

Office of the Attorney General
State of North Dakota

Opinion No. 82-59

Date Issued: August 12, 1982

Requested by: Ben Meier
Secretary of State

--QUESTION PRESENTED--

I.

Whether a corporation may register its corporation name as a trade name with the Secretary of State.

II.

Whether the Secretary of State may refuse to register a trade name where the trade name is the same as, or deceptively similar to, an existing corporate name.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a corporation may register its corporate name as a trade name with the Secretary of State.

II.

It is my further opinion that the Secretary of State may refuse to register a trade name where the trade name is the same as, or deceptively similar to, an existing corporate name.

--ANALYSIS--

I.

Section 47-25-01 of the North Dakota Century Code provides that persons may register their trade names and, as a result of such registration, enjoy legal protection and exclusive use of that name. This section states, in part, as follows:

Every name under which any person shall hereafter do or transact any business in this state, other than the true name of such person, is hereby declared to be a 'trade name'

if such name is registered under the provisions of this chapter, any person who has registered a trade name hereunder may institute a civil suit prohibiting any other person from using such name. . . .

Section 1-01-28, N.D.C.C., states that the word 'person', except when used by way of contrast, includes not only a human being but a body politic or corporate. Therefore, corporations may make use of the provisions under Chapter 47-25, N.D.C.C., and may register trade names. This conclusion is in line with the generally recognized rule that corporations may do business under an assumed name or under a name differing from its true corporate name. See Annot., 56 A.L.R. 450 (1928); 74 AmJur2d Trademarks and Tradenames, § 2 (1974).

There appears to be some confusion as to whether a corporation's name automatically works as a trade name. There are no statutes in Chapters 10-19 or 47-25, N.D.C.C., which provide such statutory trademark protection to corporate names. Furthermore, the available case law on this question is equally divided. See Annot., 68 A.L.R.3d 1168 (1976). It is my opinion that the filing of articles of incorporation by itself does not constitute the registration of a trade name. As such, corporations are eligible to have their corporate names registered as trade names so as to enjoy the statutory trade name protection afforded by Chapter 47-25, N.D.C.C.

II.

The only restriction to the registration of a trade name is found in Section 47-25-03, N.D.C.C., which states as follows:

47-25-03. TRADE NAME--NATURE.--No trade name registered shall be the same as, or deceptively similar to, the name of any other trade name registered in the office of the secretary of state.

The exact words of Section 47-25-03, N.D.C.C., prohibit the registration of trade names which are the same as or deceptively similar to other trade names. The statute makes no mention of corporate names.

However, one primary goal behind the enactment of statutes providing for the registration of trade names is the prevention of fraud, deception, and public confusion as to the identity of one's business. See 74 AmJur2d Trademarks and Tradenames, § 2 (1974). To read Section 47-25-03, N.D.C.C., as narrowly as possible would defeat this legislative intent. If persons were able to register an existing corporate name, other than their own, as a trade name, the result would be widespread public confusion and deception. No one would be capable of distinguishing the corporate name entity from the trade name entity.

Our State Supreme Court has held that statutes must be construed in light of the policy the legislature intended to accomplish. *Ulrich v. Amerada Petroleum Corp.*, 66 N.W.2d 397 (N.D. 1954). The general design and purpose of the statute should be kept in

mind and its provisions should be given fair and reasonable construction with a view towards the accomplishment of the statute's purpose and goal. *State for Benefit of Workmen's Compensation Fund v. E. W. Wylie Co.*, 58 N.W.2d 76 (N.D. 1953). Statutes should not be construed to reach unjust or absurd results. *In Interest of B. L.*, 301 N.W.2d 387 (N.D. 1981).

In light of the legislature's obvious goal of preventing fraud, deception, and public confusion as to the identity of business entities, it is my opinion that Section 47-25-03, N.D.C.C., should be interpreted as broadly as possible to accomplish this goal. As such, the Secretary of State should refuse to register a trade name which is the same as, or deceptively similar to, an existing corporate name as well as an existing trade name.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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