


DBA vs. LLC or .INC: What artist, producer, soon to be famous person need to know

So, I've been seeing these questions pop up, and I want to make sure that everyone who's a fan on  or who comes across my page on JD Supra, or otherwise, knows this. Listen up - especially, artists, producers, and those who have or will have famous monikers or pseudonyms!

A DBA, D/B/A, fictitious name, assumed name, or trade name (you'll see me refer to it as "d/b/a") is NOT a business entity! It simply means "doing business as." Legally, you can rename yourself or your business with much less formality than a real name change requires by using a d/b/a. When you start a business without limited liability it will be named after your full legal name or the name on the partnership agreement you and your partner have entered into, assuming you were savvy enough to get it in writing. That's right, a lot of people are out here hustling backwards, and if they ever get sued they'll not only be (fully) jointly and severally liable for any harms their businesses cause or judgments against their business, but they'll have a backlog of civil fines to pay. There are several steps that must be taken to avoid this type of foolishness, and they usually, in North Carolina, occur at your local register of deeds office, your county's official repository of county records. In Charlotte, it's the Mecklenburg Register of Deeds – <http://meckrod.manatron.com> (actual site) & <http://www.issionline.com/news%20archive/MecklenburgCountyRegister%201-03.pdf> (for an overview). For more information for other states, see: <http://www.business.gov/register/business-name/dba.html>

Usually, the purpose of getting a d/b/a is to identify the business as its trademark or service mark or in the way that the business has come to be known in a community. It's important to know that a d/b/a does not create a legal business entity. There must be a business entity first. Otherwise, if an individual wants their pseudonym to be their legally recognized name for the purpose of operating a business they'll need a formal name change. The underlying entity is most likely a sole proprietorship. Which basically means it's an individual doing business in their legal name or telling others that they have a business they operate with a separate name. Sole proprietorship is the most common form of business in the United States (24.6 Million in 2007, <http://www.irs.gov/pub/irs-soi/09fallbulsoleprop.pdf>); however, they are the least professional means of conducting business, in terms of business entity selection, they incur the most liability because they are unincorporated, and have NO tax advantages.

ARTIST, PRODUCERS, those with widely known monikers or pseudonyms READ CAREFULLY! You may want to get a d/b/a for several important reasons. If you don't want to have to tell everyone your real name, and you love that nickname you've earned or created to represent your talent then by all means keep it. You'll need a d/b/a to accept checks, other drafts, or do business as your nickname, stage name, moniker, pseudonym - you get the point. Even if you do the wise thing and start a business entity that affords your limited liability and tax benefits like an LLC, limited partnership, corporation, limited liability partnership, etc. you should get a d/b/a so that you can properly and through legally enforceable means sign contracts, drafts (checks, promissory notes), and do business without revealing your given name. For example, if Calvin Broadus (a/k/a Snoop Dogg) didn't want to write Calvin Broadus on his business transactions (contracts, checks, etc.) he could just use his d/b/a and sign Snoop Dogg and take that check to the bank or contract to court, and it would be honored so long as he could show proof of his d/b/a. Now, it's not that straight forward to get the d/b/a, but it makes a lot of sense.

In order to get that bank account under your d/b/a you'll need an Employer Identification Number (EIN) or Individual Tax Identification Number (ITIN). Upon having an accession to wealth earned under your d/b/a you'll have to pay federal and local taxes on your earned income at your personal income's tax

rate, and you won't have liability in the event someone wants to sue you as a sole proprietor doing business as "your moniker/stage name/pseudonym." You'll have to take proof into the bank that you have a business registered under the EIN and the proof of registration for your d/b/a. Of course, you could always have your attorney handle this process.

The best thing anyone can do to preserve their good name is to protect it and treat it as valued asset. Here are a few steps to help you manage your name as an asset:

First step - Get your EIN under your legal name, register a d/b/a in your register of deeds, and have that d/b/a form a business entity with limited liability.

Second Step - Start the business in the name of your d/b/a (e.g., Snoop Dogg = incorporator) that affords limited liability to you (as your d/b/a) and its members, shareholders, partners, etc. That business will need to be formed according to the laws of the state you live in and filed with the IRS. If it's just you, you may want to think about a single pass through entity for tax purposes (LLC or S Corp).

Third Step - Trademark your d/b/a with either the United States Trademark and Patent Office (USPTO) or local trademark office (usually, at your state's Secretary of State). Which office you chose will depend on the desired or present reach of your mark, the amount of protection you want it to have, your budget, and how much you value your mark.

Fourth Step - Pursue your dreams with passion, diligence, and wholehearted belief in your ability.

WHAT YOU DID BEFORE YOU BEGAN ANY OF THIS WAS TALK TO A LAWYER IN YOUR STATE. THAT STEP GOES WITHOUT SAYING, BUT I'LL SAY IT ANYWAY!

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