

Name Granting Compendium

This compendium sets out the name granting policy of Corporations Canada, who is responsible under the *Canada Business Corporations Act* and the *Canada Corporations Act* for ensuring that names proposed for Canadian corporations meet the requirements of the Acts and their regulations.

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1. Introduction to Name Policies

The rules for the granting of names under the *Canada Business Corporations Act* (CBCA) and the *Canada Corporations Act* (CCA) are almost the same. Essentially, an applicant cannot have a name that

- lacks distinctiveness
- is likely to cause confusion with other businesses
- is likely to mislead the public
- is reserved for another business
- is obscene, or
- has an unacceptable French or English form

The policies contained in this document are guidelines for interpreting the name regulations. They demonstrate how corporate name regulations will be applied in certain types of fact situations. Since, however, each name decision requires an exercise of judgment, based on the particular facts of that case, and after considering a number of factors, any one particular regulation and guideline may not necessarily determine the decision.

The following checklist should provide assistance in deciding which policies may be important for a particular corporate name:

1. Have you included an absolutely prohibited term in your name? Check regulation 25 (see section 3.0 of this document) prohibiting the use of “Cooperative”, “Coopérative”, “Co-op” or “Pool”, “Parliament Hill” or “Colline du Parlement”, “Royal Canadian Mounted Police” or “Gendarmerie Royale du Canada”, “RCMP” or “GRC”, “United Nations” or “Nations Unies”, “UN” or “ONU”.
2. If you are using “Canada” or the name of a province in your name, check regulation 26(a) and (b) (see section 4.2 of this document) which prohibits a name if it connotes government sponsorship and control. Your name should not give the impression of being a government sponsored entity unless the government consents in writing to use of the name.
3. If your corporation will be in a professional or educational field, ensure that your name does not mislead or connote affiliation with an existing university or professional association. (See regulation 26(c) and section 4.3 of this document).
4. If your corporation will have activities of a financial nature, make sure the name does not connote carrying on the business of a bank, loan company, insurance company, trust company, other financial intermediary, or stock exchange unless the appropriate federal or provincial regulator consents in writing to the use of the name. (See regulation 26(d) and section 4.4 of this document).
5. Your name must have some distinctiveness to distinguish your business from that of others. You cannot have a name that merely describes the business of a corporation, or its goods and services, or a quality of them, or is merely the name of a person or a geographic location. Check regulation 30(1) (see section 6.0 of this document). Keep in mind that the more distinctive your name is, the more protection it will get.
6. If you are using the name of an individual in your corporate name, you may be required to file a consent of that individual unless he or she is an incorporator or unless the individual died more than 30 years ago, or unless the name has secondary meaning. (See regulation 28 and sections 6.4 and 6.6 of this document).

7. If you are using initials in your proposed corporate name, you should check section 2.3 of this document for guidelines explaining when names with initials are confusing. If you are proposing the use of initials with surnames, see also section 2.8.8 of this document.
8. Your corporation should not appear to be the holding corporation of other, unrelated businesses which happen to use the same distinctive element as yours in their names. The use of the word “Group” can give this impression. Check section 2.4 of this document if you are planning to use the word “Group”.
9. The name you propose will not be found to be available if it seems likely to cause confusion with existing business names (whether or not incorporated), official marks or trade-marks. Confusion can be between names A and B so that A and B are likely to be mistaken for the same corporation, or it can be between A and B if A misleadingly looks related to B. Both are instances of confusion.

You are required to obtain and file a NUANS[®] report that will list business names and trade-marks which look and sound the same as your name. A NUANS[®] report may be obtained in two ways:

1. A NUANS[®] report may be requested from a private company known as a search house. You can find a list of these firms on the Corporations Canada website (www.corporationscanada.ic.gc.ca) by following the links “Name a Corporation”, and “NUANS[®] Registered Members”, or in the Yellow Pages of your telephone directory under INCORPORATING COMPANIES, INCORPORATION NAME SEARCH, SEARCHERS OF RECORDS or TRADE-MARK AGENTS - REGISTERED. The search house will charge a fee for this service.
2. A NUANS[®] report may be ordered on-line at the Electronic Filing Centre, at www.corporationscanada.ic.gc.ca from the NUANS[®] Real-Time System. The fee is \$20 payable by credit card (American Express⁷, MasterCard⁷ or Visa⁷). The system provides direct access to the NUANS[®] search service but does not provide the professional assistance and recommendations often available from a registered NUANS[®] search house. Applicants should note that a NUANS[®] report that is generated and submitted to Corporations Canada may be rejected if the proposed name does not meet the requirements of the CBCA/CCA name regulations.

If you order a NUANS[®] report, that report has a life of 90 days from the date it is requested. Most search houses can advise you whether your proposed name is likely to be accepted by Corporations Canada. The final decision, however, always rests with Corporations Canada.

Corporations Canada will examine the NUANS[®] search with certain factors in mind: Do any of the names, trade-marks or official marks which sound alike appear to be in the same business as yours? Would they likely have the same type of client, or territory of operation as yours? How much protection do they deserve?

Corporations Canada will have the information listed in the paragraph above only if you provide it to them when making your submission. If you have satisfied yourself that your corporation will not create a likelihood of confusion, give Corporations Canada the basis for your conclusions. Chances are it will satisfy Corporations Canada. Name submissions must often be rejected for lack of this kind of information. For more details concerning how Corporations Canada determines whether there is a likelihood of confusion, see regulations 18 and 19 (see section 6.1). For more details about what information to file see section 1.3. Failure to provide this

information with the first submission of your proposed corporate name will likely result in the rejection of your name request. Approval is often not possible until the information is provided.

10. If you propose to take the name of a corporation which has been inactive for 2 years, check regulation 20 (see section 2.5 of this document). For a period of two years after the inactive corporation ceases operations, the memory of its name is presumed to stay in the public's mind. You will not be able to have the exact same name or the same distinctive element during that two year period. As explained in item 11 below, you may choose to resolve this problem by adding some distinguishing feature to your name which can be removed after the two year period has expired.
11. Under certain conditions, you are permitted to have names that appear to be confusing with an existing business name (i.e., appear to be the same business as an existing business, or appear to be affiliated with an existing business). Essentially, the existing business must consent in writing to the use of its name, or, must consent and undertake to change its name. Even then, because of the two-year period referred to in item 10 above, there may still be confusion unless certain other conditions are met. If you wish to use the name of a corporation which has been inactive for two years, check regulation 20 (see section 2.8.1 of this document). If you wish to incorporate an affiliate of an existing corporation, check regulation 21 (see section 2.8.2 of this document). If you wish to incorporate a corporation which will take over the business of an existing corporation, check regulation 22 (see section 2.8.3 of this document). If you are proposing an amalgamation, check regulation 17(2), 23 and 72.1 (see section 2.8.5 of this document) for names which are permissible for the amalgamated corporation.

In order to use a name identical to the name of an affiliated corporation whose assets your corporation has or will acquire, check regulation 24 (see section 2.8.6 of this document). If the existing corporation whose name you wish to take is bankrupt, check section 2.8.9 of this document for the consent that is required.

12. If your proposed name appears to be confusing with a trade-mark, special considerations apply. If a trade-mark has been registered for 5 or more years, the applicant must get the consent of the trade mark owner. If the trade-mark has been registered for less than 5 years this may not be necessary. For information on how to get protection from trade-marks which may be registered after your incorporation, check section 9. If a proposed name is confusingly similar to an existing official mark adopted and used pursuant to the provisions of section 9 of the *Trade-marks Act*, it will be rejected. (For more information on trade-marks, official marks and trade names, see section 2.7 of this document).
13. Corporations Canada is reluctant to approve names for profit-making corporations which contain words such as "institute" or "club". These words are more commonly used in the names of not-for-profit corporations and may, for that reason, be misleading. (See section 7.0).
14. There is no difference between the regulations that apply in respect of the continuance or revival of a corporation and the regulations that apply in respect of incorporation.
15. If you are proposing a bilingual corporate name, you must ensure that the two language forms are not so different from one another that they appear to be two different corporations. (See section 9.0 of this document).
16. If the name you are proposing is in a combined English and French form, it can only include one legal element which is "Inc." and this legal element must be at the end of the name. (See Regulation 32 and section 9.5 of this document).

