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Utah's Business Name Statutes: "An Open Invitation to Litigation"¹

Like other lawyers throughout the nation,² many Utah lawyers mistakenly believe that a secretary of state grants exclusive rights to business names when he issues a certificate of incorporation³ or accepts an assumed name certificate for filing.⁴ In fact, secretary of state approval has little if anything to do with acquiring business name rights.⁵ Many lawyers do not learn this until their clients face name infringement actions. By then it is usually too late. The Utah legislature can help clear up this misunderstanding in Utah—and thereby curb name infringement—by amending the state's business name statutes, which presently imply that the Secretary of State⁶ has power to grant exclusive business name rights.⁷

I. POOR WORDING CREATES MISUNDERSTANDING

The Utah Code includes several provisions on business names.⁸ Two groups of these provisions account for most of the

1. Gilson, *Tortious Incorporation: Trap for the Unwary*, 24 BUS. LAW. 237, 254 (1968).

2. Beavers & Laney, *Choosing and Protecting the Corporate Name*, 30 OKLA. L. REV. 507, 519 (1977).

3. See *infra* notes 9-28 and accompanying text.

4. See *infra* notes 29-35 and accompanying text.

5. Beavers & Laney, *supra* note 2, at 508; Gilson, *supra* note 1, at 241; Gottlieb, *Corporate Name "Clearance"—Potential Trademark Trouble Spot*, 33 BUS. LAW. 2263, 2265 (1978); see also *infra* notes 14-28 and accompanying text.

6. On November 4, 1980, Utahns voted to amend article VII of the Constitution of Utah to create the office of Lieutenant Governor. The Lieutenant Governor's responsibilities now include those formerly discharged by the Secretary of State. This comment uses "Secretary of State" to mean the Lieutenant Governor when he exercises "those duties, functions, and powers assigned to the secretary of state by law." UTAH CODE ANN. § 67-1a-1 (Supp. 1983).

7. See *infra* notes 22-23, 33, and accompanying text.

8. UTAH CODE ANN. § 3-1-23 (1982) (use of "co-operative"); *id.* § 7-7-6 (Supp. 1983) (names of savings and loan associations); *id.* § 7-9-4 (use of "credit union"); *id.* §§ 16-6-24, -25, -81 (1973 & Supp. 1983) (names of nonprofit corporations); *id.* §§ 16-10-7 to -10 (corporate names); *id.* §§ 16-10-104, -105 (names of foreign corporations); *id.* § 16-13-1 (1973) (names of business development corporations); *id.* § 31-5-15 (1974) (insurance business names); *id.* § 31-7-11 (domestic insurers' use of own names); *id.* § 31-10-6 (names of reciprocal insurers); *id.* § 31-27-6 (use of misleading name by one not an insurer); *id.* § 31-37-6 (names of nonprofit service corporations); *id.* § 41-16-6 (1981)

misunderstanding about the Secretary of State's ability to grant exclusive name rights. One of these groups deals with corporate names; the other, with assumed business names.

A. Corporate Name Provisions

Several provisions of the Utah Code govern corporate names.⁹ Two of these provisions frequently mislead readers. One is section 16-10-7,¹⁰ which provides that unless written consent is filed, the "secretary of state shall refuse to issue a certificate of incorporation to any association" whose proposed corporate name is "the same as, or deceptively similar to,"¹¹ any of the following:

[T]he name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to

(names of motor clubs); *id.* §§ 42-2-5 to -11 (assumed names); *id.* §§ 42-3-1 to -5 (farm names); *id.* § 48-1-38(10) (use of partnership name or name of deceased partner by persons continuing business); *id.* § 48-2-5 (names of limited partnerships); *id.* § 58-3-7(1) (1974) (lending of licensed architects' names); *id.* §§ 70-3-1 to -17 (1980) (trademarks and service marks); *id.* §§ 76-10-1001 to -1010 (1978) (criminal offenses related to trademarks, trade names, and devices); *id.* § 78-51-29 (1977) (improper use of attorneys' names).

9. See, e.g., UTAH CODE ANN. §§ 16-6-24, -25, -81 (1973 & Supp. 1983) (names of nonprofit corporations); *id.* §§ 16-10-7 to -10 (corporate names); *id.* §§ 16-10-104, -105 (names of foreign corporations); *id.* § 16-13-1 (1973) (names of business development corporations); *id.* § 31-37-6 (1974) (names of nonprofit service corporations).

