

INTELLECTUAL PROPERTY LAW SERVICES



MAYBERY INC.
ATTORNEYS
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FOUND THE PERFECT WEBSITE NAME? ENSURE IT'S TRADEMARKED BEFORE YOU REGISTER IT!

You're starting a new company or product, and you've spent days agonising over the perfect name. You may have googled the name to check whether it's already taken, and consulted the SA or ICANN Registrars to check whether the website name is available.

Good news: GoDaddy.com hasn't snapped it up yet. The domain is available, so you instruct your IT service provider to register the domain on your behalf.

But beware! Just because the domain name is available, doesn't mean you can have it. **You need to check whether it is trademarked first.**

Although it's a topic that is hotly debated, a domain name is like a parking space. If someone has registered a trademark over that name, it's irrelevant that they haven't claimed the domain yet. If you take that domain, you've infringed on their intellectual property rights – which can have messy, expensive legal consequences for you.



When choosing a name, ensure that the name is legally available with Maybery Inc's trademark feasibility and registration service.

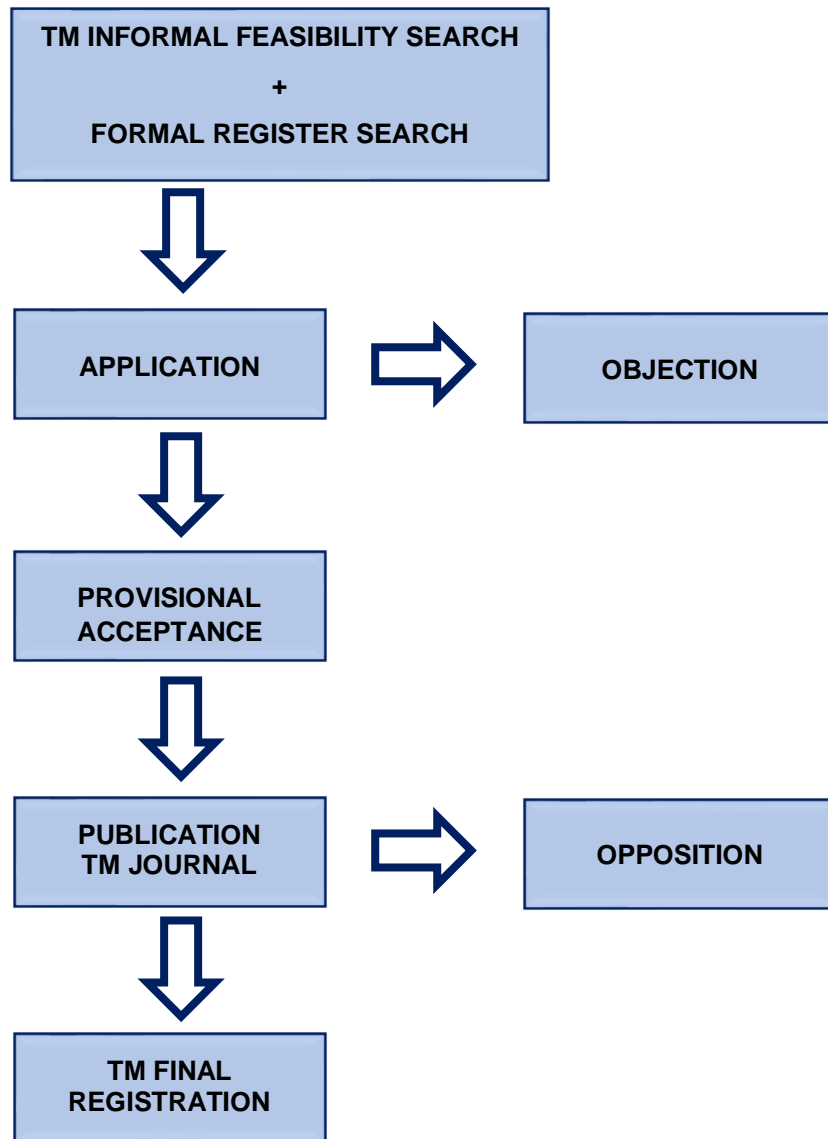
Costs for trademark feasibility searches are R3,500, and R2,500 for trademark registration.

Costs are for local search and local registration, per trademark; exclusive of VAT and valid for 2025.

More information on the trademark registration process is provided below.

OVERVIEW OF THE TRADEMARK PROCESS

The trademark process consists of two parts – search, and registration. It is important to search all possible platforms first (not only the trademarks register) to determine the feasibility of registration – because if the mark is already registered, you will not be allowed to proceed with registration.



A search must first be conducted to determine any existing use of the mark. We search not only the trademark register but also all other platforms (like Domain Registrar, Google, Facebook, Instagram, LinkedIn, Youtube etc – an added practical service which many don't do). If the name is taken on one of these platforms we'll advise you accordingly; you may still decide to proceed. However, if it **is** trademarked, then the journey on that particular name unfortunately ends there and we have to consider another one.

