

Topic: Name Availability Standard

Question by: Cathy Beaudoin

Jurisdiction: Maine

Date: January 29, 2014

Jurisdiction	Question(s)
	<ol style="list-style-type: none"> 1. What are the standards for determining name availability in your state? 2. Are these standards set by statute, rule or policy? 3. Can you share the link to these statutes, rules or policies? 4. What are the pros & cons with your standard for determining name availability? 5. Is your State considering any changes to your name availability standard? 6. Do you have a separate trade name or assumed name statute? 7. If you file trade names or assumed names, are these filed with all other entity names using the same name standard? 8. Do Sole proprietorships or General Partnerships file with your office?
Manitoba	
Corporations Canada	
Alabama	
Alaska	

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Arizona	<ol style="list-style-type: none"> 1.) Distinguishable on the record. 2.) Statute (corps): http://azleg.gov/FormatDocument.asp?inDoc=/ars/10/00401.htm&Title=10&DocType=ARS Statute (LLC): http://azleg.gov/FormatDocument.asp?inDoc=/ars/29/00602.htm&Title=29&DocType=ARS Naming standards: http://www.azcc.gov/divisions/corporations/filings/namingpolicy.asp 3.) n/a 4.) I agree with everyone else's pros and cons. 5.) Not at the AZ. Corp. Comm. 6.) Yes – trade names are handled by the AZ Secretary of State's office. 7.) Our database is linked with the SOS for purposes of name availability. Back when our law changed (2005), the naming standards were worked out between the two agencies to avoid conflicts in name granting. 8.) No – sole partnerships are not required to register, and I believe Gen. Pshps are also not required to register.
Arkansas	
California	
Colorado	
Connecticut	
Delaware	

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District of Columbia	<ol style="list-style-type: none"> 1.) Distinguishable upon a record. 2.) Set by statute. 3.) Here is the link to § 29-103.01. Permitted names 4.) There are no cons except this standard allows for deceptively similar entities to be registered (ex, US Capital Inc vs US Capitol Inc., etc.). Pros is that it s easy standard as we will ignore the special words and compare name to name. 5.) Not at this point. 6.) Yes we have a separate trade name statute 7.) Yes, name standard is the same for trade name. trade names in the District are not allowed to have corporate suffix (ex, Inc, etc.) The only exception is the word “company”. 8.) If sole proprietors or general partnerships need to register trade name then they will come to my office.
Florida	
Georgia	

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Hawaii	<ol style="list-style-type: none"> 1.) The name may not be the same as or substantially identical to. 2.) Standards set by statutes and rules. HRS 414-51, 414D-61, 415A-8, 425-6, 425-151, 425E-108, 425E-905, 428-105, 482-3, 482-21, 482-23 and H.A.R.Chapter 36, §16-36-15 3.) http://cca.hawaii.gov/breg/hrs and http://cca.hawaii.gov/breg/har 4.) Pros: intent of not confusing the public. Cons: human element is necessary in determining name availability 5.) No, not at this time. 6.) Yes. HRS 482. 7.) Yes 8.) Yes
Idaho	
Illinois	

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Indiana	<ol style="list-style-type: none"> 1.) Distinguishable upon the record 2.) Statute 3.) IC 23-1-23-1 (corporations – there are separate citations for each entity type with almost identical language). 4.) n/a 5.) There are always issues in relation to name availability, but we do not have anything in the works to make a change. 6.) We have an assumed names statute. IC 23-15-1-1. We have a proposed amendment to this portion of the statute that would require assumed names that contain an entity indicator (Inc., LLC, etc.) correspond the indicator to the entity type for which the assumed name is being filed. 7.) Assumed business names are not checked for name availability. 8.) Both of the types file at the county level.
Iowa	
Kansas	
Kentucky	

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Louisiana	<ol style="list-style-type: none"> 1.) The corporate name shall be distinguishable from a name reserved pursuant to R.S. 12:23(G) and shall be distinguishable from the name of any other corporation, limited liability company, or trade name registered with the secretary of state. 2.) Statute 3.) Corporations: http://www.legis.la.gov/Legis/Law.aspx?d=76419 ; LLC's http://www.legis.la.gov/Legis/Law.aspx?d=76253 4.) Same as other states 5.) Not at this time 6.) No 7.) Trade names are filed using the same standard. 8.) General partnerships do, however at this time we do not check availability regarding partnership names.
Maine	
Maryland	
Massachusetts	
Michigan	See additional comments below
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	

