

## SAVVY ENTREPRENEURSHIP

# 2 What's in a (Business) Name?



You've done the hard work. You ran the financial numbers, you studied the local markets for viability, you identified reliable suppliers, and you developed many new recipes. Your idea for your summer venture is all set, and you're ready to open your business, but you need a business name. Do you need to copyright or trademark a business name? Also, do you need to file it with the state government, the federal government, or both? Where do you start?

## LEARNING OBJECTIVES

- ▶ Use best practices to develop a business name
- ▶ Determine if a trademark name is necessary for a business
- ▶ Identify the difference between a trademark and a copyright
- ▶ Determine when to secure a DBA (doing business as) for your business
- ▶ Explain the guidelines for naming a business

## TERMS YOU WILL LEARN

eponymous  
trademark  
USPTO  
limited liability company  
corporation  
patents  
provisional patent  
service mark  
DBA

## CASE STUDY

### Willa's Idea

Willa teaches business at the high-school level during the school year. This summer, she's anxious to try her hand at opening a soft-serve ice cream stand that offers fruity blends. She's done the work to determine if the business can turn a profit in the three summer months it'll be open.

There are already three ice cream shops in her summer-vacation tourist town. To stand out, she's decided to create flavors not sold in the other shops—flavors based on citrus fruits, berries, apples, coconuts, and whatever else she can create. This is a start, but Willa now needs a business name that stands out as much as her flavors do.

## Naming a Business

**LEARNING OBJECTIVE** Use best practices to develop a business name

Creating a business name can involve the most expensive advertising agencies, or it can be done with a whiteboard, a few friends, and a stimulating brainstorming session.

To begin, it is best to remember some key guidelines when it comes to naming a business:

**Eponymous names:** An **eponymous** business name is one that uses a real name. Names like these are simple and ideal in small towns where a name is often recognizable. An eponymous name, however, may not tell customers much about the business.

**Descriptive names:** Many businesses (and products and services) are named for what they do. Family Smiles Dentistry mentions exactly what it does, as does Crest® Whitening Toothpaste. Descriptive names are functional to be sure, but they may not be ideal for adding to company shirts, stationery, and even a sign in front of the business.

**Acronyms:** Early in the morning when contractors are driving to their businesses, you may see several trucks with "A.C. Framers" or "ABC Concrete" on their sides. Business owners often use their initials, familiar acronyms, or a string of alphabetic characters as a company identifier. It works and is individualized, but like a person's name, it doesn't readily identify what the business does. Acronyms may not be easy for the customer to remember until the brand has grown.

Examples of well-known acronym business names include IBM® and 3M®.

**Word association:** Associative names suggest a link to a concept that's key to a business's brand. Uber indicates a "supreme example" of a person or thing, likely what the ride-sharing company wanted. Book Nook implies a small area where there are books, which is exactly what the shop owner wanted to say about her small-town bookstore.

**Non-native language words:** Non-native words have become commonplace in business names; however, we often don't recognize the words as non-native due to extensive branding. In English, we recognize Volkswagen (*people's car* in German), Samsung (*three stars* in Korean), and Corona (*crown* in Spanish).

Beware: Make sure the name you select is not derogatory or demeaning if you decide to take your company international.

**Abstract names:** By far the most fun idea to use when naming a company, and likely the most challenging to brand, is creating a name from parts of words or words associated with your business's uniqueness. How do you construct an abstract name? A common exercise is to brainstorm characteristics about your business, stand back, and see what makes you say, "I like it!"

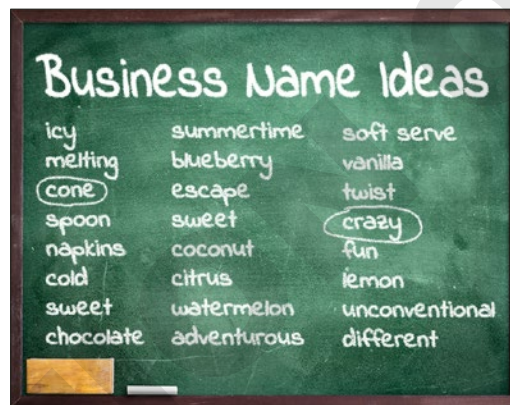
## EXERCISE 2.1 NAME A BUSINESS

For this exercise, you can break into groups of three to five or work independently. Each group member (if applicable) should have a business idea in mind. Take turns leading a brainstorming session to name your business.