17. If the French and English forms of your corporate name are similar enough, you may not need two NUANS[®] search reports. (See section 9.4 of this document).
18. If a corporate name contains a word or phrase, or connotes a business that is obscene, the name is prohibited. (See Regulation 27 and section 5.0 of this document)

1.1 How Do You Reserve a Corporate Name?

To reserve your proposed corporate name, you must:

1. obtain a NUANS[®] search on the proposed name, and
2. apply to Corporations Canada for determination that the proposed name does not contravene the regulations. In order for Corporations Canada to make this determination, the proposed name has to be submitted to Corporations Canada accompanied by the NUANS[®] search report. This can be done before articles are filed if it is important that the articles not be rejected (save yourself time by using this method!). Otherwise, Corporations Canada's decision will be made when the articles (and other forms necessary to complete the application) are filed with a proposed name. The articles will be rejected if it is found that the name is not available.

Once Corporations Canada has decided that a particular name is approved, that name is automatically reserved for 90 days, retroactive to the date the NUANS[®] search report was requested (i.e. the date appearing in the right-hand column beside the proposed name). Please note that if two consecutive dates appear in the right hand column, the reservation will be retroactive to the earlier of the two dates.

1.2 Previously Existing Reservation by a Person Other Than the Applicant

Under the CBCA, the Director is not permitted to reserve a corporate name if it is the same as, or is confusing with, a corporate name that has, before the date of the request, been reserved by the Director for another person.

1.3 Interpretations and Definitions (Regulation 17 and 18)

The regulations set out the following definitions:

Reg. 17. (1) The following definitions apply in this Part.

“corporate name” means the name of a corporation. (*Version anglaise seulement*)

“distinctive”, in relation to a trade-name, considered as a whole and by its separate elements, means a trade-name that distinguishes the business in association with which it is used or intended to be used by its owner from any other business or that is adapted to so distinguish them. (*distinctive*)

“official mark” means an official mark referred to in subparagraph 9(1)(n)(iii) of the *Trade-marks Act*. (*marque officielle*)

“trade-mark” means a trade-mark as defined in section 2 of the *Trade-marks Act*. (*marque de commerce*)

“trade-name” means a name that has been reserved by the Director under subsection 11(1) of the Act, or the name under which a business is carried on, or intended to be carried on, whether it is a corporate name or the name of a body corporate, trust, partnership, sole proprietorship or individual. (*dénomination commerciale*)

“use” means the actual use by a person that carries on business in Canada or elsewhere. (*emploi*)

Reg. 18. A corporate name is confusing with

(a) a trade-mark or an official mark if it is the same as that trade-mark or official mark or if the use of both the corporate name and either the trade-mark or the official mark, as the case may be, is likely to lead to the inference that the business carried on or intended to be carried on under the corporate name and the business connected with the trade-mark or official mark, as the case may be, are one business, whether or not the nature of the business of each is generally the same; or

(b) a trade-name if it is the same as that trade-name or if the use of both names is likely to lead to the inference that the business carried on or intended to be carried on under the corporate name and the business carried on under the trade-name are one business, whether or not the nature of the business of each is generally the same.

1.4 Facts Necessary for a Name Decision

To obtain a favourable name decision, you must provide Corporations Canada with sufficient information. Even if no confusingly similar names appear on the search report and there is therefore no concern about confusion, without some information about what your business will be, Corporations Canada cannot properly assess whether a name

- connotes government sponsorship
- connotes the business of trust, loan, insurance or banking
- misdescribes, or merely describes the business of a corporation

If there are names on the search report that look or sound similar to your name, you must provide the type of information listed in section 19 of the Regulations:

- the TYPE OF BUSINESS the proposed corporation will carry on and how this business is dissimilar to the activities of existing businesses which have similar names.
- WHERE THE PROPOSED CORPORATION WILL CARRY ON ITS BUSINESS and whether this territorial area is different from the area in which other businesses with similar names and similar activities are operating.
- WHAT TYPES OF CLIENTS AND SUPPLIERS the proposed corporation will be doing business with and whether they are different from the types of clients with whom existing businesses, with similar names and similar activities in a similar territory, will do business (e.g., deal with retailers, computer programmers or the general public).
- the DERIVATION OF THE DISTINCTIVE ELEMENT(S) of the proposed name. If there is a reasonable explanation for why the applicant wants that distinctive element, it is less likely to suspect that the applicant is trying to trade on the goodwill of an existing business with a similar name.
- whether the proposed corporation will be RELATED TO EXISTING BUSINESSES with similar names or trade marks and if so, the written consent of some or all of them.

- whether the proposed corporation has a FOREIGN PARENT with a similar name which carries on business or is known in Canada. If so, written consent is required and the proposed corporation must add “(Canada)” or “of Canada”.
- whether an EARLIER RESERVATION of a similar name which appears on the NUANS® search report, was made by the same applicant.
- the WRITTEN CONSENT OF AN INDIVIDUAL whose name appears in the corporate name, unless that individual is an incorporator. For the CBCA, the consenting individual must indicate that he or she has or had a material interest in the corporation.

If the applicant fails to provide us with this information, the name must often be rejected because Corporations Canada has no basis to be satisfied that the new corporate name will not create a likelihood of confusion with existing similar names appearing on the search report.

Without this information it may appear that the proposed name will likely be confused with an existing name which appears to be in the same business, in the same territory. With the information, it may become clear that the two businesses are, in fact, significantly different, in different territories, dealing with different types of suppliers and customers and therefore confusion is not likely.

Generally speaking, if the applicant has reviewed the NUANS® search report carefully and is satisfied in his/her own mind that the new corporation is not likely to cause confusion, it is merely a matter of giving Corporations Canada sufficient information to reach the same conclusion. Applicants should always be reasonably cautious in reaching their conclusion, however, because the applicant risks being sued by an existing business or being required by Corporations Canada to change its corporate name after Corporations Canada has been persuaded by an existing business that the new corporate name really does create a likelihood of confusion. Of course, the new corporation would always have the opportunity to state its case before Corporations Canada’s decision to change its name was taken.

1.5 Elements of a Corporate Name - Distinctiveness, Descriptiveness and a Legal Element

Generally, a corporate name is composed of three elements:

- (a) A distinctive element which is the unique identifier of the name.
- (b) A descriptive element which describes the line of business. (Not absolutely required)
- (c) A legal element which indicates the legal status of the corporation as an incorporated body.

Example:

distinctive element	descriptive element	legal element
<u>Telefax</u>	<u>Commercial Communications</u>	<u>Ltd.</u>

To decide whether or not a proposed name is available, several guidelines apply. In accordance with the CBCA and its regulations, Corporations Canada must consider if the proposed name is:

- (a) confusing
- (b) absolutely prohibited
- (c) qualifiedly prohibited
- (d) obscene

- (e) lacking distinctiveness
- (f) deceptively misdescriptive

2. Confusion (Regulations 19 to 22)

The proposed corporate name may be found to be confusing with any corporate name, trade name, trade-mark or official mark appearing on the NUANS[®] search report.

2.1 Factors to Consider in Determining Confusion

Reg. 19. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if its use causes confusion with a trade-mark, official mark or trade-name, having regard to the circumstances, including

- (a) the inherent distinctiveness of the whole or any element of the trade-mark, official mark or trade-name and the extent to which it has become known;
- (b) the length of time that the trade-mark, official mark or trade-name has been in use;
- (c) the nature of the goods, services or business with which the trade-mark, official mark or trade-name is associated;
- (d) the nature of the trade with which the trade-mark, official mark or trade-name is associated;
- (e) the degree of resemblance between the proposed corporate name and the trade-mark, official mark or trade-name in appearance or sound or in the ideas suggested by them; and
- (f) the geographical area in Canada in which the trade name or proposed corporate name is likely to be used.

Often, applicants do not supply sufficient information in the name request to properly assess all of the factors under section 19 of the regulations. In these cases Corporations Canada can only rely on Regulation 19 (a) and (e) to make the name decision. If the applicant should decide to provide more information, the name decision can be re-evaluated in light of the new facts.

A decision of confusing similarity may be based on phonetic similarity alone.

Applicants should note that federal incorporation does not in itself give applicants rights over an existing provincial corporate name or trade name.

