



## BUSINESS LAW SECTION

CORPORATIONS COMMITTEE  
THE STATE BAR OF CALIFORNIA  
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### ***CHANGES TO BUSINESS ENTITY NAMES REGISTRATION***

#### **LEGISLATIVE PROPOSAL (BLS-2011-02)**

To: Office of Governmental Affairs

From: David M. Hernand, Co-Chair, and Edward Deibert, Co-Chair, Corporations Committee (the "Committee"), Business Law Section (the "Section")

Date: June 1, 2010

Re: Proposal to **amend** Sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 13409, 15901.08(d) and 17052(c) of the California Corporations Code and Section 14417 of the Business and Professions Code, and to **adopt** new Sections 165.7, 165.8, 15901.08(h) and 17052(g) of the California Corporations Code

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#### **SECTION ACTION AND CONTACTS<sup>1</sup>**

Date of Approval by Section Executive Committee (the "Executive Committee"): July 16, 2010  
Approval Vote: For: 15      Against: 0

Date of Approval by the Committee: June 1, 2010  
Approval Vote: For: 17      Against: 1

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#### **HISTORY, DIGEST AND PURPOSE**

The mission statement of the Committee provides that it shall study, consider, and take a position on and advocate that position with respect to, among other things, "[n]eeded changes to

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<sup>1</sup> Contact information is as of the date submitted. After completion of the State Bar Annual Meeting following submission, the Committee will submit a Supplemental Contacts Information sheet to the Office of Governmental Affairs providing corresponding contact information for the following Bar year.

the California Corporations Code” and “[o]ther statutory changes that would promote efficiency or effectiveness in practice if made . . . .” Consistent with this mission, the Committee proposes amending California’s business entity name availability statutes to adopt a single “distinguishable in the records” standard for evaluating the availability of names for new corporations, limited liability companies and limited partnerships (which is the standard currently applicable to limited partnerships formed in California), coupled with the “likely to mislead” standard currently applicable to corporations and limited liability companies. Adopting a uniform naming standard would promote efficiency and effectiveness in practice by simplifying, clarifying, improving and modernizing relevant provisions of California law applicable to business entities.

## **Background**

California law currently imposes different rules for naming different types of business entities, and for corporations and limited liability companies imposes a “tend to deceive” standard that requires the California Secretary of State (the “Secretary of State”) to engage in a subjective review process involving application of principles of trademark law that the Secretary of State lacks resources and expertise to perform. The use of different naming standards for different types of business entities and use of a subjective standard for some entities has created a system that lacks coherency, is confusing to business organizers and advisors assisting them, produces unpredictable results and is out of step with the more uniform “distinguishable in the records” naming standard used in most other states.

California law also currently uses a “likely to mislead” standard for naming corporations and limited liability companies, pursuant to which the Secretary of State evaluates whether a proposed name is likely to mislead the public by creating a false implication that the filing entity is (i) affiliated with the government, (ii) a professional corporation, (iii) a different type of business entity, (iv) an insurer, or (v) in respect of a nonprofit mutual benefit corporation, a foundation.

## **Summary of Existing Statutes**

The California Corporations Code (the “Code”) contains various provisions setting forth requirements for naming of different types of business entities:

**Sections 201(b), 5122(b), 7122(c), 9122(b), and 12302(b):** Each of these Sections of the Code prohibits the Secretary of State from accepting articles of incorporation that set forth a corporate name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of another corporation. Each of these Sections permits a corporation to adopt a name that is substantially the same as the name of another corporation upon proof of consent by that corporation, and if the Secretary determines that the public is not likely to be misled.

Responding to concerns expressed about how the “likely to mislead” and “tend to deceive” standards were applied inconsistently in practice, the Secretary of State adopted Business Entity Name Regulations on May 14, 2009 (the “2009 Regulations”), which provided

substantially more guidance concerning application of such standards. (California Code of Regulations, Title 2, Division 7, Chapter 8.5, Sections 21000 through 21009). In many respects, by providing substantially more guidance concerning acceptable and non-acceptable corporate naming practices, the 2009 Regulations moved California much closer toward the “distinguishable in the records” standard used in most other states, though not entirely and not to the same extent as applies to California limited partnerships.

