CORPORATION SERVICE COMPANY®

UCC Debtor Names – Corporate Endings Do Matter!

By Paul Hodnefield, Associate General Counsel, Corporation Service Company

It's been more than five years since Revised Article 9 (RA9) took effect. By now, everyone should know the importance of getting the debtor name correct when filing a UCC financing statement. Yet, a significant number of UCC filers believe that certain errors in the debtor name really don't matter. Why worry? After all, the debtor name is sufficient if it shows up on a filing office search of the correct name. Filing office standard search logic generally ignores spacing, punctuation and, for organizations, ending "noise words," doesn't it?

Relying on the search logic to compensate for errors in any part of the debtor name is a risky proposition for secured parties, especially when it comes to the ending noise words. This was recently illustrated by the bankruptcy case *In Re Tyringham Holdings, Inc.,* 2006 Bankr. LEXIS 3332 (Bankr. E.D.Va. Dec. 1, 2006).

In *Tyringham*, the secured party, Suna Bros., Inc., consigned 65 pieces of jewelry to Tyrningham Holdings, Inc. Suna attempted to perfect its security interest in the consigned goods by filing a financing statement with the Virginia State Corporation Commission (SCC). The financing statement provided the debtor name as "Tyringham Holdings." Tyringham later filed for Chapter 11 bankruptcy protection.

The bankruptcy court had to determine whether the omission of "Inc." from the debtor name made the Suna financing statement seriously misleading. The court first determined that the name on the financing statement was not the name of the debtor required by §9-503(a)(1). The public records of the SCC listed the name of the entity as "Tyringham Holdings, Inc."

As the financing statement failed to comply with §9-503(a), the court found it was seriously misleading under §9-506(b). The court then looked to whether a search of the correct debtor name would disclose the financing statement, making it not seriously misleading under the savings clause found in §9-506(c).

The savings clause provides that a financing statement is not seriously misleading, in spite of minor errors or omissions, if a search of the filing office records under the debtor's correct name, using the jurisdiction's standard search logic, if any, would disclose the financing statement. Section 9-506(c) was intended to prevent minor errors in punctuation, spacing and ending words from making the financing statement seriously misleading.

Most states use the standard search logic described in the IACA[1] Model Administrative Rules. The IACA standard search logic was intended to give effect to §9-506(c) by disregarding spaces, punctuation and ending noise words, including "Inc."

The SCC did not adopt IACA standard search logic. Instead, the SCC search logic disregards only a short list of noise words, such as "an," "and," "of" and "the." Certain business endings are modified to standard abbreviations, but are not disregarded by the search logic. Consequently, an official search certified by the SCC under the correct name, "Tyringham Holdings, Inc.," failed to disclose the Suna financing statement. As a result, the court concluded the financing statement was seriously misleading.

Suna attempted to argue that the financing statement was not seriously misleading because searches performed by private companies, using search logic modeled on the IACA standard, did disclose the financing statement. Suna also argued that the State Corporation Commission search logic was faulty, because it didn't filter out "Inc." as a noise word.

The court rejected both of Suna's arguments, noting that §9-506(c) requires the search be conducted using the filing office's standard search logic. The relevant standard for determining the sufficiency of a debtor name is, therefore, not a diligent searcher's search logic, nor a private organization's standard search logic. All that matters is the filing office's standard search logic.

While the outcome would have been different in many other jurisdictions, *Tyringham* has some important lessons of UCC filers. The most important is that filers need to use the same diligence in providing ending words as they apply to the rest of the debtor name. Otherwise, the sufficiency of the debtor name is entirely at the mercy of the filing office search logic.

Even if a jurisdiction uses IACA standard search logic, there is no guarantee the debtor name sufficient under §9-506(c) will remain sufficient. Filing offices do occasionally change their search logic. It has happened in several states since RA9 took effect. If updated search logic fails to disclose the financing statement it becomes seriously misleading.

The bottom line is that filers need to be diligent in providing the entire name when the debtor is an organization. In the case of a corporation, as was at issue in *Tyringham*, that means providing the name exactly as it appears in the Articles of Incorporation. Remember, it's up to the secured party to "get it right."

Paul Hodnefield is Associate General Counsel for Corporation Service Company. Please contact the author with questions or comments at (800) 927-9801, extension 2375, or phodnefi@cscinfo.com.

Disclaimer: The material contained herein is intended for information purposes only and shall not constitute legal advice or counsel.