2.2 Treatment of Existing Names which are Famous, Highly Distinctive, or Diluted

Corporations Canada's primary concern in enforcing the name regulations is in eliminating confusion. Nowhere do the regulations enshrine the principle that a highly distinctive name should be protected from dilution. In practice, however, the protection principle complements the principle of avoiding confusion. A corporation may have a highly distinctive name (i.e. unique and imaginative), being a purely arbitrary creation (e.g., DWIDAG Foods Inc. for a food wholesaler), as opposed to an obviously derived composition (e.g., Cortivet for the manufacture of cortisone veterinarian preparation). Granting the highly distinctive element to a second corporation (e.g., DWIDAG Stores Ltd.) is more likely to generate confusion because this distinctive element is more likely to linger in the mind of the public. Each case, however, depends on its facts and depending on differences of goods, services, territory and clientele. Corporations Canada may or may not feel that there is in fact a likelihood of confusion.

Corporations Canada does not assume, for the purposes of the name granting policy, that any given existing corporation with a highly distinctive name will develop into a famous conglomerate, dealing in a variety of products and services.

“Famous” names are a case apart. They may originally have been highly distinctive (e.g., Kodak) or alternatively, very lacking in distinctiveness (e.g., General Motors or International Business Machines), but they have acquired high distinctiveness through use. They are generally conglomerates and Corporations Canada will not approve any corporate name that uses their distinctive feature.

Some words are so common that they are used as the distinctive element in many business names. Such wide usage dilutes the impact of the business name and gives it a reduced claim to protection. As a general rule, if a distinctive element is highly diluted (low distinctiveness), the same distinctive feature may be used in new corporate names that are only slightly different from the existing names. For instance, a different descriptive word might be all that is needed to distinguish the proposed corporate name from similar existing names, even if the descriptive word describes essentially the same business that is carried on under the existing names.

For example, names such as “Universal Products Inc.” or “Universal Bakery Products Inc.” would not be prohibited, even though there were existing names like “Universal Food Enterprises Inc.”, because the distinctive element “Universal” is highly diluted, and the existing names do not deserve much protection.

Therefore, the guidelines for initial, front-line name decisions (normally without benefit of much detailed information) should be as follows:

<u>Classification</u>	<u>Decision</u>	<u>Considerations</u>
Famous	IBM Draperies Ltd. (unavailable)	
Highly Distinctive	1) IGSAC Toys Inc. - existing IGSAC Bicycles Ltd. - proposed (unavailable) IGSAC Drapery Installation Inc. - proposed (available subject to risk accepted by the applicant in writing) 2) IGSAC Inc. - existing IGSAC Drapery Installation Inc. (unavailable because it is not known how different its products & services are)	There are circumstances which are not generally known at the time of initial name granting which would make BICYCLES available, or DRAPERY unavailable on reconsideration or confusion allegation. Upon investigation it may be determined that IGSAC Inc. is in toys, and therefore, on reconsideration, IGSAC Drapery would be available.
Low Distinctiveness / Dilution	1) Maple Leaf Toys Inc. - existing Maple Leaf Bicycles Ltd. - proposed (available) 2) Maple Leaf Inc. - existing Maple Leaf Bicycles Inc. - proposed (available)	There are circumstances which are not generally known at the time of initial decision which would make BICYCLES unavailable on Reconsideration or Confusion Allegation.

Note: Of course even the unavailable names would be available if the corporations were related and consent was provided.

Detailed information with respect to products, clientele and territory of existing corporations must be provided in writing to facilitate the name granting process.

2.3 Initials and Confusion

There is no hard and fast rule with respect to when a name containing initials is likely to cause confusion. Territory of operations and any other relevant information always has to be taken into consideration. What follows is merely a guideline which assumes that the territory of the existing businesses and the proposed business will overlap and that the applicant has produced no other information showing that confusion is unlikely (e.g., totally different clientele, long co-existence, existing corporation inactive for a long period).

(a) If a distinctive feature is made up of two initials, the proposed name will be considered confusing if:

- the descriptive feature is the same or confusingly similar, and
- the initials are identical and in the same order or if the first initial is the same and the last initial is phonetically similar.

e.g. BN Construction – confusing with BM Construction
– confusing with BN Builders
– not confusing with BF Construction

(b) If three or more initials make up the distinctive feature of a name, the proposed name will be considered confusing if:

- the descriptive feature is the same or confusingly similar,
- all of the initials except for the last one are identical, and
- the initials are in the same order as the initials in the existing corporate name.

e.g. ABCD Construction – confusing with ABCF Construction
– not confusing with DABC Construction

(c) Initials may be acceptable without a descriptive word if the result is not confusing.

Because it is difficult to develop a general policy which applies to each case that arises, some discretion must be used for cases not strictly covered by these guidelines. For example, a name like “BNND Construction” or “BMND Building” would be considered confusing with “BNMD Construction” because M and N are very similar in sound and appearance. “A & M Construction Inc.” would be found to be confusing with “ANM Construction Ltd.” because phonetically there is little difference between the two.

2.4 Confusion and the Word “Group”

If there are no other unrelated corporations with the same distinctive feature (not very high, not very low distinctiveness) as the proposed corporate name, the proposed name would be available without further requirement.

If there are other corporations with the same distinctive feature as the proposed corporate name but unrelated to the corporation for which the name is proposed, the applicant must explain why the proposed corporate name will not misleadingly suggest a grouping of those corporations.

Examples of possible responses:

- the business of the proposed corporation and that of the existing unrelated corporations are too different for them to be confused as being affiliated.
- the proposed corporation will be the umbrella corporation for related corporations using that distinctive feature and the proposed name will connote a relationship with them alone.

The addition of a descriptive word (e.g., textile) modifying the word “Group” will likely make the proposed name available as long as the descriptive word clearly distinguishes the business of the proposed corporation from the business of existing corporations with the same distinctive element.

Note: Consents of the “grouped” corporations will be required unless the existing parent of those corporations is requesting a change of name to “Group”.

2.5 Inactive Corporations (Regulation 20)

Reg. 20. Despite section 19, a corporate name that is confusing with the name of a body corporate that has not carried on business in the two years immediately before the day on which the Director receives the documents referred to in subsection 8(1), section 178 or subsection 185(4), 187(4), 191(5), 192(7) or 209(3) of the Act or a request to reserve a name under subsection 11(1) of the Act is not prohibited for that reason alone if

- (a) the body corporate has been dissolved; or
- (b) in the case of a body corporate that has not been dissolved, it consents in writing to the use of the name and undertakes in writing to dissolve immediately or to change its name before the corporation that proposes to use the name begins using it.

A proposed corporate name is prohibited if its use could lead to confusion with the name of a body corporate that has been inactive for less than 2 years, whether or not the body corporate has been dissolved.

Names identical to, or with the identical distinctive element to, those of the corporation that has been dissolved, that has amalgamated under another name or that has changed its name are not available (whether the corporations are related or not) for two years after the date the body corporate ceased to carry on business under the name. The purpose of this period of non-availability is to allow the public time to disassociate that name from a specific business.

Within the two-year period anyone could, however, incorporate a successor corporation (i.e. a corporation with the same name but with a year of incorporation in brackets immediately before the legal element of the name), or a corporation with a slightly varied name (or with an identical name if they meet the Regulation 24(1) requirement) as long as the consent of the amalgamated corporation or the corporation whose name was amended, is obtained. Because no consent is obtainable from a dissolved corporation, the applicant for the new corporation must demonstrate that it acquired the rights to the name from the dissolved corporation prior to its dissolution.

After two years, the name becomes available to anyone as long as no successor corporations were incorporated within the two years and as long as the original name has not been perpetuated as a registered trade name.

2.6 Application for Revival

If another corporation with an identical name is incorporated either before dissolution or in the interval between dissolution and revival of a federal corporation, the federal corporation will not be able to revive with that name as long as the identical name is in existence.

In the above circumstances, if the new name is only confusingly similar, it is important to know the continuousness of the operation of the applicant for revival. If its operation was continuous during a substantial period of the time that the new corporation was in operation, this demonstrates that the revival of the federal corporation is unlikely now to cause confusion.

2.7 Confusion with Corporate Names, Trade Names, Trade-marks, and Official Marks

2.7.1 Confusion with Trade-marks

- (i) In order to approve a name for which there are phonetically similar trade-mark citations, Corporations Canada must know in general terms what the proposed corporation will do and that all phonetically similar trade-marks are in substantially different products or services in order to determine that there is no likelihood of confusion. This information must be provided to Corporations Canada in writing. If this information is lacking, Corporations Canada will assume that the business, products and services associated with the trade-mark are the same as that of the proposed corporation.
- (ii) The following guidelines provide guidance in situations where there is an existing trade-mark in substantially the same products or services as the proposed name.