With the adoption of the 2009 Regulations, the Committee believes that the Secretary of State has achieved the appropriate balance between protecting the public and granting the Secretary of State discretion to reject misleading names. As implemented through the 2009 Regulations, the standard describes discrete categories, violations of which are easily verifiable by the Secretary of State. (The standard proscribes names that create a false implication that the filing entity is (i) affiliated with the government, (ii) a professional corporation, (iii) a different type of business entity, (iv) an insurer, or (v) in respect of a nonprofit mutual benefit corporation, a foundation.) The “likely to mislead” standard appropriately protects the public from misleading business entity names by granting the Secretary of State appropriate discretion to reject business names it can verify would be misleading.

**Section 13409.** Section 13409 of the Code prohibits a professional corporation from using a name that is substantially the same as the name of another corporation.

**Section 17052(c):** Section 17052(c) of the Code prohibits a limited liability company from setting forth in its articles of organization a name that is likely to mislead the public or that is the same as, or that resembles so closely as to tend to deceive, the name of another limited liability company. This Section permits a limited liability company to adopt a name that is substantially the same as the name of another limited liability company upon proof of consent by that limited liability company, and if the Secretary determines that the public is not likely to be misled.

**Section 15901.08(d):** Section 15901.08(d) of the Code requires that the name of a limited partnership must be distinguishable in the records of the Secretary of State from other limited partnerships registered under the Uniform Limited Partnership Act of 2008. This Section permits a limited partnership to adopt a name that is not distinguishable in the records from another limited partnership if that limited partnership consents and if that limited partnership agrees to change its name so that the two names are distinguishable in the records.

The “distinguishable in the records” standard applicable to California limited partnerships is similar to the standards used by approximately thirty-seven other states, including New York, Delaware, Nevada, Utah, Arizona, Washington and Oregon.

**Business and Professions Code Section 14417:** Section 14417 of the Business and Professions Code confirms that the mere filing of articles of incorporation with the Secretary of State does not of itself authorize the use of a corporate name in violation of the trademark and trade name rights of others.

## Proposal

The Committee is proposing that the Secretary of State use the “distinguishable in the records” standard that is currently used by the Secretary of State when evaluating proposed names for limited partnerships, as set forth in Section 15901.08(d) of the Code, and apply this standard to all corporations, professional corporations, limited liability companies and limited partnerships coupled with the “likely to mislead” standard currently applicable to corporations and limited liability companies. The Committee recommends adopting a new Section 165.7 setting forth the definition of “distinguishable in the records” and a new Section 165.8 codifying the definition of “likely to mislead” currently used by the Secretary of State. The Committee also proposes to amend Section 15901.08(d) to clarify that proposed names must be compared against all limited partnerships, not just those formed under the Uniform Limited Partnership Act of 2008.

Specifically, the proposed revisions to Sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b) and 17052(c), and the addition of Section 17052(g), of the Code would replace the “likely to mislead” and “tend to deceive” standards of review with “likely to mislead” and “distinguishable in the records” standards. The “likely to mislead” standard is based on the current standard utilized by the Secretary of State. The “distinguishable in the records” standard is similar to that currently in effect for limited partnerships under the Uniform Limited Partnership Act of 2008 (Section 15901.08 of the Code). The proposed revision to Section 13409 of the Code would replace the “substantially the same” standard with the “likely to mislead” and “distinguishable in the records” standards.

Each of the foregoing Sections also would be revised to allow a corporation or limited liability company to use a name that is not distinguishable in the records from the name of an existing corporation or limited liability company, respectively, if that existing entity consents and agrees to change its name so that the two names are distinguishable from each other in the records.

The proposed revision to Section 15901.08(d) would clarify that proposed names for limited partnerships must be compared against all limited partnerships, not just those formed under the Uniform Limited Partnership Act of 2008. The proposed addition of Section 15901.08(h) would add the “likely to mislead” standard to the “distinguishable in the records” standard already applicable to limited partnerships.

The proposed new Section 165.7 would define the “distinguishable in the records” standard for use in all of the foregoing sections. The factors used in this definition mirror the factors currently used by the Secretary of State when evaluating proposed limited partnership names pursuant to Section 21009 of the California Code of Regulations; however, the proposed revisions also would explicitly authorize the Secretary of State to implement regulations and guidelines as may be advisable to carry out the purposes of the revised sections.

The proposed new Section 165.8 adds a definition of “likely to mislead” closely based on the current regulatory standard set forth in the 2009 Regulations. The definition is needed to

inform the use of the term in the proposed revisions to Sections 201(b), 5122(b), 7122(c), 9122(b), 12302(b), 15901.08(h), and 17052(c) of the Code.

