

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.5.131 pertaining to rules) PROPOSED AMENDMENT
governing the registration of)
business/mark names)

TO: All Concerned Persons

1. On October 15, 2015, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on October 1, 2015, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

44.5.131 DISTINGUISHABLE ON/IN THE RECORD(S) (1) The Secretary of State's role with regard to the registration of business/mark names is ministerial. If a business/mark name is distinguishable from another business/mark name, the Secretary of State is required to file it.

~~(1)~~(2) Pursuant to Title 30, chapter 13, MCA, and Title 35, chapters 1, 2, ~~4~~, 7, 8, ~~and 10, 12, and 18~~, MCA, "distinguish," "distinguishable," "distinguishable on the record," and "distinguishable in the records" means that a registered business/mark name must be sufficiently distinctive from another registered business/mark name so that it does not cause confusion in an absolute or linguistic sense.

(3) The following items make a registered business/mark name distinguishable from another registered business/mark name:

~~(2)~~ (a) Business names that contain key words that are different and do not copy a business/mark name already on record, are "distinguishable." A "key word" means any word other than articles, prepositions, conjunctions, or business name identifiers as defined in 30-13-201, MCA. For example: "Bill's Carpentry" is distinguishable from "Bill's Builders."

(b) key words are the same, but are in a different order. For example: "Yellowstone Hotel" is distinguishable from "Hotel Yellowstone."

(c) the use of geographic designations. For example: "Helena Auto Painting" is distinguishable from "Boulder Auto Painting."

(d) phonetic similarities. For example: "Maid in Montana" is distinguishable from "Made in Montana."

(e) abbreviations. For example: "Montana Ave Salon" is distinguishable from "Montana Avenue Salon."

(f) different spellings of proper names. For example: "Jayne's Boutique" is distinguishable from "Jane's Boutique."

(g) unique or improper spelling. For example: "Black Cat Designs" is distinguishable from "Black Kat Designs."

~~(3) Geographic and numeric designations, phonetic similarities, and abbreviations of words (other than business identifiers) will make business names "distinguishable." For example, "Two for One Diner's Club" is distinguishable from "241 Diner's Club."~~

(4) The following conditions will not make a registered business/mark name distinguishable from another registered business/mark name:

~~(a) the use of punctuation marks or special characters, for~~ For example: "R/D Construction" and "R D Construction" are not distinguishable;

(b) the use of special characters. Special characters are non-alphabetical and non-numeric characters such as @, #, \$, %, &, *, and + that can represent a word. For example: 25 % Better, Inc. and 25 Percent Better, Inc. are not distinguishable.

~~(b)(c) the use of articles "a," "an," or "the," for~~ For example: "The Painted Pony" and "Painted Pony" are not distinguishable;

~~(c)(d) the use of business name identifiers or their abbreviations, for~~ For example: "ABC Inc.," "ABC Co.," and "ABC Corp." are not distinguishable;

~~(d)(e) the substitution of an arabic or roman numeral for a word, spelled-out number, for~~ For example: "2 3 Kings," "III Kings," and "Two Three Kings," are not distinguishable;

~~(e)(f) the substitution of a lower case letter for a capital letter, for~~ For example: "d" and "D" are not distinguishable;

~~(f) the use of plurals, possessives, or tense, for example: plurals--"Fine Line Inc." and "Fine Lines Inc." are not distinguishable; possessives--"Employee Services" and "Employees' Services" are not distinguishable; and tense--"Swim Inc.," "Swimming Inc.," "Swims Inc.," and "Swam Inc." are not distinguishable; and~~

(g) the use of internet domain suffixes, for For example: ".com," ".org," ".gov," and ".net" are not distinguishable.

(h) contractions. For example: "Do Not Stop, Inc." is not distinguishable from "Don't Stop, Inc."

(i) variations in word endings. For example: "Betsy's Cleaners" is not distinguishable from "Betsy's Cleaning" and "ABC Transport, Inc." is not distinguishable from "ABC Transportation, Co."

(j) adding the letter "s" to make a word, including an alphabetism, plural or possessive. For example: "Jay's Market" and "Jays Market" and "RM's Co." and "RMS Co." are not distinguishable.

(k) different spacing. For example: "Cross Roads Ranch" and "Crossroads Ranch" are not distinguishable.

(5) The Secretary of State reserves the right to not register business names that are vulgar or grossly offensive.

AUTH: Ch. 166, Sec. 1, L. 2015, 35-1-1307, 35-1-1315, 35-2-1107, MCA
IMP: 30-13-202, 30-13-310, 35-1-308, 35-1-310, 35-1-311, 35-1-1031, 35-2-305, 35-2-307, 35-2-826, 35-4-206, 35-7-106, 35-7-112, 35-8-103, 35-8-108, 35-10-703, 35-12-505, 35-12-1304, 35-18-201, MCA

REASON: These amendments are reasonably necessary to update and clarify the rules governing business/mark name registration requirements and restrictions. In addition, Senate Bill 41, as passed by the 2015 Montana Legislature, granted rulemaking authority for assumed business names and trademarks and clarified that professional corporate names and limited liability partnership names must be distinguishable on the record from any other business name. The authority and implementation statutes have been reviewed and updated to reflect these legislative changes.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., October 23, 2015.

5. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply. The bill sponsor was contacted by letter on August 19, 2015.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of September, 2015.