

Topic: Name Availability Rules

Question by: Jewel Moore

Jurisdiction: Louisiana

Date: October 16, 2020

Jurisdiction	Question(s)
	<p>We are discussing our guidelines regarding Name Availability and I would like to get some feedback. I realize your answer will depend on the wording of your state law.</p> <p>Our statutes for name availability on business entities are written with the wording *?shall be distinguishable upon the records of the secretary of state?? *If your state has this same wording, how far do you take that, in relation to spaces, punctuation, 1 word vs. 2 words, etc..?? Obviously, taking it verbatim, means *anything different* makes it distinguishable (so a space would make a difference), but? do you stick strictly to that or make ?in-house? exceptions? Would these be a Conflict or No Conflict in your state?</p> <ol style="list-style-type: none"> <li>1. ABC MARKET, LLC vs A B C MARKET, LLC</li> <li>2. JEWMOO GROUP, INC. vs JEW-MOO GROUP, INC.</li> <li>3. SOUTHEAST ENTERPRISES, LLC vs SOUTH EAST ENTERPRISES, LLC</li> <li>4. 133 ELM STREET, LLC vs 133 ELM ST., LLC</li> </ol> <p>Also, do Trade Names conflict with business entity names in your state (or just other trade names)?? If they do conflict with business entity names, do you follow the same rules for their name availability?? Our law, in reference to *?shall be distinguishable upon the records of the secretary of state?, *is only in the business filing law, it is not in the trade name statutes.</p>
Manitoba	

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<p><b>Corporations Canada</b></p>	<p>In response to your question, Corporations Canada's corporate name availability rules are based on our Act regulations, one of which is: confusion with existing trademarks, official marks and trade names.</p> <p>One of the regulations regarding confusion is <i>*the degree of resemblance between the proposed corporate name and the trademark, official mark or trade-name in appearance or sound or in the ideas suggested by them*</i>. As a rule, when the names of two businesses are so similar in appearance, sound or in the ideas suggested by them that someone could think that they are the same business, the names are considered to be confusing and the proposed corporate name would not be available. The use of spaces, punctuation, 1 word vs. 2 words, etc., is insufficient to differentiate the names from one another because their appearance remains similar, and the pronunciation of the names is the same.</p> <p>For these reason, there would be confusion between the following paired names:</p> <ol style="list-style-type: none"> <li>1. ABC MARKET, LLC vs A B C MARKET, LLC</li> <li>2. JEWMOO GROUP, INC. vs JEW-MOO GROUP, INC.</li> <li>3. SOUTHEAST ENTERPRISES, LLC vs SOUTH EAST ENTERPRISES, LLC</li> <li>4. 133 ELM STREET, LLC vs 133 ELM ST., LLC</li> </ol> <p>With regards to your question on conflicts between trade names and business entity names and if we follow the same rules for trade name availability, trade names are registered at the provincial and territorial level, not at the federal level; therefore, the federal jurisdiction has no authority or rules on the availability of trade names. Each province and territory has their own rules on the availability of trade names and the rules may vary between the jurisdictions.</p>

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Alabama	
Alaska	
Arizona	
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
District of Columbia	
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	

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Indiana	
Iowa	<p>Iowa uses distinguishable upon the record. Specifics can be found here:  <a href="https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legis.iowa.gov%2Fdocs%2Fiac%2Fagency%2F10-07-2020.721.pdf&amp;data=04%7C01%7Cpiverto%40azsos.gov%7C11c899a46372406dce6608d87432a4e2%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637387109055783770%7CUnknown%7CTWFpbGZsb3d8eyJWIjoicjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C1000&amp;reserved=0">https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legis.iowa.gov%2Fdocs%2Fiac%2Fagency%2F10-07-2020.721.pdf&amp;data=04%7C01%7Cpiverto%40azsos.gov%7C11c899a46372406dce6608d87432a4e2%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637387109055783770%7CUnknown%7CTWFpbGZsb3d8eyJWIjoicjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C1000&amp;reserved=0</a> (40.3)</p> <p><a href="#">[cid:image001.jpg@01D6A5F1.A619AC10]</a> (search for this in the pdf)</p> <p>One point ? spaces matter in Iowa in making a determination of name availability.</p>
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	