Finally, the proposed revision to Section 14417 of the Business and Professions Code expands the confirmation that mere registration of a name with the Secretary of State does not permit a business entity to violate another's trademark or trade name rights. The section is currently applicable to corporations and should be expanded to all registered business entities.

## **Reasons for Proposal**

Adopting a uniform “distinguishable in the records” standard and a “likely to mislead” standard for evaluating all business entity names will (i) eliminate inconsistencies under existing law by applying the same standards to determine the availability of business entity names across all types of business entities, (ii) eliminate the ambiguous and overly-broad “tend to deceive” standard, while not limiting or otherwise affecting rights of businesses to protect their tradenames and trademarks under applicable principles of trademark law, (iii) expand protection to the public provided by the “likely to mislead” standard by applying it to limited partnerships, (iv) streamline the Secretary of State's analysis of new business names, thereby reducing the burden imposed on the Secretary of State and freeing some of its resources and personnel for reallocation to other priorities -- resources currently occupied with implementing the “tend to deceive” standard, (v) bring California's business entity naming conventions in line with the laws of most other states and (vi) adopt an efficient, clear and predictable standard that ensures new business entities will have distinct names.

(i) Elimination of Inconsistencies Under Existing Law. The existing Code sections regarding name availability applicable to corporations and limited liability companies are inconsistent with the “distinguishable in the records” standard applicable to limited partnerships under the Uniform Limited Partnership Act of 2008. The Secretary of State has the burden of analyzing name requests for business entities under two different and incompatible standards, depending on the type of entity, even though there is no compelling reason to apply different standards to different types of business entities. The public is no more or less likely to be confused if an entity is a limited partnership (rather than a corporation or a limited liability company), nor is the Committee aware of any complaints of public confusion resulting from use of the “distinguishable in the records” standard. Yet, existing law retains the more complicated approach of examining whether names “tend to deceive” for corporations and limited liability companies. As a result, names that are available to new limited partnerships are not available to new corporations and new limited liability companies simply because the “tend to deceive” standard has not been updated to conform to the distinguishable in the records standard now in use by most other states.

(ii) Elimination of Ambiguity Without Sacrificing Public Protection. The “tend to deceive” standard is overly restrictive, often in situations where there is little practical risk of confusion. Practitioners and businesses have long expressed frustration regarding how this standard is applied in seemingly arbitrary fashion, with the result often dictated by the views of individual staff persons at the Secretary of State office where an entity name is reviewed. While the purpose of the “tend to deceive” standard is to protect the public from confusion, its

implementation is complex, involves significant subjectivity and results in overly broad application. A business entity name may be rejected because the reviewer perceives it is too close to another name (though not identical) when public confusion is unlikely because the business entity seeking the name operates in a completely different business line and uses a different logo from the entity whose existing name is sought to be protected. In contrast, under the “distinguishable in the records” standard applied to California limited partnerships and to all businesses in most states, the new business would be able to obtain the name so long as there is sufficient distinction between the names that they are recognizable as different names.

Moreover, California’s existing laws do not ensure that businesses do not have confusingly similar names. Because the Secretary of State maintains separate databases for corporations, limited liability companies and limited partnerships, when a name is requested for a particular type of entity, that name is only compared to other names in the applicable database. It is not compared against names in another database. As a result, an entity requesting a name for one type of entity can obtain the *exact* same name as the name of a different type of entity (i.e. a limited liability company can obtain the exact same name as an existing corporation or limited partnership, with the only difference being the use of the “LLC” denotation in its name). For example, as related in a recent federal court case in the Northern District of California, Sand Hill Advisors, LLC and Sand Hill Advisors, Inc. operated a few miles apart in Silicon Valley for a number of years.<sup>2</sup> The Committee does not believe this result is inappropriate, but it demonstrates that the inherent design of the existing statutory scheme is inconsistent with the core objectives of the “tend to deceive” standard.

