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What's In a UCC Name Requirement?

When to Use Specific and Generic Names

BY JEFFREY A. WURST

Revisions in the Unified Commercial Code have made collateral descriptions on financial statements simpler. But there are times when only specific names will do. Attorney Jeffrey Wurst explains when a generic name will suffice and when a specific name is critical to ensure a security interest.

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A rose by any other name would smell as sweet. "Romeo and Juliet," Act II Scene II

Shakespeare may not be of a like mind with the Uniform Commercial Code when it comes to names. In fact, the UCC is a bit schizophrenic itself on that subject. In the almost 15 years since the complete overhaul of Article 9, name issues continue to arise and confuse.

Many of us celebrated the new § 9-504 of revised Article 9, which simplified the collateral description to be included on the UCC-1 Financing Statement. Remember the old way? Collateral descriptions went on for pages. Sometimes the collateral description merely said, "See attached." Then the filing office lost the attachments. Let's be grateful those days are gone. Since revised Article 9 became effective in July 2001, § 9-504 merely requires "an indication that the financing statement covers all assets or all personal property" for an all-asset filing. Simple? It may seem so, but § 9-504, which deals with the financing statement, must not be confused with § 9-108, which deals with the sufficiency of description in which a security interest is granted.

For a security interest to attach, three components must be met under § 9-203(b):

1. Value must be given.
2. The debtor must have rights in the collateral.
3. The security agreement must have a granting clause with a description (in most cases).

However, that description in the security agreement is not as simple as the one in the financing statement. For guidance, we look to § 9-108, which requires a "reasonable description." So isn't "all assets" reasonable enough? Nope! Section 9-108(c) specifically provides that a *super generic description is not sufficient*. This section contends that simply stating "all of the debtor's assets" or "all of the debtor's personal property" does not reasonably identify the collateral. So, for the purpose of granting a security interest, we must still specify the type of collateral whether it is accounts, contract rights or another specific type.

Though the collateral description on the financing statement can be generic, the debtor's name must be precise. Section 9-503 requires that the name of the debtor appearing on the financing statement be the name that appears on the public record in the state where the debtor is organized (usually the Secretary of State). In other words, the name on the financing statement must exactly match the certificate of incorporation or similar document on file with the home state.

When A Name Must Be Specific

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other words, the name on the financing statement must exactly match the certificate of incorporation or similar document on file with the home state. For example, a filing against CW Mining Company is insufficient to perfect against the assets of C.W. Mining Company. So, in naming a debtor on a financing statement, a rose by any other name is unperfected.

Financing statements and security agreements are not the only place where a collateral description comes into play. UCC § 9-406 contains one of the most fundamental rights of an asset-based lender or factor: the right to place account debtors on notification. That notification may be given by the secured party or by the debtor and is often given by the debtor at the onset of the lending or factoring relationship, when they are all on good terms. (After default, notification under § 9-607 is given by the secured party.) Notification under § 9-406 is ineffective "if it does not reasonably identify the rights assigned." This section does not prohibit super generic descriptions.

The U.S. Court of Appeals in Dallas recently considered the reasonableness of the rights identified in *TemPay v. Tanintco*. TemPay is a factor, and Tanintco is an account debtor of A-1 Source Group, TemPay's factored client. The lawsuit did not dispute that the notification letter sent by TemPay was directed to "Tangent" instead of Tanintco, nor that it was directed to the "accounts payable manager," even though Tanintco did not have such a position. It does not dispute that the letter instructed the account debtor to pay "A-1 Source Group, LLC" instead of TemPay and identified "A-1 Source Group, LLC" as the assignor when the correct name of the company was "A-1 Source Group, Inc." The letter does stipulate that the notification instruction could only be changed in writing from TemPay. Notwithstanding, Tanintco made payments on its account for a year despite the notification letter errors.

Tanintco subsequently ceased making payments, and TemPay sued, ultimately bringing a motion for summary judgment. Tanintco brought a cross-motion for summary, in part, claiming that TemPay's notification was ineffective as a matter of law. The court denied TemPay's motion and granted Tanintco's cross-motion rendering a take nothing judgment on TemPay's claims against Tanintco. TemPay appealed the ruling.

The Court of Appeals noted that § 9-406 provides: ". . . an account debtor . . . may discharge its obligations by paying the assignor until, but not after, the account debtor receives a notification . . . that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor."

When Is Notice Effective?

The court also noted that § 9-406 expressly provides that notice is "ineffective" if it "does not reasonably identify the rights assigned." The court considered that § 9-406 does not describe with specificity the requisites of notice. It went on to observe that case law held that notice via a telephone call actually received was sufficient but "bare actual notice" was not. Another Texas appeals court held that actual notice of an assignment "embraces those things that a reasonably diligent inquiry and exercise of the means of information at hand would have disclosed." It also noted that where "an obligor has such knowledge of facts as is sufficient to put him on inquiry about an assignment, he is not entitled to rely only on statements made to him by the assignor after receiving such information."

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The Court of Appeals cited another Texas court that said, "The only requirement is that the notice reasonably identify the rights of the assignee and reasonably demands payment to the assignee. What is 'reasonable' must be determined by the particular facts of each case."

The court went on to conclude that despite the patent errors in the notification, the evidence raised a genuine issue of material fact as to whether the notification reasonably identified the rights assigned. The Court of Appeals reversed the summary judgment and remanded the matter back to the trial court for further proceedings, leaving it to the trial court to determine whether the notification was reasonable notice.

So what are the take-aways?

1. Be certain that the debtor's name is correct in a financing statement, but a reasonable identification of the debtor will suffice in a notification.
2. Specifically describe the collateral in a security agreement, but all assets are reasonable in a financing statement and a notification letter.

Simple errors can be costly, while avoiding them is inexpensive. Avoid having to be reminded:

What's done cannot be undone. "Macbeth," Act V Scene 1. abfj

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