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Nevada	<ol style="list-style-type: none"> 1.) Nevada has used the distinguishable on the record standard since 1997. 2.) Both in statute and in regulation. http://www.leg.state.nv.us/NRS/NRS-078.html#NRS078Sec039 and http://www.leg.state.nv.us/NAC/NAC-078.html#NAC078Sec010 3.) See 2. above. 4.) Pros – Take the human element out of determining if a name is deceptively similar; Necessary for creation of online service for entity creation; Reduces rejection for name related issues. Cons – Still receive complaints that a name is too similar to another on record. 5.) No 6.) Yes 7.) The Nevada SOS does not file DBAs, fictitious firm names or assumed names. These are filed at the county level. Trade names are filed with the SoS under separate statutory authority. These follow a separate naming convention that is still deceptively similar. As it is with other mark filings. They are filed in the same database as the entity filings, but the names are NOT compared with the entity filing for purposes of filing in the SOS office. 8.) Sole proprietors and general Partnerships are not required to file creation documents with us; however, they are required to maintain a state business license with the office if they are doing business in Nevada (there are a few exceptions.)

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New Hampshire	
New Jersey	
New Mexico	
New York	

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North Carolina	<ol style="list-style-type: none"> 1.) Distinguishable Upon The Record 2.) Statute N.C.G.S. 55-21(b) 3.) Statute: http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_55D/GS_55D-21.pdf ; Adm. Rules on distinguishable: http://reports.oah.state.nc.us/ncac/title%2018%-20secretary%20of%20state/chapter%2004%-20corporations%20division/18%20ncac%2004%20.0503.pdf 4.) The pro is that it is easy to determine if the name is available by using the statute and administrative code. The con is that people complain that a name is too similar to their company's name. They are having credit and billing issues and we can't do anything to help them. 5.) No 6.) No and Yes, We don't have trade name statutes, but we do have assumed name statutes. The assumed names are filed at the county level at this time. 7.) There are no standards for assumed name. Multiple filings with the same name throughout the state is allowed. 8.) No
North Dakota	
Ohio	
Oklahoma	

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Oregon	See additional comments below
Pennsylvania	
Rhode Island	<ol style="list-style-type: none"> 1.) Distinguishable upon the Record. 2.) Each applicable Chapter of Title 7 (1.2 - Business Corporations; 6 - Non-Profit Corporations; 12 - Partnerships; 13 - Limited Partnerships; 16 - Limited Liability Company) of the Rhode Island General Laws (RIGL) sets forth the standard as “distinguishable upon the record” and provides 3 exceptions to the standard. Rules and Regulations are in the process of being promulgated. We currently have Name Availability Guidelines to assist in determining “distinguishable upon the record.” 3.) http://webserver.rilin.state.ri.us/Statutes/TITLE7/7-1.2/7-1.2-401.HTM . I’ve also attached a copy of the Name Availability Guideline. 4.) The standard was changed in 2005 from “deceptively similar” to “distinguishable upon the record.” For such a small state, it has been a very easy transition. “Deceptively similar” was very restrictive resulting in a large number of daily/weekly complaints about the consent process. Since the change in standards, we receive less than a dozen complaints a year about the availability process. 5.) No 6.) In the State of Rhode Island assumed names are recorded with the local City or Town Clerk. (Sole Proprietors and General Partnerships conducting business in a name other than the real names of the individual or individuals transacting business.) 7.) Entities (business corporations, non-profit corporations, limited partnerships, and limited liability companies) of record with our office that wish to conduct business under a fictitious business name, must register that name under the corporate record by filing a Fictitious Business Name Statement. 8.) no
South Carolina	

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Tennessee	
Texas	
Utah	
Vermont	

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Virginia	<ol style="list-style-type: none"> 1.) Distinguishable on the record. 2.) Statute. 3.) See subsection C of Va. Code Section 13.1-630. 4.) The big Pro is how much easier it is to program the computer to recognize name conflicts, as opposed to the “sounds like” or “confusingly similar” name standard. You cannot have online filings that establish a new name in real time without this programming. 5.) No 6.) Yes 7.) Assumed names are filed in the Clerk’s Office, but by statute they are not considered when performing the name distinguishability test. Trade name are filed in another office, but again, by statute, they are not a part of the name distinguishability test. 8.) Our office does not accept any filings for sole proprietorships (but they do file a fictitious name certificate in the local courts). General partnerships make the filings listed in the Uniform Partnership Act, but their names, by statute, are not considered when performing the name distinguishability test. <p>It is also worth noting that Virginia follows the common law regarding the “right” to a business name, which, as I recall, is related to its use for a particular type of business within an established geographic area. “Conflicts” can be resolved in a court proceeding.</p>