Even if two entities in similar lines of business request similar names, however, the California name availability statutes are not the best tool for protecting the public from confusingly similar business names. Rather, state and federal trademark laws, which take into account not just the similarity of two names, but also the type of businesses and numerous other factors set forth in well established statutory and common law tests, are specifically designed to deter businesses from improperly using confusingly similar names and to provide businesses with enforcement mechanisms to protect their trade names. At the same time, trademark law itself recognizes the principle that two entities may use substantially similar, and even identical, business names if the entities operate in different classes of commerce (there being no problem from a trademark perspective with “Howard’s” the hardware store and “Howard’s” ice cream). Requiring the Secretary of State to apply a “likely to mislead” standard that focuses solely on the entity names, and not on how names are use, thus subjects business entity naming to a more restrictive standard than is applied under trademark law.

The “tend to deceive” standard requires the Secretary of State to in effect be the arbiter of tradename disputes for businesses that choose similar names for their businesses. But the Secretary of State does not have the resources, expertise, or information that is necessary to appropriately resolve such disputes. For example, when analyzing two similar names, the Secretary of State usually has no information regarding the type of business of the entities, thus

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<sup>2</sup> See, e.g., Sand Hill Advisors, LLC, a Delaware limited liability company v. Sand Hill Advisors, LLC, a California limited liability company, 680 F. Supp. 1107 (N.D. CAL. 2010) (lawsuit brought after Secretary of State refused to register the Delaware LLC’s name, which previously had been a California corporation registered under the name “Sand Hill Advisors”).

making the Secretary of State ill-suited to determine if differences in the underlying businesses would in fact eliminate any chance of confusion. The Committee therefore proposes that the Secretary of State ensure that business entities formed in (or doing business in) California have sufficiently distinct names so as to enable their being identified as distinct (and different) legal entities. The new standard gives the Secretary of State an appropriate and efficient tool to do so.

(iii) Expansion of “likely to mislead” standard to Limited Partnerships. The “likely to mislead” standard currently applies to corporations and limited liability companies, but it does not apply to limited partnerships. The Committee believes application of the standard to limited partnerships is warranted to achieve a uniform naming standard for all California business entities.

(iv) Reduced Burden on the Secretary of State. In order to apply the “tend to deceive” standard, the Secretary of State must devote substantial resources to apply the complex analysis required by existing provisions of the Code and the 2009 Regulations. Moreover, an examiner has considerable discretion and must exercise judgment when deciding whether to approve a specific name, which creates the possibility of inconsistent results between examiners. In contrast, application of the “distinguishable in the records” standard involves much less discretion and judgment, which consequently will decrease the amount of training examiners will need and will speed up the examination process. Relieving the Secretary of State of the obligation to analyze whether names are confusingly similar will make the name application and approval process much more efficient and predictable. The Secretary of State would then be able to reallocate scarce resources to other pressing matters, thereby creating human resources and budgetary savings and efficiencies within the Secretary of State.

(v) Uniformity With Other States. Adoption of the “distinguishable in the records” and the “likely to mislead” standards across all entity types will modernize and conform California law to the standards used in California for limited partnerships and in most other states for all types of business entities while protecting the public from misleading business names.

In summary, adoption of the “distinguishable in the records” and the “likely to mislead” standards for all business entities will continue to ensure that names for businesses in California are sufficiently distinct to enable the public to distinguish among them, will protect the public from misleading business names, will promote efficiency, and will provide a clearer and more predictable standard for the Secretary of State, practitioners, businesses and the people of California.

#### **APPLICATION**

If enacted in 2011, the proposed amendments would become effective January 1, 2012.

#### **PENDING LITIGATION**

There is none to our knowledge.

## **LIKELY SUPPORT AND OPPOSITION**

We anticipate that the proposed amendments would receive the support of most California businesses and business lawyers, many of whom have expressed their frustration with a system that results in name applications being rejected for reasons that appear arbitrary and unrelated to protecting the public interest. Non-California businesses who wish to expand their operations into California, and who therefore need to register their names with the Secretary of State, also will appreciate the predictability that the proposed amendments offer, as well as the ability to register a name that is similar but not identical to the name of an existing California corporation. Moreover, as noted above, the great majority of states use the “distinguishable on the record” standard, and therefore new businesses coming into California will be more familiar with, and presumably more comfortable with, the proposed standard.

Trademark practitioners also may support the proposed amendments because arguably they will provide businesses who have not already registered their trademarks with additional incentive to do so, if such businesses had previously been relying on the Secretary of State to prevent other companies from using names similar to theirs. On the other hand, we also expect that some existing businesses and their attorneys will oppose the proposed amendments, precisely because these entities want the Secretary of State to continue to provide what they perceive to be an extra measure of protection for their names.

