

Topic: Obscenities Name Clearance  
 Question by: Tung Chan  
 Jurisdiction: Hawaii  
 Date: June 5, 2013

Jurisdiction	Question(s)
	Do you restrict obscene or offensive words or phrases? (the "n" word or other racially inciting phraseology, obscenities towards animals, children, etc) If so, what's the legal source of authority? Do you look to federal laws, state laws or regs?
<b>Manitoba</b>	
<b>Corporations Canada</b>	
<b>Alabama</b>	
<b>Alaska</b>	
<b>Arizona</b>	<p>Not sure if this will help, but here's our experience in Arizona.</p> <p>First, we had a company that we thought was going to be named Hook A Whore, LLC. We were going to deny formation, based on our assessment that the name implied the LLC was going to be formed for an unlawful purpose. We then realized that we had mis-read the name, and it was actually HOOKAH WHORE, LLC. Hookah pipes are not unlawful per se, so we ultimately approved the formation.</p> <p>Second, this state passed a medical marijuana law, as you may have heard. Before the law was signed by the governor, we began receiving many formation documents for entities related to that industry. Some of them listed their purpose as, for example, "selling medical marijuana" or "medical marijuana provider." Since that purpose was not yet lawful, we withheld formation. We did not deny at that time, just put it on hold, until or unless the law became effective. Once the law became effective, we processed those documents.</p> <p>In our state, our MVD laws are explicit in giving the MVD the right to deny license plate names for offensive or obscene content. Perhaps you can use that for guidance. For us, our naming statutes had to be considered together with the formation and "lawful purpose" statutes to find the discretion to refuse formation. We did consult with our Legal Division on this issue.</p>
<b>Arkansas</b>	
<b>California</b>	

Jurisdiction	Question(s)
	<p>Do you restrict obscene or offensive words or phrases? (the "n" word or other racially inciting phraseology, obscenities towards animals, children, etc)                      If so, what's the legal source of authority? Do you look to federal laws, state laws or regs?</p>
<b>Colorado</b>	
<b>Connecticut</b>	
<b>Delaware</b>	
<b>District of Columbia</b>	<p>In the District of Columbia we have the following statement under our regulations for the trade names:</p> <p>“Trade name may not contain the true and real name of persons conducting the business, the words , phrases or abbreviations indicating the type of entity (ex., LLC, Inc., etc.), sexually explicit words or terms and the words “bank”, “banking”, “credit union” and “insurance”.”</p>
<b>Florida</b>	
<b>Georgia</b>	
<b>Hawaii</b>	
<b>Idaho</b>	<p>Idaho has it in administrative rules. The office has a committee (5 people in the office) that make a decision on the name. 06. Grossly Offensive Name. The business entity name may not be one that is deemed to be grossly offensive. (10-6-11)T</p>
<b>Illinois</b>	
<b>Indiana</b>	
<b>Iowa</b>	
<b>Kansas</b>	
<b>Kentucky</b>	
<b>Louisiana</b>	<p>Yes we do. The statute states:</p> <p>§212. Registrability</p> <p>A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:</p> <p>(1) Consists of or comprises immoral, deceptive or scandalous matter.</p> <p>This is a link to the statute: <a href="http://www.legis.la.gov/lss/lss.asp?doc=104225&amp;showback=Y">http://www.legis.la.gov/lss/lss.asp?doc=104225&amp;showback=Y</a></p>

