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## The Continually Narrowing View of Name Sufficiency under §9-503 of the UCC

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As the reader may be well aware, a financing statement must sufficiently provide the name of the debtor to be effective under the Uniform Commercial Code (UCC). UCC §9-503(a). When the debtor is a registered organization, the financing statement must provide the name of the debtor indicated in the public record of the debtor's jurisdiction of organization. UCC §9-503(a)(1) (see also UCC §9-102(70), defining a registered organization as one organized solely under the law of a single state or the United States, which maintains a public record of the organization). These seemingly simple requirements have recently led to confusing results in certain jurisdictions.

### Hastings State Bank v. EDM Corp., et al.



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In February 2009, a Nebraska court determined that a financing statement was seriously misleading because it identified the debtor as "EDM Corporation d/b/a EDM Equipment" when the public record of the Nebraska Secretary of State's office is "EDM Corporation." *Hastings State Bank v. EDM Corp., et al.* (In re EDM Corp.), 2009 WL 367773 (Bankr. D. Neb. Feb. 10, 2009). Hastings State Bank (HSB) commenced an adversary proceeding in bankruptcy court to determine the validity, extent

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and priority of certain liens. *Id.* at \*1. The pertinent undisputed facts before the court on summary judgment were as follows: (1) HSB loaned money to EDM Corporation and filed a financing statement to perfect its security interest in EDM's property, listing the debtor as "EDM Corporation d/b/a EDM Equipment"; (2) subsequently, Huntington National Bank loaned money under a revolving line of credit to EDM, took a blanket security interest and identified the debtor in its financing statement as "EDM Corporation"; and (3) prior to advancing money under the

actual individual or organizational name of the debtor is both necessary and sufficient, whether or not the financing statement provides trade or other names of the debtor." UCC §9-503, comment 2 (emphasis added). The Nebraska bankruptcy court disagreed.

Most importantly, according to the court, it was undisputed that a search utilizing "EDM Corporation" under Nebraska's search logic would not reveal the HSB financing statement. The court stated that the test for determining whether an error is seriously misleading under Nebraska law is whether a search of the public records, using the debtor's correct name, would reveal the financing statement. *Id.* at \*4 (citations omitted). The court also cited *In re Jim Ross Tires Inc.*, 379 B.R. 670 (Bankr. S.D. Tex. 2007), a case in which a Texas bankruptcy court found the inclusion of a "d/b/a" name following the legal name to be seriously misleading. *Id.*

## Lien on Me

line of credit, Huntington conducted a UCC search and did not discover HSB's financing statement. *Id.* at \*1-\*2. In analyzing the priority of the competing liens, the court addressed the sufficiency of HSB's financing statement and whether it was "seriously misleading" under the UCC.

HSB argued that its financing statement included the debtor's official name, notwithstanding the additional information. *Id.* at \*3. In support of its position, HSB cited comment 2 to UCC §9-503, which states that "[t]ogether with subsections (b) and (c), subsection (a) reflects the prevailing view under former Article 9 that the

### In re Jim Ross Tires Inc.

As in *Hastings State Bank*, the issue before the court in *Jim Ross Tires* was the effectiveness of a financing statement that included the debtor's trade name, but the court was also faced with assessing whether a financing statement lacking an "s" (i.e., "Jim Ross Tire Inc." instead of "Jim Ross Tires Inc."), was seriously misleading. The court determined that both financing statements were ineffective.

The support for the court's decision stemmed from two aspects of Texas law. First, there was the Texas Administrative Code, which was modeled after the UCC Model Administrative Rules for

Article 9. *In re Jim Ross Tires Inc.*, 379 B.R. 670, 677. After quoting the Texas Administrative Code, the court focused on the last provision and stated that the “Administrative Code clearly states that only exact matches and those modified by the rules are returned.” *Id.*, citing Tex. Admin. Code §95.503(8). The court concluded that because the search logic applied to searches using “Jim Ross Tires Inc.” would not return financing statements for either “Jim Ross Tires Inc. d/b/a HTC Tires & Automotive Centers” or “Jim Ross Tire Inc.,” the names provided were insufficient. *Id.* at 678.

Second, the court relied on stipulations from the parties asserting effective financing statements. Acknowledging that the UCC permits errors in financing statements, the court stated that “even if a debtor’s name is misstated on the financing statement, as long as a search under the debtor’s correct name would locate the financing statement, the misstatement should not be considered ‘seriously misleading’ as a matter of law.” *Id.* at 678-79. The court also noted that both parties stipulated that a search under “Jim Ross Tires Inc.” would not reveal the existence of their respective financing statements. Using this information, the court concluded the financing statements were seriously misleading as a matter of law. *Id.* at 679.