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Washington	<ol style="list-style-type: none"> 1.) Distinguishable upon the records, with additional provisions 2.) Statute 3.) http://apps.leg.wa.gov/rcw/default.aspx?cite=23B.04.010 4.) n/a 5.) Not known at this time 6.) Trade names and DBA's are handled at Department of Revenue 7.) Same as 6. 8.) Sole proprietors and general partnerships register with Department of Revenue, Business License Service
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

Daniel Kleinberger; Professor Emeritus – William Mitchell College of Law wrote:

Cathy,

The entity acts promulgated by the Uniform Law Commission all take the “distinguishable upon the record” approach. See e.g. : UNIFORM BUSINESS ORGANIZATIONS CODE (2011)

(Last Amended 2013), SECTION 1-301. PERMITTED NAMES:

(a) Except as otherwise provided in subsection (d) or (f), the name of a domestic filing entity or domestic limited liability partnership, and the name under which a foreign entity may register to do business in this state, must be distinguishable on the records of the [Secretary of State] from any:

- (1) name of an existing domestic filing entity which at the time is not administratively dissolved;
- (2) name of a limited liability partnership whose statement of qualification is in effect;
- (3) name under which a foreign entity is registered to do business in this state under [Part] 5;
- (4) name reserved under Section 1-303;
- (5) name registered under Section 1-304; or
- (6) assumed name registered under [this state’s assumed name statute].

In addition, requiring the filing office to protect an entity or individual’s intellectual property would: (i) require the filing office to make judgments of a judicial nature; (ii) force the office to decide which of two contestants to favor, without having available a definitive standard; and (iii) impose additional costs on the office, both for additional (and expert) staff and as a result of a foreseeable increase in litigation (because at least some of the losing contestants will appeal).

I will be happy to reiterate these points more formally, if you would like.

Regards,

Daniel Kleinberger

OHIO:

- 1.) Distinguishable upon the record – with a few specific instructions on aspects of a name which do not make them distinguishable (i.e. business entity words/abbreviations do not make a name distinguishable)
- 2.) Set by statute

- 3.) <http://codes.ohio.gov/orc/1701.05>
- 4.) Pros – gives more opportunity for businesses to register the name they want – if we still had the prior standard of “confusingly similar” there would not be many business name options at this point, the law clearly outlines how our office needs to make these decisions which takes our opinion out of the equation and we rely solely on the law. Cons – Business entities complain when someone registers a new business name that they believe is too close to their name.
- 5.) No
- 6.) We apply the same distinguishability rules to trade name registrations, but there are a few extra restrictions regarding trade name filings in Ohio law. For example, we cannot file a trade name if it implies it is incorporated, but is not. So, only a corporation can file a trade name using an entity word/abbreviation like “inc.” <http://codes.ohio.gov/orc/1329.02>
- 7.) Yes
- 8.) Sole proprietorships do not file anything to register their business entity, but if they use a business name, they must register a trade or fictitious name. In Ohio, a general partnership has the option to file a Statement of Partnership Authority, but it is not required. Many general partnerships choose to register a trade name or fictitious name to register their business name.

OREGON:

Oregon's responses are inline, mostly quoting Ohio's response.

Parenthetically, I see this as part of the pendulum swing. Back in the 1980's, when I started, we were just starting to move away from the "Guardian of Records" role that, while ministerial, was focused on making sure the information on record was right, to the "Data Warehouse" role, where our primary job was to collect information and distribute it, as inexpensively, conveniently and efficiently as possible. Perhaps the apotheosis of this was the RA9 model act.

Now policymakers are beginning to understand the dangers we warned them of when they went this direction and some are finding it hard to live with.