Jurisdiction	Question(s)
	<p>Do you restrict obscene or offensive words or phrases? (the "n" word or other racially inciting phraseology, obscenities towards animals, children, etc)                      If so, what's the legal source of authority? Do you look to federal laws, state laws or regs?</p>
<b>Maine</b>	<p>Maine does have obscene language refusal in the statute, but it isn't easy making determinations. What one person thinks is obscene, another person doesn't. Ultimately, we let our Secretary of State make the final decision. We don't see it often, thank goodness.</p> <p>3. Refuse to file name. The Secretary of State, in the Secretary of State's discretion, may refuse to file a name that:</p> <ul style="list-style-type: none"> <li>A. Consists of or comprises language that is obscene; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]</li> <li>B. Inappropriately promotes abusive or unlawful activity; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]</li> <li>C. Falsely suggests an association with public institutions; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]</li> <li>D. Violates any other provision of the law of this State with respect to names. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]</li> </ul>
<b>Maryland</b>	
<b>Massachusetts</b>	
<b>Michigan</b>	<p>In Michigan, both the Limited Liability Company Act and the Business Corporation Act contain provisions requiring that a company or corporation be formed for a lawful purpose. In some circumstances, these provisions, when coupled with the Michigan Obscene Material statute (1984 PA 343, MCL 752.361 et seq) have been referenced as a basis for refusing to file a document or documents. However, these instances are rare and have only come up a couple of times during my tenure.</p> <p>There is an interesting publication prepared by Henry Cohen, Legislative Attorney with the Congressional Research Service in 2009; it's titled "Freedom of Speech and Press: Exceptions to the First Amendment." The publication includes a section on Commercial Speech; I have included the link to the publication below.</p> <p><a href="http://www.fas.org/sgp/crs/misc/95-815.pdf">http://www.fas.org/sgp/crs/misc/95-815.pdf</a></p>

Jurisdiction	Question(s)
	<p>Do you restrict obscene or offensive words or phrases? (the "n" word or other racially inciting phraseology, obscenities towards animals, children, etc)                      If so, what's the legal source of authority? Do you look to federal laws, state laws or regs?</p>
<b>Minnesota</b>	<p>But see, Minn. Stat. section 333.19, subd. 1 which states (at least with respect to trademarks):</p> <p>333.19 UNREGISTRABLE MATTER; COLLECTIVE AND CERTIFICATION MARKS.                      Subdivision 1.Registration prohibition.                      A trademark or service mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others must not be registered if it:</p> <ul style="list-style-type: none"> <li>(1) consists of or comprises immoral, deceptive or scandalous matter; or</li> <li>(2) consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or</li> <li>(3) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation of this insignia; or</li> <li>(4) consists of or comprises the name, signature or portrait of any living individual, except with written consent; or</li> <li>(5) consists of a mark which, (i) when applied to the goods or used to identify the services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (ii) when applied to the goods or used to identify the services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (iii) is primarily merely a surname provided, however, that nothing in this clause (5) shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or used to identify the services, proof of substantially exclusive and continuous use as a mark by the applicant in this state for the five years next preceding the date of the filing of the application for registration; or</li> <li>(6) consists of or comprises a mark which so resembles a mark registered in this state or a corporate, limited liability company, limited liability partnership, cooperative, or limited partnership name in use or reserved in this state by another, or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or used to identify the services of the applicant, to cause confusion or mistake or to deceive. The secretary of state may require the applicant to obtain affidavits by both the applicant and by the holder of the previously registered name or mark in making this determination.</li> </ul> <p>This does not apply to trade names or entity filings; however, if the word is bad enough, I say, let them sue me for rejecting their name – that is a battle we would take on, we can't lose on it, even if we do 'lose'.</p>
<b>Mississippi</b>	
<b>Missouri</b>	
<b>Montana</b>	See Additional Comments below
<b>Nebraska</b>	