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Michigan	<p>The Michigan statutes have the <i>*distinguishable upon the records of the administrator*</i> standard. I have attached a copy of our name availability guideline. Spacing, special characters, and punctuation are not deemed to be distinguishable. In Michigan, your first three examples would be considered name conflicts. Your last example would not be a name conflict because the word <i>*street*</i> is spelled out in one example and abbreviated in the other example.</p> <p>The Michigan statutes do not recognize trade names, but rather the terminology <i>*assumed name*</i> is used. An assumed name is a name that the entity can transact business under that is different than the name stated in its Articles of Organization, Articles of Incorporation, etc. The name availability standard for assumed names is also <i>*distinguishable upon the records of the administrator.*</i></p>
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	

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<p><b>New Hampshire</b></p>	<p>New Hampshire adopted “Distinguishable upon the record” as its name standard for all business entity types, including trade names, in 2016. In 2019, however, the Legislature enacted more stringent conditions in the statute, similar to administrative rules adopted by other states that utilize the standard. These exceptions include:</p> <p>“a trade name, based upon the records of the secretary of state, is not distinguishable upon the record if the only distinguishing factor to the trade name is:</p> <ol style="list-style-type: none"> <li>(1) An article.</li> <li>(2) Plural forms of the same word.</li> <li>(3) Phonetic spelling of the same name or word.</li> <li>(4) An abbreviation in place of a complete spelling of the name.</li> <li>(5) A suffix or prefix added to a word or any other deviation from or derivative of the same word, excluding antonyms and opposites.</li> <li>(6) A change in a word or name indicating entity status.</li> <li>(7) The addition of a numeric designation, unless consent is granted by the current name holder.</li> <li>(8) Differences in punctuation or special characters, unless it changes the clear meaning of the word.</li> <li>(9) Differences in whether letters or numbers immediately follow each other or are separated by one or more spaces.</li> <li>(10) An Arabic numeral representing a number, a Roman numeral representing the same number, or a word representing the same number appearing in the same position within otherwise identical names.</li> </ol> <p>As such, none of the 4 examples listed in your email would be deemed distinguishable from each other under NH law. Additional examples are included in our “Name Availability Guidelines” (attached).</p>

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New Jersey	
New Mexico	
New York	
North Carolina	<p>North Carolina has an administrative rule regarding name availability and distinguishable upon the record search elements.</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 upon the records of the Secretary of State or otherwise permissible for use in a proposed entity name.</p>
North Dakota	

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Ohio	<p>In Ohio we have similar language ? names must be distinguishable upon the record ? although we have a few exceptions listed  <a href="https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcodes.ohio.gov%2Forc%2F1701.05&amp;data=04%7C01%7Cpviverto%40azsos.gov%7C4be269884b654ce29f0708d8742e3787%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637387089151233441%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C1000&amp;data=CE6Eggp4uXMDxz5iFQPbUaP4CDgLZlvURyC9iqgSKYg%3D&amp;reserved=0">https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcodes.ohio.gov%2Forc%2F1701.05&amp;data=04%7C01%7Cpviverto%40azsos.gov%7C4be269884b654ce29f0708d8742e3787%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637387089151233441%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C1000&amp;data=CE6Eggp4uXMDxz5iFQPbUaP4CDgLZlvURyC9iqgSKYg%3D&amp;reserved=0</a> ? for example the use of an entity word or abbreviation, article, conjunction, contraction, abbreviation, punctuation or the use of a different tense or number of the same word does not make a name distinguishable.</p> <p>For the examples below, our office would accept #1, reject #2 because we would ignore the hyphen and that makes them both the same, accept #3, and reject #4 as the abbreviation does not make the names distinguishable.</p> <p>Trade names conflict with business entity names in Ohio.</p>
Oklahoma	

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<b>Oregon</b>	<p>Oregon has an administrative rule that reads as follows:            Corporation Division - Chapter 160            Division 10            BUSINESS REGISTRY SECTION            160-010-0012            Distinguishable on Record</p> <p>For purposes of the reservation, registration, or use of a name under ORS Chapters 58, 60, 62, 63, 65, 67, 70, 128, 554, and 648, a name is distinguishable on the records of the Secretary of State Business Registry office from the name of any other active organized entity, and from a reserved or registered name, if:</p> <ol style="list-style-type: none"> <li>(1) Each name contains one or more different letters or numerals, or has a different sequence of letters or numerals, except that adding or deleting the letter "s" to make a word plural, singular, or possessive shall not cause a name to be distinguishable;</li> <li>(2) One of the key words is different;</li> <li>(3) The key words are the same, but they are in a different order; or</li> <li>(4) The key words are the same, but the spelling is creative or unusual.</li> <li>(5) The difference in key words is between how a number is expressed, as a numeral, Roman numeral, or word representing a numeral.</li> </ol>
<b>Pennsylvania</b>	