10. (Supp. 1983). Section 16-10-7 as originally enacted, Utah Business Corporation Act, ch. 28, § 7, 1961 Utah Laws 93, 98, was identical to MODEL BUSINESS CORP. ACT § 7(b)-(c) (1959) except for minor changes in capitalization and addition of the sentence "The Secretary of State shall refuse to issue a certificate of incorporation to any association violating the provisions of this section." This sentence, with the substitution of "may" for "shall," can be traced back to the Act of Mar. 9, 1899, ch. 52, sec. 1, § 314, 1899 Utah Laws 75, 76. An amendment, Act of Feb. 25, 1971, ch. 21, sec. 1, § 16-10-7(b), 1971 Utah Laws 47, 48, added the words "or the name of any trade-mark or service-mark registered with the secretary of state unless there has been filed with the secretary of state the written consent to such similarity executed by the existing corporation or by the holder of the reserved or registered corporate name, trade-mark or service-mark." A later amendment, Act of Mar. 9, 1977, ch. 59, sec. 1, § 16-10-7(b), 1977 Utah Laws 294, 295, added the language on assumed names and made minor stylistic changes. Compare MODEL BUSINESS CORP. ACT § 8 (1982), the current model provision, which differs substantially from the Utah version.

11. This "same as or deceptively similar" standard appears elsewhere in the Code. See, e.g., UTAH CODE ANN. § 7-7-6 (Supp. 1983) (names of savings and loan associations); *id.* §§ 16-6-24, -81 (names of nonprofit corporations); *id.* § 16-10-9 (registering names of existing corporations); *id.* § 16-10-104 (names of foreign corporations); *id.* § 31-37-6 (1974) (names of nonprofit service corporations); *id.* § 42-2-6.5 (1981) (assumed names); *cf.* *id.* § 41-16-6 ("deceptively similar" standard applied to names of motor clubs); *id.* §§ 70-3-2, -3, -10 (1980) ("likely to cause confusion or mistake or to deceive" standard applied to trademarks and service marks).

transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this act, or the name of a corporation which has in effect a registration of its corporate name as provided in this act, or the name of any trade-mark or service mark registered with the secretary of state, or assumed name of a person or persons conducting business within this state that is properly registered and carried on the active index maintained by the secretary of state

. . . .

The other provision, section 16-10-8,¹² provides that a person may apply to reserve a corporate name for 120 days, and that "[i]f the secretary of state finds that the name is available for corporate use, he shall reserve the same for the *exclusive use* of the applicant."

The intelligent but uninformed reader of these sections may conclude (1) that the Secretary of State conclusively determines whether a name is available for corporate use, and (2) that the Secretary of State's approval amounts to an unassailable grant of exclusive authority to use a name. Both these assumptions are wrong.¹³

12. (1973) (emphasis added); cf. § 16-6-25 (1973) (reserving names of nonprofit corporations). Section 16-10-8 follows MODEL BUSINESS CORP. ACT § 8 (1959) except for minor changes in capitalization. Despite criticism, see, e.g., Gilson, *supra* note 1, at 240, the model provision remains unchanged, MODEL BUSINESS CORP. ACT § 9 (1982).

13. The Secretary of State, purporting to follow the statutes, reinforces these misapprehensions. When a person applies for a corporate name, employees in the Secretary of State's office run a preliminary computer check for name availability. If the check shows the name may be available for use, the attending employee requires the applicant to read and sign a form that includes the following paragraph:

The proposed name which you have submitted appears to be available. However, until a thorough name availability search is made, this name is only *provisionally* granted. Patrons who obtain letterhead, checks, or incur other expenses associated with a *provisionally* granted name do so at their own risk. If for some reason this name cannot be used, we will immediately contact you by mail at the location listed on your application.

Form letter from David S. Monson, Lieutenant Governor, to Patrons, Corporate Division (dated "07-01-79"). If a "thorough" name availability search later turns up no conflicting names, the Secretary of State informs the applicant that the name has been "granted." The successful applicant may readily but wrongfully conclude that if the initial check results in a provisional grant, the ultimate approval must result in an absolute grant based on an all-inclusive search.

1. *The Secretary of State cannot conclusively determine name availability*

Despite what the statutes imply, the Secretary of State cannot conclusively determine that a name is available for corporate use.¹⁴ Section 16-10-7¹⁵ requires that the Secretary of State compare proposed corporate names with only certain kinds of names. Proposed names may conflict with, and be subordinate to, many other kinds of names. For example, they may conflict with names of foreign corporations doing business in the state without state authorization,¹⁶ assumed business names that have been used but are not currently registered,¹⁷ and trademarks or service marks that have been registered only federally or not at all.¹⁸ Without checking a proposed name against these kinds of names, the Secretary of State cannot conclusively adjudge name availability.

