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34.04.02 - CORPORATE NAME AVAILABILITY

000. LEGAL AUTHORITY.

The Secretary of State is authorized under Section 67-903, Idaho Code, to adopt rules. (7-1-93)

001. -- 010. (RESERVED).

011. GENERAL.

01. Characters of Print Acceptable in Names. Names may consist of letters of the English Alphabet, Arabic Numerals and certain symbols capable of being reproduced on a standard English language typewriter, or combination thereof. (7-1-93)

a. Letters of the English Alphabet includes only upper case, or capital letters; no distinction as to type face or font is recognized. (7-1-93)

b. Arabic Numerals includes 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9. (7-1-93)

c. The symbols recognized as part of a name may include ! " \$ % () * @ ?, and -. A space or spaces after words, letters, numerals or symbols may be considered as part of the name. (7-1-93)

02. False Implication of Government Affiliation. The corporate name may not be one that might falsely imply governmental affiliation. (7-1-93)

03. Grossly Offensive Name. The corporate name may not be one that is deemed to be so grossly offensive as to be unacceptable as a corporate name. (7-1-93)

04. "Words of Incorporation." "Words of incorporation" include Company, Corporation, Incorporated, Limited and their acceptable abbreviations. The acceptable abbreviations are respectively: Co., Corp., Inc., and Ltd. The acceptable "words of incorporation" for a professional corporation are Chartered, Professional Association, and the abbreviation P.A. (7-1-93)

05. Written Comparison of Names. A comparison of names to determine similarity is made by writing the names to be compared, using upper case letters of the English Alphabet and acceptable numerals and acceptable symbols. (7-1-93)

06. Categories of Name Similarity. There are three (3) categories of name similarity: (7-1-93)

a. Same. (7-1-93)

b. Deceptively similar. (7-1-93)

c. Acceptable. (7-1-93)

012. (RESERVED).

013. SAME.

01. Defined. Corporate names are the "same" if a comparison of the names, written as above provided, reveals no difference except for punctuation and symbols, spacing, articles of speech, conjunctions, the word "of," plural or possessive endings, and words of incorporation. (7-1-93)

02. Consent. "Same" name not acceptable without consent and distinguishing words. A proposed corporate name which is the same as a corporate name already on file in this office cannot be accepted or filed, unless

the holder of the name already on file gives its written consent to use of the name by the applicant, and the applicant adds one or more words to the name to make it distinguishable from the name on file. (7-1-93)

03. Form of Consent. No particular form of consent is required. The consent must be in writing and signed by an officer or authorized agent. Consent given orally or by telegraph cannot be accepted. Consent from more than one (1) corporation may be required in some instances. (7-1-93)

014. DECEPTIVELY SIMILAR.

01. Defined. Corporate names are deceptively similar if on comparison of the names, written as above, there exist striking similarities so that a person who did not know the exact name or did not know the full name of a corporation about which he was giving or receiving information would be likely to give or be given information about a different corporation having a similar name. In making the comparison, consideration will not be given to punctuation and symbols, spacing, articles of speech, conjunctions, the word "of," plural or possessive endings, and words of incorporation. (7-1-93)

02. Consent. "Deceptively similar" not acceptable without consent and, if required, distinguishing words. A proposed corporate name which is deemed to be deceptively similar cannot be accepted or filed, unless the holder of the name already on file gives its written consent to the use of the name by the applicant, and, if the holder of the name already on file and the legal staff of the Secretary of State find it necessary, the applicant adds one or more words to the name to make it distinguishable from the name on file. (7-1-93)

03. Form of Consent. Same as Subsection 013.03. (7-1-93)

04. "Deceptively Similar," When. A proposed corporate name is deemed to be deceptively similar to a name already on file if: (7-1-93)

a. The proposed corporate name is the same as a corporate name on file except for a geographical designation.