## **FISCAL IMPACT**

Applying the “distinguishable in the records” and the “likely to mislead” standards to all business entities will result in increased efficiencies during the review process by eliminating the steps necessary to apply the subjective and ambiguous “tend to deceive” standard, thus facilitating automation of the process, and will therefore ultimately reduce costs associated with this process. The revised standards of review also will make it easier for persons to form corporations in California and non-California corporations to conduct business in California, which can result in more jobs and increased tax revenues.

The Secretary of State may choose to promulgate regulations that will support the implementation of the new standard. To the extent that it does so, the Committee anticipates that there will be some costs associated with promulgating the regulations and training staff to apply those regulations. In addition, the Secretary of State may incur computer programming expenses to implement the “distinguishable in the records” standard.

## **GERMANENESS**

The subject matter of the proposed amendments and new Sections 165.7 and 165.8 is one in which the members of the Section (and, in particular, the members of the Committee) have special experience because they advise companies on name registration and file the relevant organizing documents with the Secretary of State. The subject matter requires the special knowledge, training, experience, and technical expertise of the Section. In addition, the proposed amendment would promote clarity, consistency, and comprehensiveness of the law, which, in turn, would enhance the public’s understanding of, and comfort with, the Secretary of

State's review and approval process for business entity names and, correspondingly, also increase the public's inclination to transact additional business in California.

### CAVEAT

The comments contained herein are those of the Committee only. The positions expressed herein have not been adopted by the Section or its overall membership or by the State Bar's Board of Governors or its overall membership, and are not to be construed as representing the position of the State Bar of California. There are currently close to 10,000 members of the Section. Membership in the Section is voluntary and funding for its activities, including all legislative activities, is obtained entirely from voluntary sources.

### TEXT OF PROPOSAL

THE FOLLOWING SECTIONS OF THE CORPORATIONS CODE ARE AMENDED OR ADDED AS FOLLOWS:

§ 165.7 “Distinguishable in the records of the Secretary of State” means, with reference to the proposed name of a corporation, professional corporation, limited liability company or limited partnership, that the proposed name is not the same as an existing name in those records and, except as provided in the next sentence, contains one or more different letters or numerals or has a different sequence of the same letters or numerals that is plainly recognizable by means of sight by the Secretary of State. A proposed name is not distinguishable in the records of the Secretary of State from an existing name if the difference between those names is (1) the existence or absence of, or a difference between, a word or phrase indicating type of entity for each name (such as corporation, incorporated, Corp., Inc., company, limited liability company, LLC, limited partnership, LP, L.P., Ltd., or any combination of the foregoing); (2) the use of upper case letters or lower case letters or the use of superscript or subscript letters or numerals; or (3) the addition or omission of distinctive lettering or typeface, punctuation or spaces; or any combination of the foregoing.

§165.8 “Likely to mislead the public” means, with reference to the proposed name of a corporation, professional corporation, limited liability company or limited partnership, that the proposed name (1) creates a false implication of government affiliation; (2) creates a false implication that the business entity is a professional corporation within the meaning of the Moscone-Knox Professional Corporation Act; (3) creates a false implication that the business entity is formed pursuant to a law different from that under which it is actually formed; (4) creates a false implication that the business entity's purpose is to be an insurer; or (5) with respect to a nonprofit mutual benefit corporation, includes the words “charitable foundation” or “foundation at the end of the name or immediately preceding a business entity ending.

**§ 201(b)**

The Secretary of State shall not file articles ~~which~~ unless the name set forth in those articles is distinguishable in the records of the Secretary of State (Section 165.7) from a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name which is under reservation for another corporation pursuant to this section, Section 5122, Section 7122, or Section 9122, and is not likely to mislead the public (Section 165.8), except that a corporation may adopt a name that is not distinguishable in the records of the Secretary of State from the name of substantially the same as an existing domestic corporation or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such domestic or foreign corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled. and the Secretary of State shall authorize use of the name applied for upon a finding by the Secretary of State that under the circumstances the name is not likely to mislead the public if, as to such conflicting name:

A) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to change the conflicting name to a name that complies with and is distinguishable in the records of the Secretary of State from the name applied for;

(B) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(C) the applicant delivers to the Secretary of State proof satisfactory to the Secretary of State that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State. The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