Even if the Secretary of State had the records and other resources necessary to compare a proposed name with all protectible names, the Secretary of State still could not effectively determine availability. Employees in the Secretary of State's of-

14. Gilson, *supra* note 1, at 240-47, 253.

15. (Supp. 1983).

16. Gottlieb, *supra* note 5, at 2264. UTAH CODE ANN. § 16-10-120 (1973) imposes penalties on foreign corporations doing business in the state without a certificate of authority. These penalties do not subordinate the name rights of those corporations to the name rights of persons authorized to do business in the state. The statute merely provides that the corporation cannot "maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority." If the foreign corporation wishes to enforce its rights, it need only obtain the required certificate. *Horton v. Richards*, 594 P.2d 891 (Utah 1979); *Dunham-Bush, Inc. v. Bill Hartmann Plumbing & Heating, Inc.*, 30 Utah 2d 177, 180 n.7, 515 P.2d 92, 94 n.7 (1973); *National Am. Life Ins. Co. v. Bainum*, 28 Utah 2d 45, 47, 497 P.2d 854, 856 (1972); MODEL BUSINESS CORP. ACT ANN. § 117, ¶ 4 (1960).

17. Gilson, *supra* note 1, at 240-41; Gottlieb, *supra* note 5, at 2264. Section 16-10-7 of the Utah Code requires the Secretary of State to check proposed corporate names against only those assumed names that are registered and on the active list. Although UTAH CODE ANN. § 42-2-5 (1981) requires the filing of assumed names, penalties for failing to file, prescribed in UTAH CODE ANN. § 42-2-10 (1981), do not include loss of name rights. "The only sanction associated with non-compliance is denial of the non-complying entity's access to the courts, and that sanction is removed on compliance." *Wall Inv. Co. v. Garden Gate Distrib.*, 593 P.2d 542, 544 (Utah 1979). As originally enacted, Act of Feb. 8, 1963, ch. 73, § 6, 1963 Utah Laws 344, 345, the penalty provision contained a clause making noncompliance a misdemeanor, but this clause was deleted by the Act of Mar. 9, 1977, ch. 59, sec. 6, § 42-2-10, 1977 Utah Laws 294, 297. At present persons using assumed names have little incentive to file until they wish to use the courts.

18. Gilson, *supra* note 1, at 249-50; Gottlieb, *supra* note 5, at 2264; *see also* *George v. Peterson*, 871 P.2d 208, 210 n.1 (Utah 1983) (recognizing common-law trademark rights in Utah).

fice simply lack the legal expertise necessary to determine whether one name is "deceptively similar to" another.¹⁹ They need not meet any legal education requirement, and they follow no written guidelines on name availability and deceptive similarity.²⁰ Recently, one Utah judge even questioned the legality of having the Secretary of State determine deceptive similarity.²¹

2. *The Secretary of State cannot grant the right of exclusive use*

In addition to being unable to determine name availability, the Secretary of State cannot grant an absolute right to use a name exclusively. Name rights are obtained through use, not through registration.²² Hence, a prior user has rights superior to those of a later registrant,²³ and a later user may have rights

19. Beavers & Laney, *supra* note 2, at 519-20; Gilson, *supra* note 1, at 241-45; Gottlieb, *supra* note 5, at 2265-66; Guilbert, *Corporate Names and Assumed Business Names: "Deceptively Similar" Creates a Likelihood of Confusion*, 62 Or. L. Rev. 151, 168 (1983).

20. Interview with employees of the Lieutenant Governor's Group, 160 East 300 South, Salt Lake City, Utah (Jan. 20, 1984).

21. During a recent assumed-name infringement trial, the following colloquy took place between Robert E. Froerer, attorney for the defendant, and Judge Calvin Gould of Utah's Second Judicial District:

MR. FROERER: [May I] please the Court, I would ask the Court to take judicial notice of the statutes 42-2-4.1 which places in the Secretary of State's hands the determination whether names are deceptively similar. Those names have been registered with the Secretary of State by testimony by certification and [the Secretary] has accepted the name And as a matter of law, I move that the Plaintiff's case be dismissed, that they have no standing, that the defendants have properly registered the name, and it is their name

THE COURT: It has been troublesome to me about that, Mr. Froerer since our pre-trial conference this morning. The thing that is troublesome to me is whether or not the Legislature can palce [sic] in the hands of the Lt. Governor and Secretary of State a responsibility which appears to me to be a judicial responsibility.