If it is not trademarked we proceed to registration which involves:

- a. Application to the Trademark Registrar (+ a bit of back and forth)
- b. [if accepted] – publication of the trademark for objection.

Contact us to register your trademark

<https://www.mayberyinc.co.za/contact> or reception@mayberyinc.co.za

TO: [CLIENT]
Email: [EMAIL]

Reference: CLI1099
Date: 1 January 2024

Dear Mike,

EXAMPLE REPORT

TRADEMARK SEARCH REPORT: "THE FLOORING COMPANY"

Thank you for your enquiry into the possible registration of a trademark in respect of the name *THE FLOORING COMPANY*. The first step in the process is to conduct a feasibility study in the availability of the trademark. This consists of:

1. a formal search of the South African trademark register, to determine whether the trademark already exists; and
2. an informal search of various public platforms, to determine whether the name is currently used by other entities. Though the name may not be trademarked, the use of the name nevertheless may have common law implications and/or practical implications depending on the size of the entity using it, and you may decide that it is not worth the trouble to use this name. Our advice, as always, is to avoid litigation unless it is absolutely necessary. Conversely, if the name is one of the sort that is widely used by different businesses internationally, for example *We Buy Cars*, or if it is a mark that has been so widely used that it has lost its distinguishing characteristic, such as the turtle logo, then you may decide either that it is worth attempting to trademark the name/logo, or that doing so will not have sufficient commercial value.

The platforms consulted are Google.com, DuckDuckGo.com, the CIPC websites eservices.cipc.co.za and bizportal.gov.za, facebook.com, youtube.com, linkedin.com, instagram.com and the domain registrars for the South African website domain .co.za and US website domain .com.

It is especially important, at the least, that the proposed name be available with the South African website Domain Registrar - so as to secure the website name - for example *THE FLOORING COMPANY*. Although the desired domain may be only registered but not actually in use, it often happens that entities pre-emptively register domains and park them until a buyer requests to buy the domain – and then demand an outlandish sum for it (in region of \$3,000 or more). Therefore, it may not be worth pursuing the desired domain if it is already registered. If you own the rights to a domain which has been registered by one of these speculator companies, you may have rights to transfer of that domain – but it may not be worth the legal battle, or price demanded.

If the trademark is available, application is made for registration of the mark in your name.

Please note: results are valid for the date of the search.

FORMAL TRADEMARK SEARCH REPORT

Note that trademarks are registered according to class, based on the nature of goods/services which they represent. There are 45 classes in the South African Trademark Register.

A search of the Register was conducted in the following classes, being classes potentially applicable to the proposed mark:

Class	Result
16	None.
19	None.
20	None.
27	None.
37	None.

RESULT: There is **NO FORMAL TRADEMARK** registered for *THE FLOORING COMPANY* in South Africa.

TAKE NOTE: The name "*THE FLOORING CO.*" has been reserved by a third party under number [REDACTED]. In the circumstances we advise against using "*THE FLOORING COMPANY*" because it may cause confusion and be seen as a trademark infringement.

INFORMAL TRADEMARK SEARCH

An informal search was conducted across the following platforms, with the following results.

Platform	Result found
Google.com	> Step Upp Floors, an India
DuckDuckGo.com	> Step Up Flooring, a Canada
eservices.cipc.co.za / bizportal.gov.za	>None
Facebook.com	Step up Flooring, Colorado USA
Linkedin.com	>None
Youtube.com	> None
Instagram.com	>None
.co.za domain	>None
.com domain	>None

RESULT: There is **LIMITED** use of names similar to *THE FLOORING COMPANY* internationally.

RECOMMENDATION

The requested mark does not appear to be formally trademarked. There appears to be no extensive informal use of the name worldwide. Note that, where a mark is not registered, a mark holder may still claim ownership of the mark through South African common law.

As noted, the name “**STEP-UP FLOORING**” has been **reserved** at the CIPC under number 9367583911. In the circumstances we advise against using “**STEP-UP-FLOORING**” because it may cause confusion and be seen as a trademark infringement. Litigation in this regard is likely to be expensive and unsuccessful.

Further, bear in mind that:

1. The more widespread the use of the name by various businesses, the less capable the name becomes of distinguishing you and your product, which may negatively affect the product and business.
2. The more businesses there are which use the name, the less likely an application for registration of the trademark is to succeed.


RECOMMENDATION

It is therefore our recommendation that your business **does not proceed** with commercial use of the requested mark “*THE FLOORING COMPANY*”.

We await your further instruction herein. Kindly note that the proposed mark may be registered at any time, and therefore you are requested to provide your response urgently.

Should you have any questions, please do not hesitate to call us.

Yours Faithfully



WP MAYBERY
Director
MAYBERY INC.