Jurisdiction	Question(s)
	<p>Do you restrict obscene or offensive words or phrases? (the "n" word or other racially inciting phraseology, obscenities towards animals, children, etc)                      If so, what's the legal source of authority? Do you look to federal laws, state laws or regs?</p>
<p><b>Nevada</b></p>	<p>Since at least 1997, as a policy we have applied our Mark standard to entity names. We have an extensive list of words that if included in whole or as part of a word would be cause for rejection. Our online systems will automatically reject a filing if a word from the list is present. This is at times, but infrequently, problematic if a normally acceptable word contains a word from the restricted list. These may be filed by submitting a paper document. If staff comes across a questionable word, it is brought to my attention for determination. There had been a few that had slipped through either by improper review or the processor had no idea what a word meant. The desktop system has been modified to identify the words and alert the processor of its presence.</p> <p>NRS 600.330 Restrictions on registration. A mark must not be registered if it:</p> <ol style="list-style-type: none"> <li>1. Contains immoral, deceptive or scandalous matter.</li> <li>2. Contains matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, national symbols or which may bring them into contempt or disrepute.</li> <li>3. Resembles or simulates the flag or other insignia of the United States, or of any state or municipality, or of any foreign nation.</li> <li>4. Contains the name, signature or portrait of any living person, except when the written consent of that living person has been obtained.</li> <li>5. Consists of a mark which: (a) When applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them; (a) When applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or (c) Is primarily merely a surname,</li> </ol> <p><input type="checkbox"/> but this subsection does not prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. Proof of continuous use of the mark by the applicant in this State or elsewhere for 5 years next preceding the date of the filing of the application for registration may be accepted by the Secretary of State as evidence that the mark has become distinctive.</p> <ol style="list-style-type: none"> <li>6. So resembles a mark registered in this State which has not been abandoned, that it is likely that confusion, mistake or deception may result.</li> </ol>

Jurisdiction	Question(s)
	<p>Do you restrict obscene or offensive words or phrases? (the "n" word or other racially inciting phraseology, obscenities towards animals, children, etc)                      If so, what's the legal source of authority? Do you look to federal laws, state laws or regs?</p>
<b>New Hampshire</b>	
<b>New Jersey</b>	
<b>New Mexico</b>	
<b>New York</b>	<p>Hi,                      NY does not allow offensive words or obscenities in business entity names. Our corporation statutes include the following provision regarding offensive words in names;                      "Shall not contain any word or phrase, or any abbreviation or derivation thereof, which, separately, or in context, shall be indecent or obscene, or shall ridicule or degrade any person, group, belief, business or agency of government, or indicate or imply any unlawful activity."</p>
<b>North Carolina</b>	
<b>North Dakota</b>	
<b>Ohio</b>	
<b>Oklahoma</b>	
<b>Oregon</b>	<p>Although we have the International Model Trademark Act, which gives us the ability to make such distinctions, we have a provision that does not require us to do so. Oregon's constitution is more permissive than the federal right to free speech and we've been advised that we would inevitably lose any battle over a name we found offensive and refused to file.</p> <p>Our assumed business name statute does not empower us to make such distinctions. You want to offend people with your business name, go ahead. Interestingly, the DMV does stop offensive vanity plate registrations and has court cases to say where it can and cannot draw the line.</p>
<b>Pennsylvania</b>	
<b>Rhode Island</b>	
<b>South Carolina</b>	
<b>South Dakota</b>	
<b>Tennessee</b>	

Jurisdiction	Question(s)
	<p>Do you restrict obscene or offensive words or phrases? (the "n" word or other racially inciting phraseology, obscenities towards animals, children, etc)                      If so, what's the legal source of authority? Do you look to federal laws, state laws or regs?</p>
<b>Texas</b>	<p>Although we are concerned about potential first amendment issues, we have adopted an administrative rule which provides:</p> <p>The entity name may not be one that is deemed to be so grossly offensive as to be unacceptable as an entity name.</p> <p>In addition, the Texas Trademark Act provides:</p> <p>Sec. 16.051. REGISTRABLE MARKS. (a) A mark that distinguishes an applicant's goods or services from those of others is registrable unless the mark:</p> <p>(1) consists of or comprises matter that is immoral, deceptive, or scandalous;</p> <p>The rule and statute are construed narrowly.</p>
<b>Utah</b>	
<b>Vermont</b>	
<b>Virginia</b>	<p>As to business entity names, Virginia abides by the First Amendment of the U.S. Constitution, but we do look at the names to determine if we will be held up to public scrutiny. This review practice started in 2003 after we put through Licensed to Kill, Inc., whose articles stated that it was a cigarette manufacturing company. (They issued a press release and we got media attention.) This corporation's existence has now been automatically terminated for failure to pay the annual registration fee. I think this is a common disposition for entities with a provocative name. Who would want to do business with them?</p> <p>As to trade names, these are initially filed at the local level in Virginia, so the circuit court clerks probably take a variety of positions. If they are filed and then submitted to this office, which is required if the entity is of record, we file them without any review of the name.</p>
<b>Washington</b>	<p>Our office does not have authority to restrict naming other than making sure they are distinguishable and have the appropriate type of entity included. (LLC, LP, Inc....)</p> <p>Department of Revenue handles the trade names or DBA's in Washington and they stated they also do not have authority to place restrictions.</p>
<b>West Virginia</b>	