1. Trade-mark (TM) owned by someone other than applicant (i.e. conflicting trade-mark)

- TM has been registered for five years: Corporate name applicant cannot have the proposed name without consent of the TM owner, no matter how long the applicant has used it.
- TM application has been filed under the *Trade-marks Act* or TM has been registered for less than five years: It will be determined who had prior use. If the corporate name applicant files an affidavit that satisfies Corporations Canada that the applicant had prior use of a corporate name or a trade name and provides Corporations Canada with an undertaking that the applicant will contest the other party's TM application or registration, the applicant will be granted the name.

2. Trade-mark (TM) owned by the applicant (i.e. supporting trade-mark)

- TM has been registered for five years: Even if there is another business name that is confusing, the corporate name applicant will be given the name because the applicant's TM is not likely to be struck from the TM registry.
- TM application has been filed under the *Trade-marks Act* or TM has been registered for less than five years: If there is another business name that is confusing and this business appears to have used the name before the corporate name applicant, the applicant's TM is not sufficient reason to grant the name. The name will not be approved. If, however, the applicant had prior use, the applicant will be allowed to incorporate.

Please note that in these types of trade-mark situations, the important information is:

- the length of time that the TM has been in use
- whether or not the trade-mark has been registered for five years.

- (iii) Applicants should be aware that the holder of a corporate name bears the responsibility of ensuring that no new confusing trade-marks are registered by anyone else, after his or her incorporation.

General enquiries concerning trade-marks should be directed to the Canadian Intellectual Property Office at 1-866-997-1936, or view the website at www.strategis.gc.ca/sc-mrksv/cipo/welcome/welcom-e.html.

2.7.2 Confusion with Trade Names

Corporations Canada thinks that it could be confusing for a trade name and a confusingly similar corporate name to exist at the same time (even if they are owned by the same person) unless both names form part of the same business.

For this reason, Corporations Canada will refuse a proposed corporate name if an individual is carrying on business in that trade name (even if the individual is the applicant for incorporation) unless Corporations Canada receives the individual's consent and his or her undertaking to cease carrying on business in that trade name or to transfer the trade name registration to the corporation. A sample letter of consent is available.

There will, of course, be no need for such a consent and undertaking if

- (a) a change of corporate name is proposed by a corporation that has already registered a trade name; and
- (b) the proposed name of the corporation will be that trade name.

A copy of the trade name registration showing the corporation as the owner should be filed, however.

Note 1: For Ontario Business Names on the NUANS[®] report, Ontario business names expire after 5 years unless they are renewed. Unrenewed registrations may remain on the NUANS[®] database however. Corporations Canada will assume that all Ontario trade name registrations less than 5 2 years old and appearing on the NUANS[®] report are active. Any registrations over 5 2 years old and not renewed, will be disregarded. The ½ year period is a grace period to allow time for renewal after expiry.

Note 2: For confusion with corporate and trade names for franchised businesses the use of the name of a franchise accrues to the franchisor rather than to the franchisee, the consent of existing business and trade names which are franchisee businesses will not be required for the incorporation of a confusingly similar name. Only the consent of the franchisor will be required. In that consent, the franchisor must identify the existing corporate names as franchisees.

2.7.3 Confusion with Official Marks

An official mark is “an official mark referred to in subparagraph 9(1)(n)(iii) of the *Trade-marks Act*”. If a proposed name is likely to cause confusion with an existing official mark adopted and used pursuant to the provisions of section 9 of the *Trade-marks Act*, it will be rejected.

2.8 Overcoming Confusion

The regulations suggest various ways to overcome a finding that a proposed corporate name is likely to cause confusion.

2.8.1 Consent and Undertaking by a Corporation (Regulation 20)

Reg. 20. Despite section 19, a corporate name that is confusing with the name of a body

corporate that has not carried on business in the two years immediately before the day on which the Director receives the documents referred to in subsection 8(1), section 178 or subsection 185(4), 187(4), 191(5), 192(7) or 209(3) of the Act or a request to reserve a name under subsection 11(1) of the Act is not prohibited for that reason alone if

- (a) the body corporate has been dissolved; or
- (b) in the case of a body corporate that has not been dissolved, it consents in writing to the use of the name and undertakes in writing to dissolve immediately or to change its name before the corporation that proposes to use the name begins using it.

This regulation applies only in the situation where the existing business with which the proposed name is confusing, has not carried on business for two years. A sample letter of consent is available.

The signature of the authorized signing officer must describe him or her as an officer of the consenting corporation.

2.8.2 Consent to a Distinctive Word (Regulation 21)

Reg. 21. Despite section 19, if a word in a corporate name is confusing with the distinctive element of a trade-mark, official mark or trade-name, the corporate name is not prohibited for that reason alone if the person who owns the trade-mark, official mark or trade-name consents in writing to the use of the corporate name.

A sample letter of consent is available.

Such a consent would not be required from a foreign company unless it was known or carrying on business in Canada.

There is a difference between consenting to putting certain distinctive words in a corporate name and consent to the use of certain words as a trade name. A mere consent to the use of certain words will not be accepted for purposes of regulation 21.

Consents must be unconditional.

2.8.3 Successor businesses and Year of Incorporation (Regulation 22)

Reg. 22. (1) Despite section 19, a corporate name that is confusing with the name of a body corporate is not prohibited for that reason alone if

- (a) the corporate name is the name of an existing or a proposed corporation that is the successor to the business of the body corporate and the body corporate has ceased or will, in the immediate future, cease to carry on business under that corporate name and undertakes in writing to dissolve or to change its name before the successor corporation begins carrying on business under that name; and
- (b) the corporate name of the existing or proposed corporation sets out in numerals the year of incorporation, or the year of the most recent amendment to the corporate name, in parentheses, immediately before the word or expression “Limited”, “Limitée”, “Incorporated”, “Incorporée”, “Corporation”, “Société par actions de régime fédéral” or “Société commerciale canadienne” or the abbreviation “Ltd.”, “Ltée”, “Inc.”, “Corp.”, “S.A.R.F.” or “S.C.C.”.

(2) If a corporate name is changed so that the reference to the year of incorporation or the year of the most recent amendment to the corporate name is deleted at least two years after it is introduced, it is not prohibited for that reason alone.

A sample letter of consent is available.

Section 22 may apply both in the case where a corporation changes its name and in the case of a proposed new corporation. In the former case, the date in parenthesis is the date the corporation succeeds to the name and not the date it is incorporated.

Please note that Regulation 22 does not override other applicable regulations. If, for instance, X1, the body corporate which is consenting and providing an undertaking to the incorporation of X1 (2010), pursuant to Regulation 22 was, itself, incorporated pursuant to a consent of X in conformity to Regulation 21, the consent of X is presumed for the incorporation of X1 (2010).

If a corporation succeeds to a name of a non-federal body corporate whose name is primarily or only the name of an individual, the corporation will not be able to delete the reference to the year in parentheses after two years, unless secondary meaning can be established. The name without the year in parentheses is prohibited under Regulation 30(1)(b) for being primarily or only the name of an individual. At the time of obtaining the successor corporation name under Regulation 22, the applicant may wish to add another word, in addition to the year in parentheses, so that the year in parentheses can be deleted after two years pursuant to Regulation 22(2).

2.8.4 Other use of “(2010)” and substitution of “(Canada)” for “(2010)”

The regulations do not prohibit the use of numerals indicating the year of incorporation in parentheses (e.g., “(2010)”) for the incorporation of a non-successor new corporation. This will be allowed except if the new corporation is going to be the affiliate of an existing corporation which will remain in existence and “(2010)” is proposed as the distinguishing element. This is considered misleading because “(2010)” connotes a successor.

As a general rule, Corporations Canada will not accept “Canada” or any other term as a replacement for “(2010)” in a successor situation unless the successor corporation is related to the existing corporation which has undertaken to dissolve or to change its name in which case we are really dealing with regulation 21 not 22.

The chart below provides a clarification of these guidelines.