- 1.) "Distinguishable upon the record – with a few specific instructions on aspects of a name which do not make them distinguishable (i.e. business entity words/abbreviations do not make a name distinguishable)"
- 2.) "Set by statute," but explicated by rule.
- 3.) Our Business corporation statute, for example, says, " (4) A corporate name shall be distinguishable upon the records of the office from any other corporate name, professional corporate name, nonprofit corporate name, cooperative name, limited partnership name, business trust name, reserved name, registered corporate name or assumed business name of active record with the office." ORS 60.094

http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors060.html . Rules are in OAR 160-010-0012 to -0014
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_160/160_010.html

- 4.) "Pros – gives more opportunity for businesses to register the name they want – if we still had the prior standard of “confusingly similar” there would not be many business name options at this point, the law clearly outlines how our office needs to make these decisions which takes our opinion out of the equation and we rely solely on the law. Cons – Business entities complain when someone registers a new business name that they believe is too close to their name." Less subjectivity (inherent in the "deceptively similar" standard) equals more consistency and allows for more automation and faster turnaround times. When you have to defend your decision to file or not file, it costs everybody time and money and opens the office to litigation.
- 5.) "No." Though we are considering a simplification of the rule so that it is even less subjective.
- 6.) "We apply the same distinguishability rules to trade name registrations, but there are a few extra restrictions regarding trade name filings in Ohio law. For example, we cannot file a trade name if it implies it is incorporated, but is not. So, only a corporation can file a trade name using an entity word/abbreviation like 'inc.' " Ditto Oregon.
- 7.) Yes
- 8.) "Sole proprietorships do not file anything to register their business entity, but if they use a business name, they must register a trade or fictitious name. ... Many general partnerships choose to register a trade name or fictitious name to register their business name." Also, in Oregon, anyone not disclosing their full "real and true" name of all parties in the business must file an assumed business name, which is what we call trade names. Those using a real and true name may file an ABN, if they wish

MICHIGAN:

- 1.) Distinguishable from other names on the records of the administrator. Limited partnerships, limited liability companies, and corporations are created by filing the appropriate documents with the Corporations Division. These entities must select a name that is distinguishable on the records of the administrator from other active names.
- 2.) The term “distinguishable on the records of the administrator” is stated in the statutes and it has been defined by adopted guidelines. A name is distinguishable if it has a different sequence of letters or numbers from other names. Filing with the agency creates no substantive rights to the use of a name.
- 3.) Section 212 and 217 of the Business Corporation Act, 1972 PA 284:

<http://legislature.mi.gov/doc.aspx?mcl-450-1212>; <http://legislature.mi.gov/doc.aspx?mcl-450-1217>

Section 204 and 206 of the Michigan Limited Liability Company Act, 1993 PA 23:

<http://legislature.mi.gov/doc.aspx?mcl-450-4204>; <http://legislature.mi.gov/doc.aspx?mcl-450-4206>

Section 212 and 217 of the Nonprofit Corporation Act, 1982 PA 162:

<http://legislature.mi.gov/doc.aspx?mcl-450-2212>; <http://legislature.mi.gov/doc.aspx?mcl-450-2217>

Section 102 and 104 of the Michigan Revised Uniform Limited Partnership Act, 1982 PA 213:

<http://legislature.mi.gov/doc.aspx?mcl-449-1102>; <http://legislature.mi.gov/doc.aspx?mcl-449-1104>

Name Availability Guidelines – Part 1:

<http://www.dleg.state.mi.us/bcsc/forms/corp/pub/nmeav1.pdf>

Name Availability Guidelines – Part 2:

<http://www.dleg.state.mi.us/bcsc/forms/corp/pub/nmeav2.pdf>

- 4.) Pros: - Clearly defined parameters that can be consistently applied; Objective standard
- 5.) Yes, particularly since the Name Availability Guideline - Part 2 was adopted in 1988, which predates the Michigan Limited Liability Company Act. Also, we are considering including two special characters which may predate the current keyboard.
- 6.) No, assumed name provisions are incorporated into each of the entity statutes.
- 7.) Yes

- 8.) Sole proprietorships and copartnerships file their names with the county clerk in the county in which their business is located, and also in any other county in which they transact business or have an office. The name standard applied to the names of sole proprietorships or copartnerships by the county clerk is that the name cannot be the same as or so similar to a name already on file with the county as to cause confusion or deception.

Full text of email:

Dear IACA Friends,

Last legislative session, due to a name conflict, there was legislation requiring more protection of business names filed with our office. We did testify that the exclusive use of a name is a provision outside of the entity formation laws. However, they asked us to report back to them with options for filing and protection of business names. Maine has a distinguishable upon the record name standard currently.

I have looked back at previous years posts on the IACA website, so I know that we may have covered some of this, but I am looking for more recent information.

Thanks in advance for information you are willing to share! In the perfect world, I love to hear back from all of you by the middle of next week ☐

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Hope to see you all in Milwaukee!

Cathy Beaudoin
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