During your turn, explain your business in detail and then start a timer for five minutes and begin brainstorming. Record as many words related to the business as possible on a whiteboard, chalkboard, large piece of paper, or online file.

If working in a group, no one should comment on anyone else's ideas. The goal is to get down as many words as possible within the five minutes. (If working alone, challenge yourself not to judge your own brainstorming—just keep recording your ideas.)

It's helpful here to consider the five senses. How is the business perceived through touch, taste, smell, sound, and sight? This exercise often leads to a dictionary's worth of words!



When the timer goes off, stop brainstorming. Look at the words and start creating. Consider using parts of words, whole words, and words for which the spelling can be altered in clever and meaningful ways. See what you come up with and be sure to record your findings!

## Registered Trademarks ®

**LEARNING OBJECTIVE** Determine if a trademark name is necessary for a business

When you **trademark** your business name, you brand it as the intellectual property of a particular entity. There are two ways to claim ownership of your business's name:

1. At any time, you can use the ™ symbol to the right of your company name. This indicates the business is claiming rights to a specific name or logo, but it doesn't automatically grant legal protection. Rather, it is a way to indicate the claim of ownership is being made. You can use the ™ symbol if you have not filed your trademark application yet or it's pending.
2. You can instead choose to register the trademark of your business name or logo with the United States Patent and Trademark Office (USPTO), which protects it from being used by others. Once the trademark is officially registered, you can include the ® symbol to the right of your company name or logo.



## Your Unique Business Name

Part of choosing a name for your business involves looking outward. You want to know, for example, if the same business name is already in the marketplace and being used by another business. If it's not, you may wish to protect your unique business name by trademarking it.

A good first step to make is to see whether the name has been taken. This is easily done by checking the *right* websites:

- United States Patent and Trademark Office, or [USPTO](http://uspto.gov) (uspto.gov)
- Secretary of state (for example, sos.vermont.gov for the state of Vermont)
- Internet Corporation for Assigned Names and Numbers, or ICANN (icann.org)

These sites list names for every registered business, whether a [limited liability company](#) (LLC) or a [corporation](#). ICANN lists internet domain names. If your business is a sole proprietorship or nonregistered partnership, the Yellow Pages (they're online; yp.com) is your best starting point.

**NOTE!** The USPTO office, in addition to being where you register a trademark, is the repository for [patents](#). To protect your intellectual rights, you can file a [provisional patent](#). It's good for one year, buying you time to polish and refine your ideas before you apply for a full patent, which prevents others from profiting off your patented idea for a span of many years.

## Business Structures and Naming Requirements

A formal business structure indicates a business is separate from those who have ownership of it. In fact, it even has its own bank account! There are many types of formal business structures, but here we will look at two common ones: the LLC and the corporation. Each structure has specific rules related to naming the business, including words that can't be used.

**TIP!** Examples of words not allowed in the business name of an LLC include "bank," "insurance," and "trust." Take the time needed to understand all the restrictions and requirements.

Willa wants to use the name "Cone Crazy," and she wants to become an LLC. She can, and in this case there are no restrictions against the desired name. Now, if Willa wished to shorten the business name "Cone Crazy, LLC" by dropping the "LLC" part, she could look into the use of a DBA, or "doing business as" (more on this in a bit). Doing so would provide latitude in how the business is referenced, especially in signatures, marketing, logos, advertising, and other similar situations, but for now let's stick to treating Cone Crazy as a sole proprietorship.



The United States Patent and Trademark Office

## Is Trademarking Right for You?

In Willa's case, the name "Cone Crazy" has not been used for other businesses (specifically because we made the name up for this book), and the chance of another ice cream shop selling just fruit-flavored ice cream is slim, but let's look at the benefits of obtaining a registered trademark for Cone Crazy.

For one, Cone Crazy would be recognized as Willa's shop selling her specialty-flavored cones. Anyone wishing to use the name "Cone Crazy" to sell anything else could not. In fact, the "Cone Crazy" name would be a protected business name in all U.S. states. By obtaining a registered trademark, Willa could confidently include the registered trademark symbol, ®, next to the company name, which would be visual proof to others that the name is registered with the USPTO.