EXAMPLE: Bull and Bear Club of Boise, Inc. is deceptively similar to Bull and Bear Club, Inc. (7-1-93)

b. The first two (2) words of a proposed corporate name are the same or virtually the same as the first two words of a corporation name already on file, if at least one (1) of the first two (2) words is significant.

EXAMPLE: Janitorial Service and Supply, Inc. is deceptively similar to Janitorial Service, Inc. (7-1-93)

c. For purposes of Subsection 014.04.b., the following limitations shall apply: (7-1-93)

i. Commonly used two-word terms or expressions shall be deemed to comprise one word; i.e. "Silver Dollar" would be deemed to be one (1) word.

EXAMPLE: "Silver Dollar Mining Co." is not deceptively similar to "Silver Dollar Cafe, Inc.," but is deceptively similar to "Silver Dollar Mining & Milling, Inc." (7-1-93)

ii. Words which are not considered to be significant are those which occur so commonly in corporate names as to add no distinctiveness to a name. They include, but are not limited to the points of the compass and derivations thereof, geographical and topographical designations in common use in Idaho, and ordinal designations.

EXAMPLE: Northwest, Sawtooth, Palouse Empire, Magic Valley, and First. (7-1-93)

iii. Exception: When a directional, geographical or topographical term precedes a common generic term and they comprise the whole corporate name exclusive of the word of incorporation, the directional, geographical or topographical term will be deemed to be significant and sufficient to distinguish the name from another name consisting of the generic term or the generic term preceded by a directional, geographical or topographical term.

EXAMPLE: "Boise Camera, Inc.," "Idaho Camera Co.," and "The Camera Company" are all acceptable when compared with one another. (7-1-93)

iv. A combination in series of two or more words which are not significant will be deemed to be one significant word.

EXAMPLE: "First Idaho" would be deemed to be one significant word. Therefore, "First Idaho Widget Co." is not deceptively similar to "First Idaho Capital Co.," but "First Idaho Capital Widget Co." is deceptively similar to "First Idaho Capital Co." (7-1-93)

v. If the first word of a name is not significant and the second word is significant, the comparison will be based on the second and the third words.

EXAMPLE: "Northwest Paint & Glass Co." is not deceptively similar to "Northwest Paint Supply Co.," but is deceptively similar to "Northwest Paint & Glass Supply Co." (7-1-93)

d. Names containing a fictitious, fanciful, or arbitrary word may be deemed deceptively similar to a name on file which contains the same word, although the name might seem to be available under other rules.

EXAMPLE: Entex Production Company is deceptively similar to Entex, Inc. (7-1-93)

e. The difference consists in inverted order of substantially the same words.

EXAMPLE: Van Lines of North America, Inc. is deceptively similar to North American Van Lines, Inc.
EXAMPLE: Club Caravan, Inc. is deceptively similar to Caravan Club, Inc.
EXAMPLE: Boise Electronics Supply, Inc. is deceptively similar to Electronics Supply of Boise, Inc. (7-1-93)

f. The difference consists in the presence or absence of letters which do not alter the names sufficiently to make them readily distinguishable.

EXAMPLE: Exxon -- Exon -- Exxonn -- Exxons. (7-1-93)

05. Exception For Churches. Where the name of a proposed incorporated church is deceptively similar to that of an incorporated church already on file by reason of the fact that the names are the same except for different geographical designations at the end of the name, nevertheless a letter of consent will not be required.

EXAMPLE: Persons proposing to incorporate a church named First Baptist Church of Lewiston would not be required to obtain a letter of consent from First Baptist Church of Twin Falls. (7-1-93)

015. "ACCEPTABLE".

01. Defined. A proposed corporate name is acceptable for filing if it is not significantly similar to a corporate name already on file or if it is similar, but not to the extent that it is deemed to be deceptively similar. (7-1-93)

02. "Acceptable", When. A proposed corporate name may be deemed to be acceptable if an existing corporate name on file has only one (1) significant word and the proposed corporate name consists of the same word followed by another word which does not imply that the proposed corporation is an affiliate of or in a series with the corporation having a similar name on file.

