
- there is a domain name dispute
- it involves a matter not approved by National Business Register LLP’s Legal Counsel.

## What is required in order to prove passing off?

In order for passing off litigation to be successful, you must show that a company has misrepresented itself in a way that has caused damage to your own company. Your allegation must be supported by:

1. written statements from existing and prospective customers and suppliers stating that the offending company’s name misled them into purchasing goods or services which they believed were from your company
2. relevant advertising statements/packaging which show that a misrepresentation is being made and that confusion is occurring as a result of it
3. photographic evidence that the existing business is using your company’s name
4. any other evidential requests we might make.

# What procedures are involved in a passing off action?

Dealing with a case of passing off can be stressful and confusing. If your company is signed up with National Business Register we'll be able to guide you through the process and act as an intermediary for you. It can be a complex and tedious procedure but we can make it easier.

Action starts when you complete one of our passing off complaint forms and return it to us. We will then assess the claim and investigate the validity of your registration details. This will involve:

- ensuring your company has an up-to-date registration with us
- ensuring there is no disclaimer against the alleged offending business name in their registration
- ensuring that the alleged passing off occurred during your company's registration period, and not before or during a lapsed period
- ensuring that all factors required for a passing off action are present

- sending a letter to the alleged offending party and/or their solicitors informing them that they are passing off an established business name
- informing the alleged offending party and/or their solicitors of any damage being caused by their misrepresentation
- sending the case off for assessment by an external and impartial Legal Counsel if it becomes clear that the passing off offence cannot be resolved without legal action. At this stage, Counsel may take the matter to court.

If the case goes to court, you'll be able to rest assured knowing that, as long as we've been informed of all the case details from the start, your court costs will be paid in full by us.

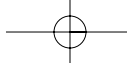
Please note: it is extremely important that you do not mislead us by omission as you may jeopardise your own case and be liable to pay your own fees. We do not take responsibility for any court orders made against you by the court; they're your personal responsibility.

How successful is National Business Register in protecting its members' business names?

Since our inception in 1984 we've successfully prevented thousands of organisations from copying our registered members' business names. We have spent more than £1m in legal fees and expenditure pursuing passing off claims.

For a small annual fee you'll have support from our internal and external specialists, including a highly skilled legal team, who will assist you each step of the way.





**National Business Register LLP**

Somerset House  
6070 Birmingham Business Park  
Birmingham B37 7BF

t: 0121 678 9000

f: 0121 678 9002

e: [info@start.biz](mailto:info@start.biz)

w: [start.biz](http://start.biz)