ABC (Canada) or ABC Canada or ABC (2010) or ABC 2010* as newco: no existing corporation, ABC	Approval
ABC (Canada) or ABC Canada as newco related to existing corporation, ABC which will continue to exist (consent – we assume affiliation)	Approval
ABC (2010) as newco related to existing corporation, ABC which will continue to exist. (consent – affiliation is assumed)	Rejection (generally not available because it is misleading, however may be permissible if clients of newco are sophisticated enough to know that newco is not the successor to existing co. ABC even though it looks like it is, and ABC consents)
ABC 2010 as a newco related to existing corporation, ABC, which will continue to exist (consent – we assume affiliation)	Approval
ABC (2010) as newco related or unrelated to existing corporation, ABC which is dissolving or changing name (consent & undertaking)	Approval
ABC (Canada) or ABC Canada or ABC 2010	Approval

as newco <u>related</u> to ABC which is dissolving or changing name (consent)	
ABC (Canada) or ABC Canada or ABC 2010 as newco unrelated to ABC dissolving or changing name	Rejection (as a general rule) (may be permissible if clients of newco are sophisticated enough to know that newco is not related to existing co. ABC even though it looks like it is.)

* As long as the corporation is not to be a successor to an existing corporation any reasonable date is permissible, unless it is misleading.

e.g. ABC 1884 Ltd. would be misleading for the name of a corporation which has not been in business since 1884.

Exception to Regulation 22(1)(b) If Existing Corporation is Inactive

If the existing corporation has not carried on business for two years preceding the request to use the name, the successor corporation does not need to insert the year of incorporation or amendment but the requirements of Regulation 20 must be met.

Exception to Regulation 22(1) (b) If Existing Corporation is a Quebec Company

“De facto” import continuances

Corporations Canada will permit a corporation to be incorporated with a name that is identical (i.e. without the year of incorporation) to the name of an existing provincial (e.g., Quebec) company if the federal incorporation is to serve as a “de facto” continuance from that province which does not permit exports to the federal jurisdiction.

The applicant must file with us a written undertaking of the provincial company to dissolve forthwith or to change its name before the corporation proposing to use the name carries on business.

There must be a note on file to indicate that the applicant considers this incorporation to be a “de facto” continuance (i.e. the same shareholders and assets will be involved in the federal corporation as in the provincial company).

Like other import continuances, the availability of this name will be subject to a NUANS[®] name search and approval.

2.8.5 Amalgamations

Reg. 17(2) For greater certainty, this Part applies to the corporate name of an amalgamated corporation.

Reg. 23. Despite section 19, if the corporate name of an amalgamated corporation is the same as the name of one of the amalgamating corporations, it is not prohibited for that reason alone.

Reg. 72.1 (1) Despite subparagraph 184(1)(b)(ii) of the Act, the resolutions approving the amalgamation of a holding corporation with one or more of its subsidiary corporations may provide that the corporate name set out in the articles of amalgamation is not the same as that set out in the articles of the amalgamating holding corporation.

(2) Despite subparagraph 184(2)(b)(ii) of the Act, the resolutions approving the amalgamation

of two or more wholly owned subsidiary corporations of the same holding body corporate may provide that the corporate name set out in the articles of amalgamation is not the same as that set out in the articles of the amalgamating subsidiary corporation whose shares are not cancelled.

Regulation 72.1 applies when 2 or more corporations amalgamate through the short-form process. The corporation resulting from a vertical short-form amalgamation may have any approved corporate name and is not be restricted to the corporate name of the holding corporation. A corporation resulting from a horizontal short-form amalgamation may also have any approved corporate name and is not limited to the corporate name of the amalgamating corporation whose shares are not cancelled.

2.8.6 Acquisitions

Reg. 24. (1) Despite section 19, the corporate name of an existing corporation that is the same as the name of an affiliated body corporate from which the corporation has acquired or will, in the immediate future, acquire all or substantially all of the property of the body corporate is not prohibited for that reason alone if the body corporate undertakes in writing to dissolve, or to change its name, before the corporation begins using the corporate name.

(2) Despite section 19, if the corporate name of a proposed corporation is the same as the name of a body corporate that is to be an affiliate of the proposed corporation from which the proposed corporation will, in the immediate future, acquire all or substantially all of the property of the body corporate, the corporate name is not prohibited for that reason alone if the body corporate undertakes in writing to dissolve, or to change its name, before the proposed corporation begins using the corporate name.

If the name is granted on the understanding that the applicant will, in the immediate future acquire all or substantially all the property of the affiliated body corporate, the applicant should confirm within a few days that substantially all the property did transfer from the affiliated body corporate.

Upon incorporation of the proposed corporation, Corporations Canada will keep the file open pending receipt of written confirmation that substantially all property did transfer. If it is not received within a reasonable period, steps will be taken to require the corporation to change its name.

A transfer of all the shares is not considered to be a transfer of property.

A sample letter of consent is available,

2.8.7 Failing to Honour Undertaking

Subsections 12(4.1) and (5) of the CBCA state that if a corporation acquires a name as a result of a person undertaking to dissolve or to change names, and that undertaking is not honoured, the Director may direct the corporation to change its name in accordance with section 173. The Director may revoke the corporation's name and assign a name unless the undertaking is honoured within 60 days of the Director directing the corporation to change its name.

2.8.8 Initials and Given Names

The addition of initials to a surname that is otherwise confusing is not sufficient to overcome that confusion.

e.g. "J.B. Smith Shoes LTD." would be confusing with "Smith Shoes INC."

However, adding a given name to a corporate name that contains a surname may be sufficient to

overcome confusion.

e.g. “Smith Shoes Ltd.” would not be used to refuse “Robert Smith Shoes Ltd.” unless we are aware that their territory of operation is the same.

2.8.9 Bankruptcy

For the purposes of Regulations 20 to 24, a name is available, if it is confusing with the name of a bankrupt corporation, if the trustee in bankruptcy consents.

2.8.10 Names of Canada, Provinces, and Cities Added to Remove Confusion

The name of a province or city with or without parentheses is not considered a general term and may be added to a corporate name to overcome confusion with the name of an existing related corporation.

e.g. “Newton Tool Québec Ltd.” would not be considered confusingly similar to “Newton Tool Manitoba Ltd.” or “Newton Tool (Canada) Ltd.”

“Newton Tool (Canada) Inc.” would not be considered confusing with “Newton Tool Inc.” (a USA company)

However, the consent of the existing corporation(s) would be required under Regulation 21 in order to grant such a similar name. If there are many existing affiliates, the consent of the geographically closest affiliate or the parent of all the affiliates would be sufficient.

Note: There are rules about the use of certain provincial and territorial names in federal corporation names. Refer to section 4.2 for more information.

2.8.11 Canadian Subsidiaries

If a proposed Canadian subsidiary of a foreign, provincial or federal parent uses the name of that parent, which name is too general or merely descriptive, the proposed corporation must add the word “Canada” or equivalent unless there is some other distinguishing feature between parent and subsidiaries and can overcome the objection of generality by showing that the name has acquired some distinctiveness in Canada, whether or not it has actually been used in Canada (e.g., the name may have acquired distinctiveness due to advertising which reaches the Canadian market for the product). The name will be prohibited if it is confusing with an existing Canadian corporation or trade- mark.

Note 1: A proposed Canadian subsidiary of a foreign parent with the identical name would not be required to add the word “Canada” if it could establish that the foreign company had never carried on business in Canada and is not known in Canada.

Note 2: If a name is rejected on the basis that it appears to create a likelihood of confusion, Corporations Canada will reconsider the decision if other information is presented which demonstrates that, in fact, there is no likelihood of confusion, such as:

- activities, including the ways the goods and services are distributed;
- territory of operation;
- clientele;
- the inherent distinctiveness and dilution of the name; and/or
- the derivation of the name.

3. Absolutely Prohibited

Reg. 25. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if the name contains any of the following elements:

- (a) “cooperative”, “coopérative”, “co-op” or “pool”, if it connotes a cooperative venture;
- (b) “Parliament Hill” or “Colline du Parlement”;
- (c) “Royal Canadian Mounted Police”, “Gendarmerie royale du Canada”, “RCMP” or “GRC”; and
- (d) “United Nations”, “Nations Unies”, “UN” or “ONU”, if it connotes a relationship to the United Nations.