In addition, trademarks can be used for as long as the business exists. (Note that the USPTO requires the filing of routine maintenance documents to prove the trademark is still in use, with no more than ten years passing between maintenance filings.)

### 4 BENEFITS OF REGISTERED TRADEMARKS

- 1 No other business can operate under the trademarked name.**
- 2 The business's trademarked name can be used across state lines and still be protected.**
- 3 The business can use the registered trademark (®) symbol.**
- 4 The trademark is long lasting.**

A product or service looking to register a trademark must be registered in an industry or product class. The USPTO identifies the classes, and the business owner determines which class is appropriate for their case. For Cone Crazy, Willa would likely select “Class 30 – Foods of plant origin.” (Yes, not all the classes are a perfect fit. Traditional ice cream is not a plant-based food, but this class is the recommended one.) The fee to register is shown next to the industry or product class.

A registered U.S. trademark does not protect a business name across international borders. It’s possible to register a name internationally through the Madrid Protocol or international trademark registration treaty, although protections are not guaranteed. One application is used for all 120 countries that are part of the treaty.

The trademark <sup>TM</sup> and **service mark** <sup>SM</sup> symbols appear as superscripts to the right of trademarked names. A business owner can add either symbol next to a business name at any point, but doing this *does not* register a business name or confirm ownership of it—it simply means they intend to use the particular name, logo, or phrase to identify their brand or product. To register a trademark, you must file with the USPTO.

## EXERCISE 2.2 ASK YOURSELF

Which of the following business names are protected by law, meaning no other business can operate under the same name without violating trademark law?

1. Cone Crazy®
2. Cone Crazy™
3. Cone Crazy<sup>SM</sup>

## Copyrights ©

**LEARNING OBJECTIVE** Identify the difference between a trademark and a copyright

What exactly is a copyright? When we break down the word, we see exactly what it is: rights to the copy. In the twenty-first century, this understanding has expanded from print copy specifically to include audio and visual copy, dance pieces, musical compositions, and media. A copyright is simply a creator’s protection of their intellectual property. Any minimally creative expression that is tangible can be copyrighted. This includes blog posts, oil paintings, computer programs, and rap music.

There are caveats as explained by the U.S. Copyright Office. For example, if you’ve developed an innovative method for making a shirt, baking a pie, or washing clothes, those don’t get copyrighted; instead, you can pursue a patent to protect that type of intellectual property.

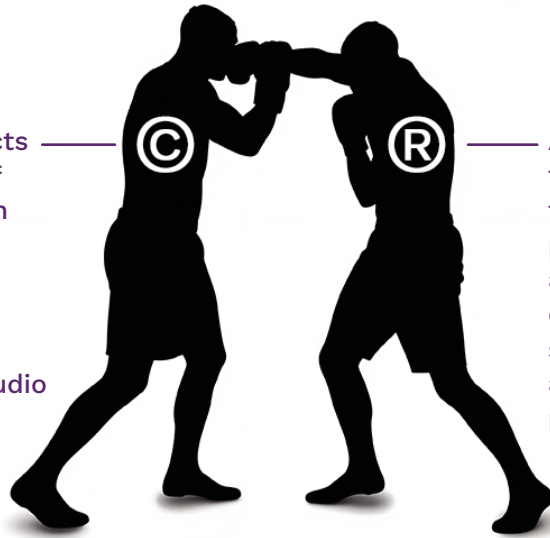
## The Difference Between Copyright and Trademark

What is the difference between a copyright (©) and a trademark (® or ™)? This question has been asked of business instructors (and no doubt Google!) for many years. The answer may at first sound simple, but there are a few nuances to consider.

The difference is that a copyright protects a *representation* or *expression*, whereas a trademark protects a business’s name, logo, or brand.

## Copyright vs. Trademark: What's Protected?

Copyright protects original works of art created by an entity, such as books, articles, songs, photos, sculptures, choreography, audio recordings, and motion pictures.



A registered trademark protects the wording, phrasing, symbols, and design that distinguish the source of the goods as belonging to a particular entity.

Well, isn't the name of one's business something that's created? If the name of the business were incorporated into a work of art, perhaps a sign that you put on your office wall, then certainly that art could be copyrighted, but it's trademarking that preserves the intellectual property of a business's names, logos, and tag lines.