EXAMPLE: The following names are acceptable when compared to the name United, Inc.: United Sales, Inc. -- United Enterprises, Inc. -- United International, Inc.

EXAMPLE: The following names are deceptively similar to the name United, Inc.: -- United of Idaho, Inc. -- United Phase Two, Inc. (7-1-93)

03. Surnames. A surname is considered to be a "word". Where proposed corporate name contains a

surname as the second "word" and contains a given name or initials as the first "word" which is different from the first "word" of an existing corporation, the name is acceptable. (7-1-93)

04. Alphabet Names. Where a name or a unit of a name consists of initials only or letters of the alphabet, the combination of initials will be considered as one word for the purpose of applying name availability rules.

EXAMPLE: The following are different "words" and are not considered to be similar: A & A -- AAA -- AAAA -- A & B -- AAB -- AAC.

EXAMPLE: A & B Supply is acceptable when compared to A & B, Inc.

EXAMPLE: A & B Electric Supply is deceptively similar when compared to A & B Electric Co. (7-1-93)

016. (RESERVED).

017. MATTERS NOT CONSIDERED.

Only the proposed corporate name and the names of active corporations (corporations which are in good standing or have been forfeited for less than six (6) months) are considered in determining name availability. Among the matters not considered are: (7-1-93)

01. Purpose. Whether or not the purpose of the proposed corporation is the same as or similar to the purpose of an existing corporation. (7-1-93)

02. Location. Whether or not the corporations will be carrying out activities in the same or nearby locations. (7-1-93)

03. Prior Actions. Whether or not an analogous situation has previously been acted on in this office. (7-1-93)

04. Opinion. Whether or not an "opinion" as opposed to a "ruling" has already been expressed by an employee of the Secretary of State in response to an oral or written request (see Section 019). (7-1-93)

05. Activity. Whether or not an existing corporation is actively engaged in business, or has a telephone listing, or a location of a place of business. (7-1-93)

06. Intent. Whether or not an existing corporation is about to change its name or be dissolved or merged out of existence. (7-1-93)

07. Reliance. Whether or not the applicant has ordered stationery, opened a bank account, signed a contract, or otherwise altered his position in the expectation, hope or belief that the proposed name would be available. (7-1-93)

08. Influence. Whether or not the applicant is more or less important, extensive, widely known, or influential than an existing corporation. (7-1-93)

09. Common Law. Whether or not infringement or unfair trade practice has occurred or might occur. (7-1-93)

018. (RESERVED).

019. "RULING" VS. "OPINION."

01. Definitions. An "opinion" on name availability is a statement by an employee of the Secretary of State made prior to the time an instrument is accepted for filing. A "ruling" on name availability is a final determination made by the legal staff whether or not to accept an instrument for filing. (7-1-93)

02. Who May Express "Opinions." Any employee of the Corporation Division may express an "opinion" on name availability in response to written or telephone, or other oral requests; but such an "opinion" is not

a "ruling" or final determination that the name will be "available" or that the name will be "not available" or that an instrument containing such will or will not be accepted for filing. (7-1-93)

03. Form of "Opinion." An "opinion" may be expressed orally or in writing. "Opinion" as to name availability will be stated as follows for the various name similarity categories: (7-1-93)

- a. Same. (7-1-93)
- b. Deceptively similar. (7-1-93)
- c. Acceptable. (7-1-93)

04. "Opinion" Not Final. All "opinions" that a name is acceptable are merely advisory and are not final unless and until a proper legal instrument employing the name has been accepted for filing. (7-1-93)

05. Who May Make "Ruling." "Rulings" are made by members of the legal staff of the Corporate Division, except on name reservations. The corporation clerks consult the legal staff on all name availability questions involving any degree of similarity which arise in connection with a name reservation. The legal staff will make no "ruling" as to name availability prior to the submission of an instrument for filing. (7-1-93)

020. -- 999. (RESERVED).