Jurisdiction	Question(s)
	Do you restrict obscene or offensive words or phrases? (the "n" word or other racially inciting phraseology, obscenities towards animals, children, etc) If so, what's the legal source of authority? Do you look to federal laws, state laws or regs?
Wisconsin	
Wyoming	

**Additional comments:**

**MONTANA:**

Montana's standards are very similar to Nevada's.

We use Montana Code Annotated as our guide.

MCA 30-13-303. Registrability. (1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others may not be registered if it:

(a) consists of or comprises immoral, deceptive, or scandalous matter;

(b) consists of or comprises matter that may disparage or falsely suggest a connection with persons, living or dead, or institutions, beliefs, or national symbols or bring them into contempt or disrepute;

(c) consists of or comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation or any simulation of the flag or coat of arms of any of the enumerated entities;

(d) consists of or comprises the name, signature, or portrait of any living individual, except with the individual's written consent;

(e) consists of a mark that:

(i) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(ii) when used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; or

(iii) is primarily merely a surname; or

(f) consists of or comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) Subsection (1)(e) does not prevent the registration of a mark used in this state by the applicant that has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use of the mark or service mark as a mark by the applicant in this state or elsewhere for the 5 years before the date on which the claim of distinctiveness is made.

There has been debate over the differences between vulgarities and obscenity's, and which are allowable or not under the Immoral section of the code, but at this time there is nothing definitive in the code to make that distinction.

Nothing in the code references any specific word or phrase, unless that phrase or term could be considered "disparaging".

**NOVA SCOTIA:**

Aloha Tung!

In Nova Scotia we would absolutely refuse any name we considered to be offensive. We have similar provisions in both our corporate legislation (section 16(1) of the Companies Act) and our trade name legislation (section 4(4) of the Partnership and Business Name Registrations Act) that basically provide that where a name is "otherwise objectionable" to the Registrar, we can (and do) refuse to register that name. There is nothing that legislatively defines what that "otherwise objectionable" might include, but in our name reservation instructions, the guidance around it are described as follows:

**"OBJECTIONABLE NAMES**

Names that are considered to be objectionable on public grounds will not be accepted. A name will not be approved if it includes a vulgar expression, obscene word or connotation, racial, physical or sexual slur.

The use of names of public figures will not be acceptable without advance written consent of the person named. You cannot use a surname other than your own, without advance written consent of the person named."

Best regards,

Hayley

Tung,

Here’s a brief treatment of the topic from MLMFT (my late mother’s favorite treatise – Bishop & Kleinberger, **LIMITED LIABILITY COMPANIES: TAX AND BUSINESS LAW** (Warren Gorham & Lamont, 1994; Supp. 2012-1))

A few states have given the filing office broader powers of review, 525 but those powers can raise constitutional issues. For example, when the Pennsylvania Department of State rejected a proposed certificate of organization because the proposed **name** violated Pennsylvania's “blasphemy statute,” the matter moved promptly to the federal district court. 526 The “blasphemy statute” prohibits in entity **names** “[w]ords that constitute blasphemy, profane cursing or swearing or that profane the Lord's **name**.” 527 On summary judgment, the “the Court [found] that the Blasphemy Statute violates both the Establishment Clause and the Free Speech Clause of the First Amendment to the United States Constitution.” 528 The entity **name** at issue was “I Choose Hell Productions LLC”. 529

526

**Kalman v. Cortes**, 723 F. Supp. 2d 766 (ED Pa. 2010) . The reviewing function was performed by the Business Processing Section of the Corporation Bureau of the Pennsylvania Department of State. Id. at 778.