Transcript on Appeal at 49-50, *George v. Peterson*, 671 P.2d 208 (Utah 1983).

22. Beavers & Laney, *supra* note 2, at 522-23; Cohen, *Trademarks And Trade Names In Massachusetts*, 59 MASS. L.Q. 43, 44 (1974); Liddy, *Trademarks, Corporate Names and the Secretaries of State*, 59 TRADE-MARK REP. 764, 764-765 (1969); see also *Shatterproof Glass Corp. v. Buckmaster*, 256 So. 2d 531, 533 (Fla. Dist. Ct. App. 1972); *Northwest Suburban Congregation Beth Judea, Inc. v. Rosen*, 103 Ill. App. 3d 1137, 1140, 432 N.E.2d 335, 338 (1982); *Dynasty Room, Inc. v. Whiskey-A-Go-Go, Inc.*, 186 So. 2d 402, 403 (La. Ct. App. 1966); *D.W.G., Inc. v. Gordon's Jewelry Co.*, 635 P.2d 326, 328 (Okla. 1981).

23. Alterman, *Trade Regulation in Michigan: Trade Names and Trademarks*, 24 WAYNE L. REV. 167, 191 (1978); Gilson, *supra* note 1, at 240; Gottlieb, *supra* note 5, at 2263; Guilbert, *supra* note 19, at 153, 175-76.

superior to those of a prior registrant who has not used the name.²⁴ Furthermore, names composed of some commonly used words merit protection only when they acquire "secondary meaning" in the minds of the public. "Secondary meaning" presupposes extensive use of a name.²⁵ The Secretary of State's check of names on file does not determine whether a name is being used. Nor does mere incorporation constitute a use sufficient to create name rights.

If the Secretary of State does not grant exclusive name rights, why does the state register names? Name registration serves primarily to protect the public from confusion between corporate names and to enable public officials to identify entities operating within the state.²⁶ Registration statutes protect names, but only as a secondary function.²⁷ The limited name protection these statutes afford falls far short of the right of exclusive use that many registrants believe they obtain. State registration is a step—but only one step—in obtaining such rights.²⁸

B. Provisions on Assumed Name Registration

Any person who does business under an assumed name in Utah must file a certificate in the Secretary of State's office.²⁹ Section 42-2-6.5 of the Utah Code³⁰ declares that, unless written consent is filed,

The secretary of state shall not accept a certificate for filing if the assumed name therein is the same as, or deceptively similar to the name of any corporation authorized to do business in this state, a name which is reserved or registered in this state pursuant to statute, the name of a trademark or service mark registered with the secretary, or an assumed name which is filed and on the active list.

24. *Galt House, Inc. v. Home Supply Co.*, 483 S.W.2d 107 (Ky. 1972); *Beavers & Laney*, *supra* note 2, at 520-21; *Cohen*, *supra* note 22, at 47; *Gilson*, *supra* note 1, at 241.

25. *George v. Peterson*, 671 P.2d at 210-211.

26. *Gilson*, *supra* note 1, at 255; *Gulbert*, *supra* note 19, at 159; MODEL BUSINESS CORP. ACT ANN. 2d § 8, ¶ 2 (1971); MODEL BUSINESS CORP. ACT ANN. § 7, ¶ 4 (1960).

27. MODEL BUSINESS CORP. ACT ANN. 2d § 8, ¶ 2 (1971); MODEL BUSINESS CORP. ACT ANN. § 7, ¶ 4 (1960).

28. The following sources discuss other steps to follow in obtaining name rights: *Beavers & Laney*, *supra* note 2, at 513-25; *Cohen*, *supra* note 22, at 47; *Gilson*, *supra* note 1, at 248-53, 256 & n.45; *Gottlieb*, *supra* note 5, at 2266-69; *Horn & Zafman, Recognizing Trade Mark and Trade Name Pitfalls; a Guide to the General Practitioner*, 46 L.A. B. BULL. 477, 481 (1971).

29. UTAH CODE ANN. § 42-2-5 (1981).

30. (1981).

Readers of this list may draw conclusions like those drawn by readers of Utah's corporate name statutes:³¹ (1) that the Secretary of State comprehensively checks to see whether a proposed name is available for use as an assumed name, and (2) that the Secretary of State's approval amounts to an unassailable grant of exclusive authority to use the approved name.

