

Topic: Name Availability Standards

Question by: Kathy Sachs

Jurisdiction: Kansas

Date: December 1, 2014

Jurisdiction	Question(s)
	<p>Years ago, we agreed on a name availability IACA standard for the distinguishable on the record standard (as opposed to deceptively similar). The primary goal was to be able to automate online systems, but also to create consistency.</p> <p>We are considering streamlining our standard. I'm wondering how many states use this standard or if others have moved to be more literally distinguishable on the record.</p> <p>For example, any preposition would make a name distinguishable. Any difference in word of Incorporation would make a name distinguishable. We would probably leave the special character rules the same. Thoughts?</p>
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	<p>Arizona currently follows standards similar to those set forth below or those outlined by Nevada. For example, we exclude all entity identifiers from the analysis of distinguishability.</p> <p>Our naming standards are here: http://www.azcc.gov/divisions/corporations/filings/namingpolicy.asp</p>
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
District of Columbia	

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Florida	<p>Florida uses the distinguishable standard for name availability. Below is a copy of our profit corporate law that recently passed and helped define our standards that we were using from old name rules that had been repealed. Similar language was put in our other business entity statutes as well.</p>
Georgia	
Hawaii	<p>Hawaii does not have distinguishable on the record standard for name availability. Hawaii has a substantially identical standard.</p>
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	<p>Massachusetts does not have distinguishable on the record. Massachusetts General Law c. 156D, section 4.01(b) states: name may not be the same as, or so similar that is it likely to be mistaken for....</p>
Michigan	<p>In Michigan, the name must be distinguishable on the record of the administrator. More detail regarding what it means to be distinguishable upon the record may be found at the below link. Our guidelines address the differences between singular and plural forms of a word, abbreviations, the presence or absence of the word "the", differences in punctuation and special characters, etc.</p> <p>http://www.dleg.state.mi.us/bcsc/forms/corp/pub/nmeav2.pdf</p>
Minnesota	

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Mississippi	
Missouri	
Montana	See additional comments below
Nebraska	
Nevada	<p>Nevada uses the distinguishable on the record standard. The entity endings such as Inc., Corp. etc. and "The," "A" or "An" do not make a name distinguishable on the record.</p> <p>There are a few punctuation/character/spaces/lettering provisions in regulation. http://www.leg.state.nv.us/NAC/NAC-078.html#NAC078Sec010 . These regulations have been in place since September 2000.</p>
New Hampshire	
New Jersey	
New Mexico	
New York	

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North Carolina	<p>North Carolina as an Administrative Code on Distinguishable names.</p> <p>18 NCAC 04 .0503 DECEPTIVELY SIMILAR AND DISTINGUISHABLE NAMES</p> <p>(a) Designations of entities, such as "company", "co.", limited", "ltd.", "corporation", "corp.", "incorporated", "inc.", "professional association", "p.a.", "limited liability company", "L.L.C.", "professional limited liability company", and "limited partnership" shall be disregarded in determining if a proposed entity name is distinguishable upon the records of the Secretary of State, provided that such words appear at the end of the proposed entity name. Such words shall not be disregarded in such determination when they appear in the body, rather than at the ending, of the proposed entity name.</p> <p>(b) Articles, conjunctions, prepositions, punctuation, spaces, and the substitution of an Arabic numeral for a word shall be disregarded in determining whether a proposed entity name is distinguishable.</p>
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	

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Tennessee	<p>Tennessee uses the distinguishable standard for name availability. In general in Tennessee, a name is distinguishable from other names if it contains one or more different letters, and/or words, or it has a different sequence of letters and/or words, from all other active, reserved and registered names. Differences between singular and plural forms of words are distinguishable, and a space between words is distinguishable. However, required ending words (inc., corp, llc) are ignored, and articles, conjunction, prepositions, symbols, capitalization, and punctuation are also ignored. For Example, A.B.C. INC is not distinguishable from ABC, LLC. But Food INC is distinguishable from Foods INC.</p>
Texas	
Utah	<p>Utah is the same as Nevada. Plural vs. singular is also not distinctive in Utah</p>
Vermont	
Virginia	
Washington	<p>I've attached the corporate statute for Washington State as example. There are several "must" and "must not" including the use of the word bank and others.</p> <p>The, and, abbreviations, plural, entity designation, and special characters are also not considered distinguishable.</p> <p>http://apps.leg.wa.gov/rcw/default.aspx?cite=23B.04.010</p>
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

MONTANA:

Reflected below is Montana's distinguishable on the record Rule.

44.5.131 DISTINGUISHABLE ON/IN THE RECORD(S)

(1) Pursuant to Title 30, chapter 13, MCA, and Title 35, chapters 1, 2, 7, 8, and 12, MCA, "distinguishable on the record" and "distinguishable in the records" means that a registered business name must be sufficiently distinctive from another registered business name so that it does not cause confusion in an absolute or linguistic sense.

(2) Business names that contain key words that are different and do not copy a business name already on record are "distinguishable." For example, "Bill's Carpentry" is distinguishable from "Bill's Builders."

(3) Geographic and numeric designations, phonetic similarities, and abbreviations of words (other than business identifiers) will make business names "distinguishable." For example, "Two for One Diner's Club" is distinguishable from "241 Diner's Club."