More facts about copyrights include the following:

**You don't have to register them.** As with trademarks, you don't have to register a copyright. The fact that you created something makes it yours. However, it's easier to protect and enforce ownership if a copyright is registered. The process is straightforward for most works, and the fees are reasonable. The easiest way to investigate copyrighting is to visit: [copyright.gov](http://copyright.gov)

**They last for life.** A copyright lasts for the life of the author plus 70 years after their death.

**They're licensable.** You can use copyrighted work with the express (contracted) consent of the creator. Conversely, you can grant someone else permission to use your copyrighted work. Such scenarios can create revenue for both the creator and, if permitted, for the party that licenses the copyrighted work. A common example is one musician using the lyrics or music of another musician to create a new piece of music. This is exactly why there are copyrights!

For clarity, let's take a look at a few examples. The following "M" is a registered trademark for the McDonald's corporation:



The Nike name and the following "swoosh" symbol are also both registered trademarks:



LINK

Because these names and logos are registered trademarks, no other company can use the McDonald’s “golden arches” above, the Nike name, or the Nike “swoosh.”

Have you ever looked closely at the Nintendo Switch logo? It includes a ™ designation, so the company has either applied for a registered trademark or is satisfied with simply using the ™ symbol at this point.

Finally, think about the words of your favorite song. Those words are copyrighted by the songwriter simply because they wrote them. Music by The Beatles, Taylor Swift, and other top performers is formally copyrighted so other artists don’t copy the music and call it their own.



## Doing Business As

**LEARNING OBJECTIVE** Determine when to secure a DBA (doing business as) for your business

There are several reasons for using a **DBA** (doing business as). For one, a DBA eliminates the need to write “LLC” or “Corp” after a business name, which can streamline marketing materials, contracts, and other documents, but there’s another reason, especially if the business has not yet registered its name and still exists as a sole proprietorship. Will your business be taken seriously if you sign your personal name to contracts? Wouldn’t being able to sign with the business name seem more logical (as well as being logistically easier for recordkeeping purposes)?

**NOTE!** What is the correct way to add “doing business as” to your business name? The legal community allows “D/B/A,” “d.b.a.,” “d/b/a,” “DBA,” and “dba”!

In many businesses, and certainly in a sole proprietorship, it’s important to distinguish between your personal and your business’s finances. This is another benefit to using a DBA.

Remember, if you are a structured business (LLC or corporation), your business name will be filed with the state in which you established the business. In this case, that business name is already different from your personal one. You may still, however, wish to file a DBA in order to be able to refer to a more simplified version of the business’s name.

An LLC can operate under a DBA. Imagine your business is a hair salon called “Sheer Experience, LLC.” After some time, the business starts offering manicures, so you decide to add the DBA “Sheer Nails” under your existing “Sheer Experience, LLC.” For tax purposes, there’s still one company, but your business can now be known and conduct operations under two separate names.



## What Else You Need to Know

Obtaining a DBA is as simple as visiting the county or state offices (in person or online) for the location in which the business will operate (this is your own residence if the business operates from your home). There is generally a modest filing fee required, which is usually less than \$100.

As mentioned when talking about what to name a business, certain words are not permitted in a business name. Understandably, “Inc.,” “Incorporated,” “LLC,” “PC,” and other acronyms alluding to an LLC or corporation are not allowed, and, in general, words associated with financial and government institutions are also not permissible.

**WARNING!** Unlike a trademarked name, your DBA does not prevent anyone else from using the name for their business. Only a registered trademark or formalizing the name as an LLC or corporation can protect a name from use by others.

The length of time you can use your DBA for your business varies from state to state. Some states require a renewal application, whereas others don't. The easiest way to find out what is or isn't required is to contact your state government's office that handles business filing.

### EXERCISE 2.3 ASK YOURSELF

We know the business name “Cone Crazy” is not registered legally as the business is run as a sole proprietorship, but is it a business name in your hometown? What website(s) can you check to find out?



### BUSINESS PLAN ACTIVITY 2

You're starting your business as a sole proprietorship, but you don't want your name to be the name of your business. Rather, you want a name that more-closely represents your product and the company you're creating.

Open the business plan template you downloaded and saved in the previous chapter's business plan activity. It includes a link to a website where you can fill out a New York State DBA for your business to include. However, when it's time to submit a real DBA for a business, you will need to use the form required by the county or state in which the business will be operating.