**§5122(b)**

The Secretary of State shall not file articles ~~which unless the name set forth in those articles is distinguishable in the records of the Secretary of State (Section 165.7) from a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive,~~ the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name which is under reservation for another corporation pursuant to this section, Section 201, Section 7122, or Section 9122, and is not likely to mislead the public (Section 165.8), except that a corporation may adopt a name that is not distinguishable in the records of the Secretary of State from the name of substantially the same as an existing domestic corporation or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, ~~upon proof of consent by such domestic or foreign corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled and the Secretary of State shall authorize use of the name applied for upon a finding by the Secretary of State that under the circumstances the name is not likely to mislead the public if, as to such conflicting name:~~

(A) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to change the conflicting name to a name that complies with and is distinguishable in the records of the Secretary of State from the name applied for;

(B) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(C) the applicant delivers to the Secretary of State proof satisfactory to the Secretary of State that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State. The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

§7122(c)

The Secretary of State shall not file articles ~~which unless the name set forth in those articles is distinguishable in the records of the Secretary of State (Section 165.7) from a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive,~~ the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name which is under reservation for another corporation pursuant to this section, Section 201, Section 5122, or Section 9122, and is not likely to mislead the public (Section 165.8), except that a corporation may adopt a name that is not distinguishable in the records of the Secretary of State from the name of substantially the same as an existing domestic corporation or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, ~~upon proof of consent by such domestic or foreign corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled and the Secretary of State shall authorize use of the name applied for upon a finding by the Secretary of State that under the circumstances the name is not likely to mislead the public if, as to such conflicting name:~~

A) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to change the conflicting name to a name that complies with and is distinguishable in the records of the Secretary of State from the name applied for;

(B) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(C) the applicant delivers to the Secretary of State proof satisfactory to the Secretary of State that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State. The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

## § 9122(b)

The Secretary of State shall not file articles ~~which unless the name set forth in those articles is distinguishable in the records of the Secretary of State (Section 165.7) from a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive,~~ the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name which is under reservation for another corporation pursuant to this section, Section 201, Section 5122, or Section 7122, and is not likely to mislead the public (Section 165.8), except that a corporation may adopt a name that is not distinguishable in the records of the Secretary of State from the name of substantially the same as an existing domestic corporation or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, ~~upon proof of consent by such domestic or foreign corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled and the Secretary of State shall authorize use of the name applied for upon a finding by the Secretary of State that under the circumstances the name is not likely to mislead the public if, as to such conflicting name:~~

A) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to change the conflicting name to a name that complies with and is distinguishable in the records of the Secretary of State from the name applied for;

(B) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(C) the applicant delivers to the Secretary of State proof satisfactory to the Secretary of State that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State. The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

## §12302(b)

The Secretary of State shall not file articles ~~which unless the name set forth in those articles is distinguishable in the records of the Secretary of State (Section 165.7) from a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive,~~ the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to this title, or a name which is under reservation pursuant to this title and is not likely to mislead the public (Section 165.8), except that a corporation may adopt a name that is not distinguishable in the records of the Secretary of State from the name of substantially the same as an existing domestic corporation or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such domestic or foreign corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled, and the Secretary of State shall authorize use of the name applied for upon a finding by the Secretary of State that under the circumstances the name is not likely to mislead the public if, as to such conflicting name:

A) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to change the conflicting name to a name that complies with and is distinguishable in the records of the Secretary of State from the name applied for;

(B) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(C) the applicant delivers to the Secretary of State proof satisfactory to the Secretary of State that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State. The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

## §13409

(a) A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which such corporation is engaged or by a rule or regulation of the governmental agency regulating such profession. The provisions of subdivision (b) of Section 201 shall not apply to the name of a professional corporation if such name shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership or other organization or whose name or names appeared in the name of such predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to file articles of incorporation which set forth such a name; provided, however, that such name shall be distinguishable in the records of the Secretary of State (Section 165.7), and that such name shall not be likely to mislead the public (Section 165.8) from the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in this state which is authorized to transact business in this state, or a name which is under reservation for another corporation, and that such name shall not be likely to mislead the public (Section 165.8). The Secretary of State may require proof by affidavit or otherwise establishing that the name of the professional corporation complies with the requirements of this section and of the law governing the profession in which such professional corporation is engaged. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