---

527

15 Pa. C.S. § 1303(c)(2)(ii) (2001).

---

528

**Kalman v. Cortes**, 723 F. Supp. 2d 766, 806 (ED Pa. 2010) .

---

529

**Kalman v. Cortes, 723 F. Supp. 2d 766, 770 (ED Pa. 2010) .**

Regards,

Dan

**Professor Daniel S. Kleinberger | Founding Director, Mitchell Fellows Program**

**Reporter, Uniform Law Conference Drafting Committee on**

**Series of Unincorporated Business Entities**

**Co-Reporter, Uniform Law Conference Project for**

**Harmonization of Business Entity Acts**

**daniel.kleinberger@wmitchell.edu | 651-290-6387 | Fax: 651-290-6414**

**William Mitchell College of Law**

**875 Summit Avenue, St. Paul, MN 55105**

**<http://ssrn.com/author=329071>**

**<http://bit.ly/DanK Papers>**

**Dan cont'd:**

Got interested and did a little further research into the law:

The City of Ann Arbor does not contend that the name “Sambo's” is deceptive or relates to unlawful activity. Nor does the City deny that “Sambo's” is a valuable trade name which communicates useful information to consumers. To be sure, since its inception in 1957, the trade name “Sambo's” has received substantial promotion so as to acquire an identity in the eyes of the public. It conveys information because of the associations that have grown up over time between the name and the level of price and the quality of food and service. See *Friedman*, 440 U.S. at 16, 99 S.Ct. at 897. Clearly it conveys the type of information protected by the First Amendment, see *Virginia Bd.*, 425 U.S. at 765, 96 S.Ct. at 1827, as the First Amendment's concern for commercial speech is based on the informational function of advertising. See *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783, 98 S.Ct. 1407, 1419, 55 L.Ed.2d 707 (1978).

It also conveys to some citizens a pernicious racial stereotype of blacks as inferior. For example, “Sambo's” is no more than a form of latent vilification. The City, citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1949), urges that “Sambo's” is a racist trade name and that the use of words which, by their very utterance, inflict injury are not protected by the First Amendment. The Court in *Chaplinsky* affirmed a conviction under a statute that applied only to words with a direct tendency to cause violence by the persons to whom, individually, the words were addressed. *Id.* at 573, 62 S.Ct. at 770. The Supreme Court has refined its holding, however, so that suppression of speech which in no way tends to incite an immediate breach of the peace cannot be justified under *Chaplinsky's* “fighting words” doctrine. *Gooding v. Wilson*, 405 U.S. 518, 524-27, 92 S.Ct. 1103, 1107-08, 31 L.Ed.2d 408 (1977); *Lewis v. City of New Orleans*, 415 U.S. 130, 143, 94 S.Ct. 970, 972, 39 L.Ed.2d 214 (1974).[FN7]

*Sambo's Restaurants, Inc. v. City of Ann Arbor* 663 F.2d 686, 694 (C.A.Mich., 1981).

**TUNG RESPONSE:**

We have the same restrictions on trade mark registration probably because it was in a uniform act or model act. But for some reason, our trade name law is not as clear. (To Montana comment)

Also, I'm not sure the case law that you are citing, Dan, is entirely relevant because the sambo case is saying that that name is protected speech. But the case is not saying all speech is protected. In fact, the case itself cites “fighting words” as not protected. So basically we would like to see provisions that give registrars discretion to prohibit some names and be able to use that discretion within the limits of the constitution.

Any additional examples of language or authority would be appreciated.

Thanks,

Tung

**Full text of email:**

Aloha everyone!

We are currently grappling with restricting certain trade names based on offensive words or obscenities. We really think there has to be some limitations but are looking for guidance.

Do you restrict obscene or offensive words or phrases? (the "n" word or other racially inciting phraseology, obscenities towards animals, children, etc)

If so, what's the legal source of authority? Do you look to federal laws, state laws or regs?

Any help would be most appreciated.

Mahalo,

Tung

Tung Chan

Commissioner of Securities

Business Registration Division, Chief

Department of Commerce and Consumer Affairs

335 Merchant St.

Honolulu, HI 96813

Phone: (808) 586-2744