These conclusions are wrong for reasons similar to those in the corporate name discussion. The Secretary of State simply does not have the records or expertise necessary to determine whether a name is actually available for use.³² Furthermore, the Secretary of State's approval does not amount to an absolute grant of rights to use the name.³³ Assumed name statutes serve primarily to protect the public and only secondarily to protect the assumed name.³⁴ Those who seek exclusive rights to an assumed name must look beyond the statutes.³⁵

II. THE LEGISLATURE SHOULD AMEND THE STATUTES

Since Utah's business name statutes promote name infringement, the Utah legislature can curtail infringement by amending those statutes. Commentators have suggested several approaches to ameliorate the problems created by confusing business name provisions.³⁶ Utah's legislature can reduce the state's business name troubles by (1) rewording the statutes to include warnings about the limited effects of state registration; (2) requiring prospective registrants to certify that they have performed thorough name searches; and (3) mandating that the Secretary of State stamp all name documents with a warning.

31. See *supra* text accompanying note 13.

32. See *supra* text accompanying notes 14-21.

33. See *George v. Peterson*, 671 P.2d 208, 210 & n.1 (Utah 1983); see also *Howard Stores Corp. v. Howard Clothing Inc.*, 308 F. Supp. 70, 73 (N.D. Ga. 1969); *Nielsen v. American Oil Co.*, 203 F. Supp. 473, 477-78 (D. Utah 1962); *MacPhail v. Stevens*, 41 Colo. App. 99, 101, 586 P.2d 1339, 1341 (1978); *Guilbert*, *supra* note 19, at 176 n.96.

34. *United States v. American Standard Remodeling Corp.*, 252 F. Supp. 690, 692 (W.D. Pa. 1966); *People v. Wallace*, 77 Ill. App. 3d 979, 983, 397 N.E.2d 20, 23 (1979); *Sheraton Corp. of Am. v. Kingsford Packing Co.*, 162 Ind. App. 470, 480, 319 N.E.2d 852, 858 (1974); *Reed v. Pelley*, 112 Misc. 2d 382, 382, 447 N.Y.S.2d 98, 99 (Sup. Ct. 1982); *Photo & Sound Co. v. Corvallis*, 291 Or. 105, —, 628 P.2d 733, 735 (1981); *Caruso v. Local Union No. 690, Int'l Bhd. of Teamsters*, 33 Wash. App. 201, 206, 653 P.2d 638, 642 (1982); cf. *Platt v. Locke*, 11 Utah 2d 273, 278, 358 P.2d 95, 98 (1961).

35. See *supra* note 28.

36. *Gilson*, *supra* note 1, at 237, 253-60; *Guilbert*, *supra* note 19, at 185-93.

A. Rewording the Statutes to Include Warnings

Utah's present business name statutes mislead many readers into believing they can obtain exclusive rights to a business name merely through state registration. To prevent similar problems, other states' name statutes contain language that warns of the limited effects of state name registration. Utah's legislature should reword each of Utah's misleading name statutes, using other states' warnings as models.

1. Corporate name provisions

Utah's corporate name provisions contain no language explaining the limited role that state approval plays in obtaining exclusive name rights. Other states' statutes do contain such language. A few states have provisions modeled on section 4 of the Uniform Business Corporation Act.³⁷ Representative of this group is Idaho, whose corporate name provision contains the following warning:

Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practice in the use of trade names, nor derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names.³⁸

Minnesota's provision follows the same theme but adds further language, including specific references to other misleading parts of the state code:

This section and section 302A.117 [reserved names] do not abrogate or limit the law of unfair competition or unfair practices, nor sections 333.001 to 333.54 [trade names, marks, and insignia], nor the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.³⁹

Both of these statutes warn that their respective states' corporate name provisions will not "abrogate or limit" certain other statutes or principles. But neither expressly states that incorporation alone does not create exclusive name rights.

37. OKLA. STAT. ANN. tit. 18, § 1.11 draftsman's note (West 1953).

38. IDAHO CODE § 30-1-8(c) (1980).

39. MINN. STAT. ANN. § 302A.115 subd. 4 (West 1984).

A better provision is North Carolina's, which bears the following warning:

The issuance of a corporate charter to any domestic corporation shall not authorize the use in this State of the corporate name in violation of the rights of any third party under the federal Trademark Act, the Trademark Act of this State, or the common law; and the issuance of such charter shall not be a defense to an action for violation of any such rights.⁴⁰

This provision generally follows a suggested addition to the provision of the Model Business Corporation Act on which section 16-10-7 of the Utah Code is based.⁴¹

Utah's warnings should follow the North Carolina approach and should perhaps also clarify that the Secretary of State does not check for all potential name conflicts. The state legislature should append a separate specific warning to each misleading corporate name section, rather than merely tacking a generalized warning to the end of each misleading chapter or burying a single warning deep within the Code, where it might easily be overlooked or ignored. The warning for each section should carefully address and dispel the misconceptions that commonly arise from that section.