## Analysis

These decisions are not the first to emphasize that the filing office’s search logic controls the analysis. See *In re Tyringham Holdings Inc.*, 354 B.R. 363, 365 (Bankr. E.D. Va. 2006) (citing *Pankratz Implement Co. v. Citizens Nat’l Bank*, 130 P.3d 57 (Kan. 2006); *Receivables Purchasing Co. Inc., v. R&R Directional Drilling LLC*, 588 S.E.2d 831 (Ga. 2003); and *All Bus. Corp. v. Choi*, 634 S.E.2d 400 (Ga. 2006)). Despite this apparent momentum, this line of decisions should not be followed for two reasons. First, the line of reasoning renders UCC §9-506 and UCC §9-503’s comment 2 meaningless. Section 9-506 addresses errors or omissions in a financing statement. Comment 2 adequately summarizes the rules as follows:

Subsection (b) contains the general rule: [A] financing statement that fails sufficiently to provide the debtor’s name in accordance with Section 9-503(a) is seriously misleading

as a matter of law. Subsection (c) provides an exception: If the financing statement nevertheless would be discovered in a search under the debtor’s correct name, using the filing office’s standard search logic, if any, then as a matter of law the incorrect name does not make the financing statement seriously misleading.

UCC §9-506, comment 2.

Reading UCC §9-503 (which contemplates adding trade names to a financing statement, provided the correct name appears in the financing statement) together with UCC §9-506 (which permits errors in financing statements), it is evident the UCC does not contemplate or require the debtor’s name to be listed in a financing statement with absolute precision. Yet, the *EDM Corp.* and *Jim Ross Tires* decisions appear to require perfection.

Second, search logic should not be the “end-all” basis for a court’s determination because the results may be inexplicable. Using Nebraska as an example, which largely adopted the UCC Model Administrative Rules for Article 9, the standard logic for corporation name searches includes the following (and only the following) rules: (1) there is no limit to the number of matches that may be returned; (2) no distinction is made between upper- and lower-case letters; (3) punctuation is disregarded; (4) “noise words” such as company, corporation, incorporated, etc., are disregarded; (5) “the” is disregarded; and (6) spaces are disregarded. 436 Neb. Admin. Code §503.1-503.6. The Nebraska Code then goes on to state:

After taking the preceding rules into account to modify the name of the debtor requested to be searched and to modify the names of debtors contained in active financing statements in the UCC information management system, the search will reveal only names of debtors that are contained in active financing statements and, as modified, exactly match the name requested, as modified.

436 Neb. Admin. Code §503.8.

Therefore, it would appear that a search submitted to the Nebraska Secretary of State office for “EDM Corporation” would be reduced to “EDM.” This name should theoretically return financing statements for the following debtors: edm inc., EDM

Company, E.D.M. Corp., etc.—all of which may be different entities than “EDM Corporation.” It is difficult to understand how “EDM Corporation d/b/a EDM Equipment” was not found for two reasons. First, “d/b/a” and what appears after it should be included in an extensive list of words that qualify as “noise.” See 436 Neb. Admin. Code §503.4, *In re Jim Ross Tires Inc.*, 379 B.R. 670, 677, n.5 (listing everything from agency to trustee, and including railroad and REIT). Second, even if “d/b/a...” is not noise, a search reduced to “EDM” by the search logic should have revealed “EDM Corporation d/b/a EDM Equipment” (likely reduced to “EDMDBAEDMEQUIPMENT” under the search logic above). See *Clark’s Sec. Trans. Mo.*, “Adding a Trade Name after the Debtor’s Legal Name May be Hazardous to the Health of Your Financing Statement,” May 2009 (“[I]t seems strange that the Nebraska search logic would not pick up Hastings’ financing statement.”). After all, it would appear that the controlling search logic should have produced everything starting with “EDM.”

Regardless, it appears that the search logic adopted by the various secretaries of state continues to trump those states’ versions of the UCC. As a result, creditors should review the applicable rules in each state in which they operate. The International Association of Commercial Administrators has compiled a list of links to the rules for nearly every state, which is available at [www.icaa.org/node/46](http://www.icaa.org/node/46). Creditors should also take every effort to review the state’s legal records to assess the debtor’s legal name. Erring on the side of being over-inclusive may be a fatal error for the financing statement. The financing statement should contain the debtor’s legal name—and only the debtor’s legal name. ■

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