4. Qualifiedly Prohibited (Regulation 26)

Reg. 26. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if it connotes that the corporation

- (a) carries on business under royal, vice-regal or governmental patronage, approval or authority, unless Her Majesty or a person, society, authority or organization referred to in paragraph 9(2)(a) of the *Trade-marks Act* consents in writing to the use of the name;
- (b) is sponsored or controlled by or is connected with the Government of Canada, the government of a province, the government of a country other than Canada or a political subdivision or agency of any such government, unless the appropriate government, political subdivision or agency consents in writing to the use of the name;
- (c) is sponsored or controlled by or is connected with a university or an association of accountants, architects, engineers, lawyers, physicians or surgeons or another professional association recognized by the laws of Canada or a province, unless the appropriate university or professional association consents in writing to the use of the name;
- (d) carries on the business of a bank, loan company, insurance company, trust company or another financial intermediary that is regulated by the laws of Canada, unless the Superintendent of Financial Institutions consents in writing to the use of the name; or
- (e) carries on the business of a stock exchange that is regulated by the laws of a province, unless the relevant provincial securities regulator consents in writing to the use of the name.

4.1 Names which Connote Government Sponsorship and Control

Examples of names which connote government patronage or sponsorship and control:

Sports Canada
Canadian Association of Postmasters
Health & Welfare Programmers Association
Canadian Armed Forces
Canadian Forces
Canadian Labelling Standards Council
Royal Canadian Mint

4.2 Abbreviations for Government Departments (Regulation 26(b))

Care should be taken if using initials that could connote government sponsorship or control in a proposed name. For example: The abbreviation “IC” for Industry Canada would be available with a descriptive feature like “shoes”. The same distinctive element with a descriptive feature like “Corporate Information Services” would be unavailable because it implies government sponsorship and control.

Provincial or Territorial Names or Abbreviations (Regulation 26(b))

Care should be taken if using the name or the abbreviation of one of Canada's provinces or territories. Use of certain provincial names and abbreviations in federal corporate names is prohibited. At the request of some provincial or territorial governments, Corporations Canada does not allow the use of the names or abbreviations in a federal corporate name. If an applicant has strong objections, he or she may wish to contact the appropriate government to try to obtain consent for use.

Alberta

The terms “ALTA” and “(Alberta)” in federal corporate names is prohibited. At the request of the Alberta Government, Corporations Canada does not allow the use of these terms. These terms are reserved for bodies corporate incorporated in Alberta as affiliates of an extra-provincial company of the same or similar name. If an applicant has strong objections, he or she may wish to contact the Alberta Companies Branch to obtain consent for use of the term.

The terms “ALTA”, “Alberta” and “Of Alberta” will be available unless they give a government connotation to the name in which case consent of the relevant government authority will be necessary. The Alberta Companies Branch leaves it up to Corporations Canada to determine if there is governmental connotation.

Ministry of Service Alberta
Corporate Registry
Box 1007, Station Main
Edmonton AB T5J 4W6
Phone: 780-427-7013
For toll-free access within Alberta first dial 310-0000
Email: cr@gov.ab.ca
Internet: www.servicealberta.ca

British Columbia

The terms “B.C.”/ C.-B., “(B.C.)”/“(C.-B.)”, “British Columbia”/“Colombie-Britannique”, “(British Columbia)”/“(Colombie-Britannique)” and “Of British Columbia”/“de la Colombie-Britannique” will not be available without the approval of the British Columbia Registrar of Companies. The British Columbia Registrar of Companies wishes all names of this nature to be referred to its office for that determination to be made.

B.C. Registrar of Companies
The Waddington Bldg.
940 Blanshard St., 2nd Floor
Victoria, B.C. V8W 3E6
Tel: 250-387-7848
Internet: www.bcregistry.ca

Nova Scotia

“Nova Scotia”/“Nouvelle-Écosse” cannot be used as the first word in a corporate name without consent from the Nova Scotia Registrar of Joint Stock Companies.

Service Nova Scotia and Municipal Relations
Registrar of Joint Stock Companies
Maritime Centre, 9th floor, Box 1529
1505 Barrington Street

Halifax, N.S. B3J 2Y4
Telephone: 902-424-7770
Fax: 902-424-4633
Email: joint-stocks@gov.ns.ca
Internet: www.gov.ns.ca/snsmr/rjsc/

Manitoba

“Manitoba” cannot be used in the name of a proposed federal corporation without consent from the Companies Office of Manitoba.

Director
Companies Office
Manitoba Consumer and Corporate Affairs
1010, Woodsworth Building, 10th Floor
405 Broadway Avenue
Winnipeg, Manitoba R3C 3L6
Telephone: 204-945-2500
Fax: 204-945-1459
Email: companies@gov.mb.ca
Internet: www.companiesoffice.gov.mb.ca/index.html

Saskatchewan

“Sask.”, “Saskatchewan”, “(Sask.)”, “(Saskatchewan)”, or any other term which denotes affiliation with the Government of Saskatchewan, may only be used in a name proposed for a federal corporation with the consent of the Director of Corporations in Saskatchewan. In accordance with the Saskatchewan Justice Name Qualification Policy (www.saskjustice.gov.sk.ca/Corporations/pdfforms/name-qualification-policy.pdf), the corporation must agree to:

- (a) carry on the major portion of its business within Saskatchewan; or
- (b) have its head office in Saskatchewan, from which it carries on the major portion of its business; and
- (c) undertakes to change its name to delete the word “Saskatchewan” from its name, should it cease to carry on its business in Saskatchewan.

Director of Corporations
Corporate Registry
Information Services Corporation
1301 – 1st Avenue
Regina, SK S4R 8H2
Tél. : 306-787-2962
Télééc. : 306-787-8999
Email: corporateregistry@isc.ca
Website: www.isc.ca/corporateregistry

Newfoundland and Labrador

“Newfoundland and Labrador”/“Terre-Neuve-et-Labrador” or “N.L.”/“T.-N.-L.” are not permitted in a name proposed for a federal corporation without consent from the Registry of Companies of Newfoundland and Labrador.

Registry of Companies
Commercial Registrations Division
P.O. Box 8700, Confederation Building
Ground Floor, East Block
St. John's, NL A1B 4J6
Telephone: 709-729-3317
Fax: 709-729-0232
Email: gsinfo@gov.nl.va
Internet: www.gs.gov.nl.ca/registries/

New Brunswick

“New Brunswick”/“Nouveau-Brunswick” cannot be used at the beginning of a corporate name without consent from the Director, Corporate Affairs Registry of New Brunswick.

Director
Corporate Affairs Branch
Service New Brunswick
P.O. Box 1998
Fredericton, N.B. E3B 5G4
Telephone: 506-453-2703 or 888-762-8600
Fax: 506-453-2613
Email: snb@snb.ca
Internet: www.snb.ca

The physical address is:

City Centre
462 Queen St
Fredericton, N.B.
E3B 1B6

Foreign Countries

A name such as XYZ (Switzerland) Inc. would be available without consent of the Swiss government.

4.3 Names Connoting a Connection with a University or Professional Association (Regulation 26(c))

4.3.1 Professional Associations

Corporations Canada does not require the consent of the professional organization just because a proposed name makes reference to a member or members of that profession.

The test is whether it could reasonably be assumed that the business is sponsored, controlled by, or connected with the organization.

e.g. *No consent required for:*
Heritage Lawyers' Association
John Brown Accounting Services Ltd.
Black & White Engineers or
Engineering & Consulting Ltd.

However, consent will be required if the proposed name is confusingly similar with a particular university or professional association.

e.g. *Consent required for:*

University of Montreal Debating Society

Upper Canada Lawyers' Debating Society (Law Society of Upper Canada - the professional association)

Certified General Accountants Debating Society

Since Corporations Canada may not be aware of the names of all professional bodies, in each case, if a proposed name refers to an existing profession, the applicant should inform us whether this name is likely to be confusing with any existing professional association. The applicant may wish to contact the appropriate authorities for more information before using the name. Please note that the various provincial professional bodies have their own remedies against misuse of their professional titles. Furthermore, a provincial legislature has the power to legislate to prevent a federal professional association from carrying on operations in its province.