2. *Assumed name provisions*

Unlike the corporate name provisions of the Code, the chapter dealing with assumed names contains an obscure warning:

This chapter shall in no way affect or apply to any corporation duly organized under the laws of this state or under the laws of any other state, which shall carry on, conduct or transact its business under its true corporate name nor shall this chapter in any way affect the statutory or common law trademark, service mark, or trade name rights granted by state or federal statute.⁴²

The last clause of this section was added by a 1977 amendment⁴³ and contains language that might alert conscientious readers to the existence of other rights that may be superior to those obtained through state registration.

However, a few problems keep this warning from being as

40. N.C. GEN. STAT. § 55-12(k) (1982).

41. Gilson, *supra* note 1, at 256-57.

42. UTAH CODE ANN. § 42-2-9 (1981).

43. Act of Mar. 9, 1977, ch. 59, sec. 5, § 42-2-9, 1977 Utah Laws 294, 297.

effective as it might otherwise be. First, the warning is too vague. It does not specifically warn that state approval does not amount to a grant of exclusive rights to use the approved name. Second, the warning's location reduces its impact. The busy reader who quickly peruses the assumed name chapter might never notice the warning because it comes at the end of a paragraph entitled "Corporate names and trademark, service mark, and trade name rights not affected." The reader may mistakenly assume from the title that the section merely dispenses with the assumed name filing requirements for names registered under other sections of the Code. Although this is one function of the paragraph, it tends to obscure the more important warning function. It would be more effective to place the warning at the end of the section that creates the most confusion in the assumed name chapter: section 42-2-6.5.

B. Requiring Prospective Registrants to Certify Their Searches

The responsibility for searching out potentially conflicting business names rests with the party who wishes to adopt a new name. Utah's business name statutes lead applicants to believe that the responsibility rests with the Secretary of State. Since the Secretary of State does not perform comprehensive checks for conflicting names,⁴⁴ reliance on the Secretary of State alone to perform searches can lead to name infringement. The legislature can clear up the misconception about who bears the ultimate responsibility for name conflicts by amending misleading business name statutes to clearly read that the applicant bears the responsibility.

This could be done by revising the statutes to require that would-be registrants submit with every request for name approval a signed statement certifying that the registrant has found no conflicts after making a reasonable effort to search for conflicts in all pertinent records, including, but not limited to, certain enumerated records. This statement would perform somewhat the same function as the statement that trademark applicants must file on both the state and federal levels.⁴⁵ Requiring such a signed statement would not shift the responsibility for performing name searches: it would only help the appli-

44. See *supra* text accompanying notes 14-18.

45. See 15 U.S.C. § 1051 (1982); UTAH CODE ANN. § 70-3-3 (1980).

cant to realize more clearly his present responsibilities.

C. Stamping Name Documents with a Warning

As a final step the legislature should require that the Secretary of State stamp each name approval document with a warning that approval does not necessarily confer absolute rights to use the name. This approach has been tried elsewhere. North Carolina, for example, stamps corporate documents with the following notice:

The issuance of a corporate charter to any domestic corporation or a certificate of authority to any foreign corporation does not authorize the use in this State of the corporate name in violation of the rights of any third party under the Federal Trademarks Act, the Trademark Act of this State, a trade name or the common law; and the issuance of such charter or certificate will not be a defense to an action for violation of any such rights.⁴⁶

Since this type of warning would not be given until all name searches had been completed, it would probably not prove effective if it were the only warning given. But coupled with multiple warnings in the statutes and the requirement of search certificates, this further warning could help reduce name infringement.

III. CONCLUSION

Utah's present business name statutes may mislead readers into believing that state registration confers greater rights than in fact it does. Those persons misled by these statutes may ignorantly infringe others' business name rights. The state legislature can reduce such infringement by passing laws to dispel common misconceptions. That ignorance is no excuse under the law is no excuse for perpetuating ignorance through the law.

Richard E. Turley, Jr.

46. Smith, *Trademark Registration in North Carolina*, 8 WAKE FOREST L. REV. 389, 394-95 (1972).