## Naming LLCs and Corporations

**LEARNING OBJECTIVE** Explain the guidelines for naming a business

In many regards, naming formalized businesses might be easier than naming sole proprietorships. This is because the state in which the business is being established does much of the work, simply because no two LLCs or corporations can have the same name. This largely eliminates the need to trademark the name, and for good reason—LLCs and corporations have requirements that informal business structures don't.

**WARNING!** It's up to the business—not the state—to formalize itself with a unique name. There may be cases in which a Department of State's office accepts a business application without knowing the business's name is already registered.

Review this table of requirements for business names depending on if the business is being formalized as an LLC or a corporation:

REQUIREMENTS FOR BUSINESS NAMING (LLC VS. CORPORATION)		
Requirement	LLC	Corporation
Must confirm name availability with the state	Confirm via the state's secretary of state public-inquiry web page or an application for the reservation of a name	
Must include certain words	LLC, L.L.C., Limited Liability Company, Limited	Corp., Corporation, Inc., Incorporated
Must NOT include certain words	Examples: Financial Organization, Bank, Union, Education, Olympics, Trade Board, Corporation, Doctor	Examples: FBI, Treasury, State Department, City, Village of..., University of...

In some cases—and provided the business obtains consent from key organizations—a business name can include one of the prohibited words. For details applicable to you, seek advice from the Small Business Administration.

In the state of New York, requirements for choosing a name for an LLC or a corporation include the following:

- A corporation name must be distinguishable from those of other corporations, sole proprietorships, LLCs, and partnerships. An entity can't take a name that already has a trademark or service mark registered.
- If the state accepts a certificate of incorporation, and it turns out another business has the same corporate name, an amendment to the corporation's certificate must be submitted.

Other states have similar requirements. Check the requirements for your state.

Once a limited liability company has registered its name by having its articles of organization reviewed, approved, and filed by the Department of State, no other business can register with it.

### EXERCISE 2.4 IS THE NAME ALLOWED? 👁

Your friend is opening a business in Buffalo, NY. The business has selected the name "Alphabet," and it plans on becoming an LLC. Check the following websites to determine whether your friend can use this business name and record your findings:

- United States Patent and Trademark Office ([uspto.gov](https://www.uspto.gov); trademark search). See link 1.
- New York State Corporation and Business Entity Database ([apps.dos.ny.gov/publicInquiry](https://apps.dos.ny.gov/publicInquiry)). See link 2.
- Yellow Pages ([yellowpages.com](https://www.yellowpages.com)). See link 3.



LINK 1



LINK 2



LINK 3

## Chapter Summary

Naming a business is as important to a business's existence as the product or service it provides and the revenue it makes. The name identifies your business in the marketplace, provides insights into what your product is, affords legal identification for your entity, and sets your business apart from those of competitors.

**LEARNING OBJECTIVE** Use best practices to develop a business name

Consider the following when brainstorming a business name: Make it eponymous, be descriptive, use acronyms, try word association, use non-native words, and experiment with abstract words.

**LEARNING OBJECTIVE** Determine if a trademark name is necessary for a business

Trademarking your business name provides legal protection for your business's moniker. A trademark is obtained through the USPTO, and it secures your name for all commercial and legal transactions.

**LEARNING OBJECTIVE** Identify the difference between a trademark and a copyright

Trademarks and copyrights are not the same. Anyone who authors a work such as a poem, song, video, or artwork automatically owns the copyright, and formalizing the copyright for the work protects it from others pirating it for their own benefit. Trademarks, on the other hand, are used for company and brand names, and they must be formalized through the process of registration.

**LEARNING OBJECTIVE** Determine when to secure a DBA (doing business as) for your business

The benefit of filing a DBA is that it allows your company to operate under a few different legal titles. This can be beneficial for marketing and legal reasons.

**LEARNING OBJECTIVE** Explain the guidelines for naming a business

Sole proprietorships and simple partnerships are the easiest businesses to establish (and name!). Limited liability companies, which are "formal business structures," must have their names registered in the state in which the business is established. The area's secretary of state is the optimal source of information for any business attempting to establish its business title.

## Self-Assessment

Check your knowledge of this chapter's key concepts.