(b) A foreign professional corporation qualified to render professional services in this state may transact intrastate business in this state by any name permitted by a law expressly applicable to the profession in which the corporation is engaged, or by a rule or regulation of the governmental agency regulating the rendering of professional services in this state by the corporation. The provisions of subdivision (b) of Section 201 shall not apply to the name of a foreign professional corporation if the name contains and is restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, or other organization, or whose name or names appeared in the name of the predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to issue a certificate of qualification to a foreign professional corporation that sets forth that name in its statement and designation; provided, however, that such a name shall be distinguishable in the records of the Secretary of State (Section 165.7) from the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in the state, or a name that is under reservation for another corporation, and that such name shall not be likely to mislead the public (Section 165.8). The Secretary of State may require proof by affidavit or otherwise establishing that the name of the foreign professional corporation qualified to render professional services in this state complies with the requirements of this section and of the law governing the profession in which the foreign professional corporation qualified to render professional services in this state proposes to engage in this state. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

§ 17052(c)

Shall not be a name that the Secretary of State determines under the circumstances is likely to mislead the public ~~and shall not be the same as, or resemble so closely as to tend to deceive,~~ (1) ~~the name of any limited liability company that has filed articles of organization pursuant to Section 17050,~~ (2) ~~the name of any foreign limited liability company registered to do business in this state pursuant to Section 17451,~~ or (3) ~~any name that is under reservation for another domestic limited liability company or foreign limited liability company pursuant to Section 17053.~~ However, a limited liability company may adopt a name that is substantially the same as that of an existing domestic limited liability company or foreign limited liability company that is registered pursuant to Section 17451 upon proof of consent by that domestic limited liability company or foreign limited liability company and a finding by the Secretary of State that, under the circumstances, the public is not likely to be misled.

The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

§ 17052(g)

Shall be distinguishable in the records of the Secretary of State (Section 165.7) from:

(1) the name of any limited liability company that has filed articles of organization pursuant to Section 17050,

(2) the name of any foreign limited liability company registered to do business in this state pursuant to Section 17451, or

(3) any name that is under reservation for another domestic limited liability company or foreign limited liability company pursuant to Section 17053. However, a limited liability company may adopt a name that is not distinguishable in the records of the Secretary of State from the name of an existing domestic limited liability company or foreign limited liability company that is registered pursuant to Section 17451 and the Secretary of State shall authorize use of the name applied for if, as to such conflicting name:

\_\_\_\_\_ A) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to change the conflicting name to a name that complies with and is distinguishable in the records of the Secretary of State from the name applied for;

\_\_\_\_\_ (B) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

\_\_\_\_\_ (C) the applicant delivers to the Secretary of State proof satisfactory to the Secretary of State that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

#### **§ 15901.08(d)**

Unless authorized by subdivision (e), the name of a limited partnership must be distinguishable in the records of the Secretary of State (Section 165.7) from:

(1) the name of any limited partnership that has previously filed a certificate pursuant to Section 15902.01 or any foreign limited partnership registered pursuant to Section 15909.01; ~~and~~

(2) the name of any limited partnership or foreign limited partnership formed or registered before January 1, 2008 that is governed by the Uniform Limited Partnership Act of 2008, whether by election or operation of law; and

~~(2)~~ (3) each name reserved under Section 15901.09.

The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

#### **§ 15901.08(h)**

The name of a limited partnership shall not be a name that the Secretary of State determines under the circumstances is likely to mislead the public (Section 165.8).

The Secretary of State may make any rule, regulation, or guideline the Secretary deems advisable to carry out the purposes and provisions of this section.

THE FOLLOWING SECTION OF THE BUSINESS & PROFESSIONS CODE IS AMENDED AS FOLLOWS:

#### **§ 14417**

The filing of (a) articles of incorporation pursuant to Sections 200, 5120, 7120, 9120 or 12300 of the Corporations Code, (b) a certificate of limited partnership pursuant to Section 15902.01 of the Corporations Code, or (c) articles of organization pursuant to Section 17050 of the Corporations Code, shall not of itself authorize the use in this state of a corporate name, a limited partnership name or a limited liability company name in violation of the rights of another under the federal Trademark Act (15 U.S.C. Sec. 1051 et seq.), the Trademark Act (Chapter 2 (commencing with Section 14200) of Division 6), the Fictitious Business Name Act (Chapter 5 (commencing with Section 17900) of Division 7), or the common law, including rights in a trade name. The Secretary of State shall deliver a notice to this effect to each newly organized corporation, limited partnership and limited liability company.