If no professional regulating body exists in a particular field, a body purporting to be such a professional association may be incorporated. The use of the word "professional" in the name is not prohibited.

e.g. North American Professional Shoemakers' Association

Note: We would also incorporate another body purporting to offer the same professional services (i.e. shoemakers association) providing that the name proposed for that corporation is not confusing with the existing association name.

e.g. North American Professional Shoemakers' Association - existing

Uniso Professional Shoemakers' Society - acceptable

Exception: The name of a professional association bearing the words "Corporation professionnelle du Québec" will be refused, unless it is accompanied by the consent of the Office des professions du Québec, since it connotes an organization approved by the professional code of Quebec.

4.3.2 Use of the term "University"

If the name of a proposed corporation uses the term "university" in a fashion that suggests that the corporation is a degree-granting institution, the name will be rejected as being misleading unless it can be established that the corporation has been authorized by the relevant federal or provincial authority to grant degrees.

e.g. University Painters Inc. - acceptable

e.g. Northern University Inc. - misleading

4.3.3 Use of terms connoting a degree-granting institution such as "College", "School", "Institute", "Adult Education", "Research" or "Applied Research"

An applicant's name will be rejected for being misleading if the name of a proposed corporation uses the terms "academy", "college", "school", "institute", "adult education", "research", "applied research" or a similar term, and it appears either from the name itself, or from other information we have, that the proposed corporation will grant bachelors, masters or doctorate degrees or a licentiate without the authorization of a relevant authority.

e.g. Sudbury Typing College (Inc) - acceptable, since no bachelors, masters, doctorate degree or licentiate will result

e.g. Northwest Applied Research (Inc) - unacceptable, if it grants degrees without authorization

If an application is received for the incorporation of a post-secondary educational institution, which has the aim of granting a bachelor, masters or doctorate degree or a licentiate (as a university or college), the application will be referred for comment to:

Universities Canada
1710-350 Albert Street
Ottawa, Ontario
K1R 1B1, CANADA
Tel.: (613) 563-1236
Fax: (613) 563-9745
Email: info@univcan.ca

4.4 Names Connoting a Financial Intermediary (Regulation 26(d))

In cases where it is not clear whether a particular proposed corporate name connotes the business of loan, trust, insurance, banking, or stock exchange, Corporations Canada will depend on the advice of the Office of the Superintendent of Financial Institutions (OSFI). OSFI staff will provide this advice to applicants. The following are the guidelines that should be followed for these types of corporate names:

- A. If a proposed name intended for a CBCA corporation appears to connote a loan company, a trust company, an insurance company or a subsidiary of a bank, the applicant should refer to:

Senior Director, Compliance Division
Office of the Superintendent of Financial Institutions (OSFI)
121 King Street West, Toronto, Ontario M5H 3T9
Telephone: 416-973-6662
Fax: 416-954-3169
email: useofname@osfi-bsif.gc.ca
Internet: <http://www.osfi-bsif.gc.ca>

For example, the following cases should be referred to OSFI if a name uses a descriptive term like “guaranty”, “warranty”, “surety”, “life”, “casualty”, “assurance” or “indemnity”.

When applying to OSFI for an opinion that the name is acceptable, the applicant should provide a description of the proposed business of the applicant corporation in sufficient detail to enable OSFI to understand how the proposed name supports the anticipated activities of the applicant corporation. If applicable, the applicant should also indicate to OSFI the exemption under the legislation administered by OSFI which, in the opinion of the applicant, permits the applicant corporation to use the descriptive elements contained in the proposed name. If OSFI requires further information, it will contact the applicant directly.

When OSFI is satisfied that the referred name does not connote a loan, trust or insurance company, a bank or other financial intermediary, it will issue a letter indicating that the name is acceptable, addressed to the applicant.

- B. If a proposed name, intended for a CBCA corporation, clearly connotes that the applicant business is a financial intermediary, it will be rejected. Corporations bearing such names may be

incorporated only under one of the statutes administered by OSFI or provincial financial regulators. For example, subject to Section C, the following types of descriptive terms clearly connote a financial intermediary:

- i) If a descriptive term like “fiduciary”, “trustco”, “trust”, “loanco”, “loan”, “savings”, “insurance”, “annuity”, “lifeco”, “fiduciaire”, “fiducie”, “prêt”, “épargne”, “assurance”, “rente” or “vie” is used. These terms are reserved for companies incorporated under the *Trust and Loan Companies Act* or the *Insurance Companies Act* administered by OSFI.
 - ii) If the descriptive term “mortgage”/“hypothèque” is used and the corporation is a mortgage lending business and not a mortgage brokerage business (in the latter case, the word “mortgage”/“hypothèque” would be acceptable).
 - iii) If a term like “bank”, “banker” or “banking” is used alone or in combination with certain other words (e.g., “Bancorp”, “banco” or “bankco”) in connection with financial activities. These terms are reserved for banks regulated by the *Bank Act* administered by OSFI and are not permitted for CBCA corporations or provincial corporations.
- C. If a proposed name clearly does not connote a financial intermediary, it does not need to be referred to OSFI. For example, the following situations do not need to be referred:
- i) If any of the terms that normally connote the business of a financial intermediary are used in a fanciful way. Examples are “Once in a Life Time Bridal Boutique Inc.”, “Time Savings Household Cleaner Inc.” and “Sam’s TrustWorthy Contracting Services Ltd..
 - ii) If the terms “finance”/“finances”, “acceptance”/“acceptation”, “credit”/“credit”, “fund”/“fonds”, “fidelity”/“cautionnement” and “underwriters”/“souscripteurs” are used.
 - iii) If a term such as “broker”/“courtier”, “agent”, “agency”/“agence” or “service(s)”/“service” is used in a name in such a way as to connote an insurance or mortgage-related agency or brokerage business (e.g., “Cartier Insurance Brokers Inc.”).
 - iv) If the terms “trust foundation”/“fondation fiduciaire” or “trust society”/“société de fiducie” are used by not-for-profit corporations.
 - v) If the term “mortgage investment corporation”/“société de placement hypothécaire” is used.

Note: Provincial Restrictions on Businesses Offering Insurance-Related Services

For the purposes of licensing, some provincial jurisdictions (e.g., Quebec and Ontario) have restrictions on the type of names allowed for companies offering insurance-related services. Since the use of a name granted is subject to the laws of the jurisdiction where the corporation intends to carry on business, the applicant may wish to contact the appropriate authorities before applying for the proposed name.

5. Obscene Names Prohibited (Regulation 27)

Reg. 27. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if it contains a word or phrase, or connotes a business, that is obscene.

Because a contravention of this nature arises so rarely, Corporations Canada has no guidance to offer here.

6. Lacking Distinctiveness (Regulation 30)

Reg. 30. (1) For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if it

(a) is only descriptive, in any language, of the business of the corporation, of the goods and services in which the corporation deals or intends to deal, or of the quality, function or other characteristic of those goods and services;

(b) is primarily or only the name or family name, used alone, of an individual who is living or has died within 30 years before the day on which the Director receives any of the documents referred to in subsection 8(1), section 178 or subsection 185(4), 187(4), 191(5), 192(7) or 209(3) of the Act or a request to reserve a name under subsection 11(1) of the Act; or

(c) is primarily or only a geographic name that is used alone.

(2) Subsection (1) does not apply if a person proposing to use the corporate name establishes that it has been used in Canada or elsewhere by them or by their predecessors so as to have become distinctive in Canada on the day referred to in paragraph (1)(b).

6.1 Definition of Distinctiveness (Regulation 17)

“Distinctive” is defined in section 17 of the regulations as:

“distinctive”, in relation to a trade-name, considered as a whole and by its separate elements, means a trade-name that distinguishes the business in association with which it is used or intended to be used by its owner from any other business or that is adapted to so distinguish them.

Distinctiveness can be inherent or acquired (secondary meaning).

Generally speaking, the most inherently unique names have distinctive features which are composed of letters or figures which have no generic meaning.

e.g. XLYK
DWIDAG

In addition, unusual combinations of generic words can be distinctive.

e.g. Jean Junction

Words composed of parts of other words, surnames, family names, initials, numbers, geographic location and arbitrary dictionary words make a less inherently distinctive but acceptable name.

e.g. Suncraft Shoes Ltd.
Smith Shoes Ltd.
Ottawa Shoes Ltd.
I.I.L. Shoes Ltd.
Star Shoes Ltd.

6.2 Only Descriptive (Regulation 30(1)(a))

Examples of names lacking distinctiveness are “Software Inc.” and “Car Sales Inc.” An acceptable distinctive element would need to be added before such a corporate name could be granted (e.g., “Turner Software Inc.” or “Greymark Car Sales Inc.”).

