

Topic: Doing Business Standard for Trade Names

Question by: Betty Poulin

Jurisdiction: Vermont

Date: 23 June 2010

| Jurisdiction | Question | If so, does your state have a statute, rule, or any case law that defines or articulates standards for "doing business?" | If so, please respond by providing a citation to the statutes, rules or regulations, or caselaw! |
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| Manitoba | | | |
| Corporations Canada | | | |
| Alabama | | | |
| Alaska | | | |
| Arizona | | | |
| Arkansas | | | |
| California | Trade names are not filed with the Secretary of State. | | |
| Colorado | A person is prohibited from transacting business under a name other than the true name of the person unless a statement of trade name has been filed. | We do not have the authority to terminate a registration if someone is not actually doing business under the trade name. | |

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| Connecticut | | | |
| Delaware | | | |
| District of Columbia | Yes | <p>“Any trade, profession, or activity which provides, or holds itself out to provide, goods or services to the general public or to any portion of the general public, for hire or compensation in the District of Columbia.”</p> <p>We apply this definition to all entities that question whether they need to register with Corporations Division.</p> <p>We do not cancel the trade names unless reserved name does not meet the requirements of the law (ex., trade name can not include corp. qualifier such as LLC, etc. but the one on record does....etc.).</p> | |
| Florida | | | |
| Georgia | | | |
| Hawaii | | | |
| Idaho | | | |
| Illinois | | | |
| Indiana | | | |
| Iowa | | | |
| Kansas | | | |
| Kentucky | | | |
| Louisiana | No | N/A | N/A |
| Maine | | | |
| Maryland | | | |
| Massachusetts | | | |
| Michigan | No | Michigan has nothing comparable. We have no requirement that a person or entity actually must be actively engaged in any business. | The statutes applicable to corporations, limited liability companies and limited partnerships only describe the type of activities that alone are not sufficient to require the foreign entity to obtain a Certificate of Authority. |
| Minnesota | Minnesota does not have any authority to remove assumed names | | |

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| | for any reason. Expiration, or cancellation by the holder of the assumed name, (or, starting in 2011, failure to file the annual renewal) are the only ways to remove an assumed name from the active list. | | |
| Mississippi | | | |
| Missouri | No | N/A | N/A |
| Montana | | | |
| Nebraska | | | |
| Nevada | | | |
| New Hampshire | No | N/A | N/A |
| New Jersey | | | |
| New Mexico | | | |
| New York | In NY corporations, LLCs and LPs that wish to use a name other than their real name file a certificate of assumed name under General Business Law section 130. This statute provides for voluntary discontinuance of the assumed name only. The SOS is not authorized to terminate filings. | Yes | Article 24 Trademarks, section 360 Definitions, provides the following standard for when a trademark, is deemed abandoned. (i) A mark shall be deemed to be "abandoned" when either of the following occurs: (1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment. (2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark. |

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| | | | <p>Section 360 (d) provides that the term "trade name" means any name used by a person to identify a business or vocation of such person. Trademarks may be cancelled if a court finds that the mark has been abandoned.</p> <p>§ 360-h. Cancellation. The secretary shall cancel from the register,</p> <p>in whole or in part:</p> <p>(a) any registration concerning which the secretary shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;</p> <p>(b) all registrations granted under this article and not renewed in accordance with the provisions hereof;</p> <p>(c) any registration concerning which a court of competent jurisdiction shall find:</p> <p>(1) that the registered mark has been abandoned,</p> <p>...</p> |
| North Carolina | | | |
| North Dakota | Yes | Yes | <p>47-25-07. Cancellation. The secretary of state shall cancel from the register:</p> <p>1. Any registration concerning which the secretary of state receives a voluntary written and signed request for cancellation from the registrant or the assignee of record. In the case of a registrant who is a deceased individual, the request for cancellation may be made by the personal representative of the registrant's estate.</p> <p>2. Any registration concerning which a state district court finds any of the following:</p> <p>a. That the registered trade name has been</p> |

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| | | | <p>abandoned.</p> <p>b. That the registrant is not the owner of the trade name.</p> <p>c. That the registration was granted improperly.</p> <p>d. That the registration was obtained fraudulently.</p> <p>e. That the trade name registered is so similar to a trade name registered by another person as to be likely to cause confusion or mistake or to deceive.</p> <p>3. Any registration a district court orders canceled on any grounds.</p> <p>4. Any trade name when the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.</p> |
| Ohio | No | N/A | N/A |
| Oklahoma | No | N/A | N/A |
| Oregon | | | |
| Pennsylvania | | | |
| Rhode Island | | | |
| South Carolina | | | |
| South Dakota | | | |
| Tennessee | | | |
| Texas | Texas has no similar provision to terminate the filing of an assumed name certificate | | |
| Utah | No | Utah's statute does not define what "doing business" is, but the corporate statute suggests some things that do NOT constitute doing business. In these online days, they could be doing business from a park with a laptop! | |

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| Vermont | | | |
| Virginia | <p>The Code of Virginia provides that a person, including a business entity, must file a fictitious name certificate in the circuit court of the jurisdiction in which it intends to use the name prior to use. If the person is a business entity of record in our office (except a general partnership), it must also obtain a certified copy of said filing and file it in our office, where we place it with the entity's records. These are mere notice filings. See Section 59.1-69 et seq.</p> | <p>There is no requirement for these fictitious/assumed/dba name filings to be distinguishable from one another. Rather, Virginia follows the common law, that is, the first to use a name in a geographic location as to a particular product or service has the superior right to the name in such location, and this person can obtain an injunction against infringers. This scheme seems to alleviate us of the need to have an agency review such filings for termination for non-use.</p> | |
| Washington | Not really | <p>In Washington State, trade names are filed with the Dept. of Licensing, but the statute only has the following definition of "business":</p> <p>(2) "Business" means an occupation, profession, or employment engaged in for the purpose of seeking a profit.</p> | |

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| | | The registrant may cancel a registration, but there is nothing in statute about terminating one. | |
| West Virginia | | | |
| Wisconsin | | | |
| Wyoming | | | |

Additional comments:

Full text of email:

The Vermont trade name statute allows the Secretary of State to terminate registration of a trade name if it is found, after notice and an opportunity for hearing **"that the person is not doing business or intending to do business in this state as demonstrated by a substantive act or acts consistent with that intent."**

Vermont's statute does not provide any further definitions or standards for making the determination to terminate a trade name.

Does your state use a "doing business" standard? If so, does your state have a statute, rule, or any case law that defines or articulates standards for "doing business?" If so, please respond by providing a citation to the statutes, rules or regulations, or caselaw!

Thank you in advance for any help you may provide!

Betty Poulin,

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Corporations Division