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<b>Rhode Island</b>	<p>Rhode Island also uses ?distinguishable upon the record.? We have a description and examples on our website, here&lt;<a href="https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.sos.ri.gov%2Fdivisions%2Fbusiness-services%2Fname-availability-guidelines&amp;data=04%7C01%7Cpviverto%40azsos.gov%7C4eb3f535877442c9ad2008d874296220%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637387068386202946%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&amp;sd=VluS8uM9gOSkqd0D%2Blp972fEi1kN61bOBIpelfxtCz4%3D&amp;reserved=0">https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.sos.ri.gov%2Fdivisions%2Fbusiness-services%2Fname-availability-guidelines&amp;data=04%7C01%7Cpviverto%40azsos.gov%7C4eb3f535877442c9ad2008d874296220%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637387068386202946%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&amp;sd=VluS8uM9gOSkqd0D%2Blp972fEi1kN61bOBIpelfxtCz4%3D&amp;reserved=0</a>&gt;. In the examples you gave below, we would consider it a conflict for all four. We have no record of trade names here, so they do not factor into the name availability decision.</p>
<b>South Carolina</b>	
<b>South Dakota</b>	
<b>Tennessee</b>	
<b>Texas</b>	
<b>Utah</b>	
<b>Vermont</b>	

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Virginia	<p>Our statutory standard is distinguishable on the record and we interpret this as the order of the letters and numbers in a name. We toss out spaces and marks, including punctuation, some "noise words" that do not provide any context (e.g., "the"), and then, pursuant to statute, entity designations (e.g., "Inc."). What's left is a core name that must be distinguishable from the core name of all active entities of record - a perfect job a computer!</p> <p>Our LLC Name statute can be found at section 13.1-1012&lt;<a href="https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.lis.virginia.gov%2Fvacode%2Ftitle13.1%2Fchapter12%2Fsection13.1-1012%2F&amp;data=04%7C01%7Cpiverto%40azsos.gov%7C3ac80243a1c5441e0dcd08d8750576cb%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637388014109247710%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAil_CJQljojV2luMzliLCJBTil6lk1haWwiLCJXVCI6Mn0%3D%7C1000&amp;sdata=p8zMNb6aaO82G2RmiLYDNATDfxrRVFEzCGHwm%2FTDoOI%3D&amp;reserved=0">https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.lis.virginia.gov%2Fvacode%2Ftitle13.1%2Fchapter12%2Fsection13.1-1012%2F&amp;data=04%7C01%7Cpiverto%40azsos.gov%7C3ac80243a1c5441e0dcd08d8750576cb%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637388014109247710%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAil_CJQljojV2luMzliLCJBTil6lk1haWwiLCJXVCI6Mn0%3D%7C1000&amp;sdata=p8zMNb6aaO82G2RmiLYDNATDfxrRVFEzCGHwm%2FTDoOI%3D&amp;reserved=0</a>&gt; of the Code of Virginia. (On July 1, 2021, the names of protected series are added to the mix.)</p> <p>I will say that I am not a fan of including spaces and marks in the core name. This makes it too easy to obtain a deceptively similar name. If you have ABC, Inc., do you really also want to allow A B C, Inc.? I do not see where any protection for a name is provided with this approach.</p> <p>I have attached the algorithm rules we employed in programming our system.</p>
Washington	

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West Virginia	
Wisconsin	
Wyoming	

**Additional comments:**

**Full text of email:**

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Thank you in advance for your input--

Jewel Moore  
Assistant Commercial Administrator  
Commercial Division  
Secretary of State Kyle Ardoin

225.922.2896 (o)

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\*<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.sos.la.gov%2F&data=04%7C01%7Cpiverto%40azsos.gov%7C68651a1c34554dca56fd08d8721b5e40%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637384809620796171%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C2000&sdata=k53nJagzCSR23mE0JoP3Ia0g6JpNHJ95DVBjQt4jWdA%3D&reserved=0>  
<<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.sos.la.gov%2F&data=04%7C01%7Cpiverto%40azsos.gov%7C68651a1c34554dca56fd08d8721b5e40%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637384809620796171%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C2000&sdata=k53nJagzCSR23mE0JoP3Ia0g6JpNHJ95DVBjQt4jWdA%3D&reserved=0>>\*