

WHAT'S IN A (UCC) NAME? THE CONSEQUENCES OF NOT USING THE “EXACT LEGAL NAME”



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While UCC code is the same among all states, filing requirements differ.

By now the importance of using the exact legal name of the debtor on a UCC filing is understood. To not follow this rule can jeopardize your filing and have it become classified as “seriously misleading” as defined by the Uniform Commercial Code. This means loss of priority—the death knell for most secured transactions.

Recently, two court cases have brought additional context to “the exact debtor name” discussion. Both cases have shed light on what the courts value. It should come as no surprise that understanding what constitutes the exact name of the debtor played a critical role in both decisions.

CASE ONE: INDIANA, THE CASE OF THE MISSING “T”

Earlier in 2017, an Indiana bankruptcy took up the matter of an individual name UCC-1 filing under the Uniform Commercial Code. In *In re Nay*, Bankr. Case No 16-90762-BHL-11, the court addressed Indiana’s individual name guidelines, which were adopted during Indiana’s modification of its UCC laws. They centered upon the name of the individual as it appeared on his or her Indiana driver’s license.

The facts of the case were fairly standard for these types of disputes. Two debtors, Ronald Markt Nay and Sherry Nay, entered into a secured transaction with a financing institution. This first secured party filed its UCC-1 blanket lien statement using the names “Ronald **Markt** Nay” and “Sherry Nay”. After this agreement, the debtors sought additional financing for equipment from a second secured party. This secured party filed their purchase money security interest (PMSI) using the names “Ronald **Markt** Nay” and “Sherry Nay”, omitting the “T” in Mr. Nay’s middle name. The name that appears on Mr. Nay’s Indiana driver’s license is Ronald **Markt** Nay.

Unfortunately, the Nays had to enter into bankruptcy protection. It was at this time that the missing “T” on the second secured party’s filing became an issue. The dispute centered on the question: Does the missing “T” create a seriously misleading UCC filing under Indiana’s version of 9-506(b)?

The court began its analysis by looking at UCC 9-503(a) as it pertains to individuals. Indiana had previously adopted Legislative Alternative A when it amended its due diligence code in 2013. Alternative A maintains that a UCC filer should use the exact name of an individual as

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it appears on that debtor's valid driver's license. If you fail to use that exact name, your only defense would be that the name could still be found through a search using Indiana's search logic under 9-506(c).

The court followed the plain language of the law, and it determined that the filing of the second lien holder could not be found under Indiana's search logic. The argument between "correct name" and "full correct name" raised by the second lien holder was not pervasive. To that end, the first secured party's blanket lien controlled and thus included the property of the PMSI filing. Therefore, not filing with the "T" in the debtor's named created a seriously misleading filing, and the second party lost its priority.

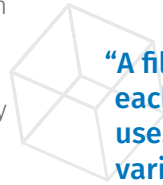
CASE TWO: WISCONSIN, THE CASE OF A SPACE

The next case takes us to Wisconsin. In *United States SEC v. ISC, Inc.* (No. 15-cv-45-jdp. United States District Court, W.D. Wisconsin) the issue of a corporate name was front and center in this dispute.

The secured creditor filed their initial UCC financing document in Wisconsin. At the time of this filing, the name of the debtor in its charter document was **ISC, Inc.** (with no space between "Inc" and the period). The secured party had originally filed listing the debtor's name as **ISC, Inc.** (mistakenly including a space between "Inc" and the period).

The Wisconsin court, like the Indiana court, looked at similar code provisions. In particular, the court noted that under 9-506(a), a financing statement that substantially complies is effective, even if it has minor errors or omissions unless the errors or omissions make the financing statement seriously misleading. Under 9-506(b), a financing statement that fails sufficiently to provide the name of the debtor is seriously misleading.

To determine this, the court will follow and interpret Wisconsin's search logic. In this case, the Wisconsin search logic **did not** locate this filing by the secured party with the added space. Thus, even this minor omission created a seriously misleading filing. The secured party lost their priority.



"A filer must be cognizant of the power of each state's search logic. Not every state uses the same search logic standard; variations do exist."

KEY TAKEAWAYS

In summary, there are two key takeaways from both state cases:

1. A filer must use the name exactly as it appears in the debtor's charter document naming clause.
2. A filer must be cognizant of the power of each state's search logic. Not every state uses the same search logic standard; variations do exist.

This added wrinkle reinforces the need for having a robust filing review protocol. Failure to follow these UCC due diligence [signposts](#) will jeopardize the filing and may lead to loss of priority.

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