(4) The following conditions will not make a registered business name distinguishable:

(a) the use of punctuation marks or special characters, for example: "R/D Construction" and "R D Construction" are not distinguishable;

(b) the use of articles "a," "an," or "the," for example: "The Painted Pony" and "Painted Pony" are not distinguishable;

(c) the use of business name identifiers or their abbreviations, for example: "ABC Inc.," "ABC Co.," and "ABC Corp." are not distinguishable;

(d) the substitution of an arabic numeral for a word, for example: "2" and "Two" are not distinguishable;

(e) the substitution of a lower case letter for a capital letter, for example: "d" and "D" are not distinguishable;

(f) the use of plurals, possessives, or tense, for example: plurals--"Fine Line Inc." and "Fine Lines Inc." are not distinguishable; possessives--"Employee Services" and "Employees' Services" are not distinguishable; and tense--"Swim Inc.," "Swimming Inc.," "Swims Inc.," and "Swam Inc." are not distinguishable; and

(g) the use of internet domain suffixes, for example: .com, .org, and .net are not distinguishable.

Full text of email:

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We are considering streamlining our standard. I'm wondering how many states use this standard or if others have moved to be more literally distinguishable on the record.

For example, any preposition would make a name distinguishable.

Any difference in word of Incorporation would make a name distinguishable.

We would probably leave the special character rules the same.

Thoughts?

Name Availability Guidelines and Restrictions

Laws governing business entities generally require that the entity's name be unique from the names of other entities doing business in the state. States typically employ one of the following legal standards to determine if a name is available for use: "distinguishable upon the record" or "deceptively similar." Kansas uses the less stringent standard of "distinguishable upon the record", which merely requires that the entity's name be distinguishable from other entity names already on file with the Secretary of State. This liberal standard means that even though the proposed name may look or sound similar a small difference in spelling, or the addition of one extra letter or word, is enough to allow the name.

There are two business entity types that are not required to have distinguishable names; general partnerships and limited liability partnerships. The Kansas Secretary of State uses the following guidelines in determining if a name is available:

1. The plural form of a word is distinguishable from the singular word.

Example: "Cat" and "Cats"

2. Numbers are distinguishable from words representing the number.

Example: “10” and “ten”

3. The following words, or abbreviations thereof, are eliminated from the name prior to searching for availability, no matter where the words occur in the name

- Association
- Chartered
- Church
- Club
- College
- Company
- Co
- Corporation
- Corp
- Foundation • Fund
- Incorporated
- Inc
- Institute
- Limited Liability Company
- LLC
- Limited Company
- LC
- Limited Partnership • LP
- Limited
- LTD
- Professional Association

- PA
- Society
- Syndicate
- Union
- University

4. The following prepositions, articles, and conjunctions are eliminated prior to searching for availability, no matter where the words occur in the name:

- An
- And • & • As
- At
- By • For
- From
- In • Of
- On
- The • To
- With

5. The letter “a” is eliminated only if it appears as an article in the name.

6. The following words are not eliminated prior to a search for name availability:

- About
- Above
- Across
- After
- Against
- Along
- Although

- Among
- Around • Because
- Before
- Behind
- Below
- Beneath
- Beside
- Between
- Beyond
- But • Despite
- Down
- During
- Except
- For
- How
- If
- Inside
- Into
- Like • Near
- Nor
- Off
- Once
- Onto
- Or

- Out
- Outside
- Over
- Past • Since
- So
- Than
- That
- Through
- Throughout
- Till
- Toward
- Under
- Underneath • Until
- Up
- Upon
- When
- Where
- Whether
- While
- Within
- Without
- Yet

7. The following symbols cannot be used in a name:

- Carrot ^

- Back slash \
- Tilda ~
- Pipe |
- Vertical Bar |
- Ellipsis ...
- Horizontal bar _____
- Underscore ____

8. The following symbols, punctuation marks, and special characters are eliminated prior to searching for availability, no matter where they occur in the name:

- Quotation Mark ""
- Apostrophe ‘
- Parenthesis ()
- Comma , • Period .
- Forward slash /
- Colon :
- Semicolon ; • Ampersand &
- Brackets [] {}
- Accent ’ Hyphen –
- Exclamation !
- Question ?

9. The following symbols and marks are not eliminated, nor are they converted to the word equivalent:

- 0-9
- A-Z
- # • \$
- %

- & • *
- +
- < • =
- >
- @

10. The following Roman numerals are entered by the Secretary of State as the alphabetic equivalent, not the number equivalent:

- I M C
- X V D

11. Any space between words is eliminated.

12. The Secretary of State follows the order given below in applying the guidelines:

- A. Strip prepositions, articles and conjunctions and words of incorporation
- B. Keep characters listed in 5 only
- C. Strip letter "a" if necessary
- D. Delete spaces

Exceptions

The Secretary of State may, at its discretion, accept a name for filing in the following instances:

1. When initials are used in the name that, when the punctuation between the initials is disregarded, spell an article, preposition, conjunction or word of incorporation, and use of an article, preposition, conjunction, or word of incorporation is not intended;
2. When an alphabetical character that is intended to be a Roman numeral is used in a name and causes a conflict with another name using the same character as a letter;
3. When separate words are used in a name that constitute a name already on record when the space(s) between the words are disregarded.

KATHY M. SACHS | Business Services

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