

Topic: Name Standard and Name Contest Process

Question by: Rose Ann Drake

Jurisdiction: Montana

Date: 6 August 2010

Jurisdiction	Question(s)	
	Do you have a process by which someone can remedy a name dispute, such as a name contest process?	What is name standard do you use?
Manitoba		
Corporations Canada	<p>Legislation applying to businesses incorporated federally in Canada permits the Director to order a change of name if the name contravenes the statute. This legislation also permits a person who feels wronged by the Director's decision to appeal it to a court of law.</p> <p>Any interested person may make an allegation to the Director that a corporate name creates a likelihood of confusion, which is the standard our legislation follows. In this case, the Director will give each party the opportunity to present its case through an exchange of correspondence, not oral hearings, requiring all factual information to be submitted in the form of a sworn affidavit or statutory declaration. This process is outlined in one of the Director's policies.</p>	
Alabama		
Alaska		
Arizona		
Arkansas		
California		
Colorado	We do not have a name contest process.	Section 7-90-601 (2) states that, with a few exceptions, each entity name and reserved name must be distinguishable on

		the records from every other entity name and reserved name.
Connecticut		
Delaware		
District of Columbia	No	The name cannot be the same as or deceptively similar to another name.
Florida	A filer can request an Administrative Hearing if they disagree with our denial of a name but I can't remember when the last request for hearing was.....over 20 years ago	Florida has the "distinguishable on the record" standard also.
Georgia		
Hawaii	If a filer claims that the registered name is substantially identical or confusingly similar, it may file a petition with our department director for an administrative order of abatement to address the infringement of its name.	Hawaii's standard is "substantially identical".
Idaho		
Illinois	No	Distinguishable on the records.
Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana	No	
Maine	No	Distinguishable on the records
Maryland		
Massachusetts		
Michigan	No	
Minnesota	<p>Minnesota used to do this and we no longer have this process. We based ours on the process that was used back in the 80's by the Ontario Corporations office. We did have a number of these each year, but there just wasn't enough authority available to our office to make it stick, not to mention that there was no funding for doing the process, and I didn't have the time to do it so it was done by administrative folks, not by staff attorneys.</p> <p>If you want to see what we used to do, see:</p> <p>https://www.revisor.mn.gov/statutes/?id=5.22&year=2004</p>	
Mississippi		
Missouri	No	Distinguishable on the records.

Montana		
Nebraska		Deceptively similar.
Nevada		
New Hampshire	No	
New Jersey		
New Mexico		
New York	No	Distinguishable on the records.
North Carolina	No	
North Dakota		North Dakota still has "deceptively similar" name standard.
Ohio	Ohio's standard is "distinguishable on the record," but we do not have a process for name complaints	Ohio's standard is "distinguishable on the record."
Oklahoma	No	
Oregon	<p>What is a "name contest" and why would you want to be involved? It's an IP dispute, and that's settled in court. Any adjudication by the Secretary's office would either be irrelevant or prejudicial, depending on your viewpoint, I would think. It just muddies the waters.</p> <p>Back in the days of "non-ministerial" Corporation Commission, our attorney directors would mediate name disputes, but they still only really applied to filing with us. You were left with a situation where the state "officially" declares one party holds the name, while a court may rule the opposite way. That's why we got out of the game - it's a decision for the courts, not the state.</p>	
Pennsylvania		
Rhode Island	We are not charged with name mediation, those decision are left to the courts.	Distinguishable on the record.
South Carolina		
South Dakota		
Tennessee		
Texas	Texas does not have a procedure for contesting a name through the SOS's office. If a document is rejected (due to name or other reason), the submitting party may appeal the rejection to a district court in Travis County. If a document is filed and a third party feels that the filed name is infringing on their prior rights, the third party would pursue private legal	

	action against any infringing party.	
Utah		
Vermont		
Virginia	If someone were to take issue with our analysis, they could petition the Commission and get a hearing. I'm not aware of any instances where this has occurred.	Virginia's standard is "distinguishable on the record." Essentially, we remove non-descript articles, prepositions and conjunctions (e.g., "an," "of," "and"), "corporate" endings (e.g., "LLC"), punctuation marks and spaces, and end up with a "key." If the key of the proposed name is distinguishable from the keys of all other names of record, the proposed name is available.
Washington	No	Distinguishable on the records
West Virginia		
Wisconsin		
Wyoming		

Additional comments:

Hi Allison,

Reflected below are Montana's laws regarding a name contest. We receive several of these each year and our legal staff works with the parties with the Secretary of State making the final decision. We have found it to be a great tool for businesses that feel their name is being infringed on and provides them a means in which to resolve.

Tana

35-1-310. Contest of registration of name. (1) A person doing business in this state may contest the subsequent registration of a name under this section with the office of the secretary of state by filing an acknowledged notice of contest with the secretary of state and sending a copy of the notice of contest to the person who subsequently registered the contested name. The notice to the secretary of state must be accompanied by a \$100 deposit, which the secretary of state shall award to the prevailing party in the contest.

(2) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name in the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days. If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest. If a settlement

is not reached, the secretary of state shall hold a hearing. At the hearing the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing. Where consistent with this section, the informal procedures of the Montana Administrative Procedure Act apply.

(3) The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

- (a) the strength or unique nature of the names;
- (b) the similarity of sound, appearance, or meaning of the names;
- (c) the intent of the parties;
- (d) the type of businesses engaged in or to be engaged in by the parties;
- (e) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;
- (f) the nature and quality of goods or services provided by the parties;
- (g) the level of sophistication of potential purchasers of goods or services offered by the parties;
- (h) whether the party contesting the subsequent registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and
- (i) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

(4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and may order that the contested name be changed in the records of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the office of the secretary of state.

(5) A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

From the Montana Administrative Procedures Act:

2-4-604. Informal proceedings. (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under [2-4-201](#):

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

- (i) written or oral evidence in opposition to the agency's action or refusal to act;
- (ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or
- (iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings thereon;

(d) all matters placed on the record after ex parte communication pursuant to [2-4-613](#);

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at his cost a transcription of the recording, or both. Objections shall become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

From: iaca-section-bos-bounces@lists.iaca.org [mailto:iaca-section-bos-bounces@lists.iaca.org] **On Behalf Of** Clark, Allison

Sent: Friday, August 06, 2010 12:55 PM

To: Drake, Rose Ann; iaca-section-bos@lists.iaca.org

Subject: Re: [Iaca-Section-Bos] Contest of Registration of Name

Ohio's standard is "distinguishable on the record," but we do not have a process for name complaints. I would be interested in more information about this process.

Thanks,
Allison

Full text of email:

Good Afternoon!

I have a question for the group.

The Montana legislature passed revisions to the corporation statutes in 1991 which changed the standard for acceptance of corporate names from "deceptively similar" to "distinguishable on the record".

In addition, the act also included an alternative process for name complaints which enables individuals to remedy in a name dispute by filing a "name contest" with the Montana Secretary of State.

My question is are there other states that have a similar name contest process?

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