1. DBA is an acronym that means "doing business agency." *True or false?*
  2. Trademarks are needed for a business's name. *True or false?*
  3. The author of an artistic work (music, art, story) automatically own the copyright to it. *True or false?*
  4. LLC is an acronym for limited liability corporation. *True or false?*
  5. The ® symbol indicates a trademark is registered in the U.S. *True or false?*
  6. ™ is an abbreviation for:
    - A. trademark
    - B. service mark
    - C. title mark
    - D. trademade
  7. Each of these names can be used for an LLC except:
    - A. Cone Crazy
    - B. HRR Corporation
    - C. JR's Construction
    - D. Early Morning Bakery
  8. Which of these is a good place to check to see if a business name is taken?
    - A. Facebook.com
    - B. USPTO
    - C. Yellowpages.com
    - D. Facebook.com and Yellowpages.com are both good places to check.
  9. What is true about the ® symbol?
    - A. It legally registers a business name in the state in which the business operates.
    - B. It legally registers a business name in all 50 states.
    - C. It legally registers a business name internationally.
    - D. None of these options is true.
  10. What is true about the ™ and ℠ symbols?
    - A. They legally protect a name from being taken by another business.
    - B. They indicate the application for a registered trademark has been filed with the U.S. Patent and Trademark Office.
    - C. They indicate the user considers something their trademark.
    - D. They can be placed on either the left or right side of the business's name.
-

## Business Vocabulary Review

Reinforce your understanding of the key business terms introduced in this chapter.

Unscramble these key business terms. The definitions are clues.

- \_\_\_\_\_ 1. Doing business as; a way for a person or business to operate under a name that differs from its legal name: **BDA**
- \_\_\_\_\_ 2. A formal business structure that is run by shareholders and has limited liability: **TRRNOCOAIP**
- \_\_\_\_\_ 3. A way to protect one's idea with the USPTO for one year while a product or service is under development: **ILAO SRINOV PATNET**
- \_\_\_\_\_ 4. A name that comes from a person, place, or thing, usually its founder, creator, discoverer, or source: **SEYUNMOPO**
- \_\_\_\_\_ 5. A formal business structure that has reduced personal risk: **METDIIL TLILBIAYI MACOYNP**
- \_\_\_\_\_ 6. The words or symbols that distinguish an organization's goods and services from those of others: **VCEESIR KMRA**
- \_\_\_\_\_ 7. The words or symbol that identify and distinguish a business as a unique entity: **TMDAERAKR**
- \_\_\_\_\_ 8. Where a business can register a trademark or apply for a patent: **SUTOP**
- \_\_\_\_\_ 9. Legal rights designed to keep others from making, selling, or otherwise profiting from a protected idea: **TPTSEAN**
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## Think Like an Entrepreneur

Now apply what you've learned in this chapter by thinking critically and creatively—just as an entrepreneur would.

### CASE STUDIES

1. You did it! You've developed a name for your company. You have decided on an informal business structure, so you don't trademark the business's name. After one year of being in business, another enterprise in your industry notifies you it has a trademarked name that's the same as your company's name and that you must cease using your business name immediately. What do you do?
2. The secretary of state where you plan to open your business has approved your Certificate of Incorporation. Less than one year into your company's existence, another business notifies you that your corporation must change its name, as they are using the same one. Explain what to do next.
3. You have decided to formalize your business into a limited liability company. You know that you must add "LLC" at the end of your business's title, but you wish to shorten the name for contracts, pay statements, etc. What option do you have?

### ETHICS IN ACTION

You are in the business of tree care, removal, and maintenance, but you do not sell trees. You named your business Ever-green, using the concept of maintaining the trees in a healthy, "green" state.

Another business entered your locale five years after you started your company. This company is in the business of tree sales, and it operates as a nursery. You feel the name of this company (Evergreen Tree Sales) is too close to your business's name and that customers will be confused, perhaps causing you to lose potential clients. Evergreen Tree Sales insists what they do is sales and that they have little to do with tree maintenance. As such, they are not infringing on your business or causing any confusion.

Technically Ever-green and Evergreen Tree Sales *do* operate in different arenas and, as such, can have similar names. From an ethical perspective, consider the following:

- What are the possible negative implications of Ever-green and Evergreen Tree Sales operating in the same locale?
  - Are there any potentially positive effects the existence of Evergreen Tree Sales could have on the sales of Ever-green?
  - If you were the owner of Ever-green, how would you go forward?
  - If you were the owner of Evergreen Tree Sales, what do you feel would be the ethical thing to do?
-