Some names that are merely suggestive of the industry, product or service, however, would be acceptable. An example of a merely suggestive name is “Tires and Wheels Ltd.” for a car sales business. The name “Tires and Wheels Ltd.” does not describe the business nor the product produced. It simply suggests the corporation’s field of activity. If the corporation manufactured or sold tires and wheels, however, this name would be unacceptable because, in this context, it would be only descriptive.

As a general rule, Corporations Canada will not accept names that only describe a quality of the corporation’s business or its goods or services (e.g., “Faster Consulting Services Inc.”).

However, Corporations Canada will accept such names if:

- alliteration gives the name an acceptable level of distinctiveness (e.g., “Better Business Boardrooms Inc.”).
- the NUANS[®] report demonstrates that the word describing a quality is commonly used as a distinctive feature in business names (e.g., “Superior” in “Superior Machinery Ltd.” or “Advanced” in “Advanced Technology Solutions Ltd.”).
- the descriptive word sounds unusual if used to describe the business of the proposed corporation (for example “Endless Furniture Inc.” is acceptable, whereas “Long Lasting Furniture Ltd.” is not).

Although these names are descriptive of a quality of the business, they are not merely descriptive but have some distinctiveness. By reason of alliteration or being unusual, these names are distinguishable from others. Also, if the NUANS[®] search reports show that a descriptive word is extensively used as a distinctive element, Corporations Canada will tend to accept the name.

Please note that the approval of certain words as a corporate name does not necessarily mean that those words could be registered as a trade-mark.

6.3 Name or surname of individual (Regulation 30(1)(b))

Corporations Canada determines whether a name is a surname by asking whether one would reasonably think of this word or words as a name or surname rather than as something else (e.g., a coined word). If it appears to be a name or surname, then that word or words cannot be used alone unless there is secondary meaning.

e.g. *The following proposed corporate names are unacceptable:*

Legault Inc.
S. V. Lee Ltd.
Sarah Legault Inc.
S & R Wolfe Inc.

Corporate names in which a name or surname (as determined in the paragraph above) is not used alone would be acceptable.

e.g. *The following proposed corporate names are acceptable:*

- (1) Wilson & Myers Ltd. (two names, not one name used alone)
Bob & Carol Harris Inc.
- (2) Legault Gardening Enterprises Ltd.
Thomas Construction Inc.

Note: If the added descriptive word is not specific and gives no indication of the nature of the proposed

business the name may be refused for creating a likelihood of confusion with existing similarly named corporations. Other such non-specific descriptors are: “agency”, “associates”, “brothers”, “distributions”, “enterprises”, “industries”, “group”, “products”, “services”, “sons”, “Canada” and “International”.

e.g. *If Thomas Construction Inc. already exists, then the proposed corporate names are unacceptable:*
Thomas Enterprises Ltd.
G. W. Thomas Enterprises Ltd.

The applicant must either provide information to show that there is in fact no likelihood (based on differences of products, territory, clientele) of confusion with existing companies, or, the applicant should add a more specific descriptive word,

e.g. *The following proposed corporate names are acceptable:*
Thomas Landscaping Inc. (or, add a more specific name or surname)
George W. Thomas Enterprises Ltd.

Note 1: “Associates” or “and Associates” can be used in combination with a name or surname. Although “Associates” is acceptable with a coined word, “and Associates” is not because it could mislead one into assuming that the distinctive element is a surname

e.g. XYLX & Associates – not acceptable

Note 2: The Office of the Superintendent of Bankruptcy prefers that trustees who incorporate use only the name(s) of the principal partner(s) in the corporate name. However, if only one person is involved, then a surname used alone may not be acceptable (see surname formats above). The addition of a descriptive term like “Insolvency Trustee” or “Bankruptcy” would overcome any such objection.

6.4 Use of Family Name (Regulation 28)

Reg. 28. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if an element of the name is the family name of an individual, whether or not preceded by their given name or initials, unless the individual or their heir or personal representative consents in writing to the use of their name and the individual has or had a material interest in the corporation.

Regulation 28 appears to state that every word that is in fact a family name of an individual requires a consent in writing regardless of whether the reasonable person would think of it as a family name. Any applicant not providing such a consent would be in contravention of this regulation. Corporations Canada will consider if a reasonable person would look upon that word as a family name. If so, a consent will be required; otherwise a consent will not be required.

e.g. Ran Shoes Inc. – no consent required
Ran Smith Shoes Inc. – consent of Ran Smith
Ran, Smith Shoes Inc. – consent of Ran and consent of Smith

A sample letter of consent is available.

Punctuation such as a comma (,), ampersand (&) or hyphen (-) is necessary in a proposed name if the use of two surnames could wrongly connote the name of one individual (e.g., “Robert Simpson” should become “Robert, Simpson”, “Robert & Simpson”, “Robert-Simpson” if two surnames are intended).

A consent is not required if the word is a dictionary word or a Christian name unless it is used in such

way as to connote a family name to a reasonable person.

- e.g. Star Shoes Ltd. – no consent
Star, Smith Shoes Ltd. – consents of Star & Smith
Star Smith Shoes Ltd. – consent of Star Smith
Starsmith Shoes Ltd. – no consent
Star Associated Ltd. – no consent
Star & Associates Ltd. – consent of Star
Star Associates Ltd. – no consent
Rose Green’s Tools Ltd. – consent of Rose Green

Consents are not required if the word or words are obviously the name of an historical person, literary or fictional character.

- e.g. Dorian Grey Fashions Inc. – acceptable
Lady Macbeth Cosmetics Inc. – acceptable
Bonaparte Shirts Inc. – acceptable

If the proposed corporate name contains a fictitious name, it will be necessary to file a statutory declaration or an affidavit signed by the incorporator or principal shareholder of the proposed corporation stating that he or she has ensured that:

1. it is a fictitious name and is not the name of an individual who is well-known or known to him or her personally; and
2. it is not the name of an individual already established or associated with the line of business of the proposed corporation in Canada or internationally.

A consent is not required if the family name is the name of the incorporator of the business applying for the name.

A consent is not required if the family name is the name of a street on which the business is located.

For the CBCA, the consenting person must have or must have had a material interest in the corporation as required by section 28 of the regulations.

6.5 Use of geographic terms (Regulation 30(1)(c))

- e.g. Red Lake Inc. is not acceptable because “Red Lake” is primarily or only a geographic name.

There should be no prohibition against the use of a geographic reference in the granting of a corporate name if a descriptive feature is added. Substantiation for the use of a geographic location is not required.

- e.g. Red Lake Gold Mines Inc. would be acceptable provided that it is not confusing.

A street address used alone is considered primarily a geographic name and is not available unless a descriptive term is added.

- e.g. 235 St. Catherine Street Inc. – unacceptable
235 St. Catherine Street Enterprises Inc. – acceptable

6.6 Definition of “secondary meaning” (Regulation 30(2))

The applicant can escape the prohibitions of subsection 30(1) of the regulations as long as the applicant

can show that the trade name has been used in Canada or anywhere else by them or their predecessors to such an extent that persons in that trade would, on hearing the name, think of the business, rather than the primary meaning of the words in its name.

In order to convince the Director appointed under the CBCA of secondary meaning, the applicant must produce in writing, evidence showing how large and widespread the business is and, if necessary, include written statements from others in the trade.

Evidence to support a claim for secondary meaning must be in the form of an affidavit or statutory declaration and must attest to use of the name across Canada, either for significant periods of time or with great intensity.

6.7 Lack of Distinctiveness

If Corporations Canada were to approve names that lacked distinctiveness, the task of preventing confusion among business names would be rendered more difficult. The only way the name attached to business “X” will not be confused with the name attached to business “Y” is if there is something in the names to distinguish them. The stronger the distinguishing feature, the less likely confusion will occur.

Based on this reasoning, the corporate name regulations require that corporate names have a distinguishing feature. These regulations also impose rules to indicate where distinctiveness is insufficient or lacking. According to these rules, a name lacks distinctiveness and is therefore unavailable when it is only descriptive, or when it is only an individual’s name or a geographic name.

A corporate name that only describes the business of the corporation, industry, goods or services, or the quality or function of those goods and services is unavailable (e.g., “Car Sales Inc.”). A name will also be unavailable for being “only descriptive” when it merely describes the quality of the corporation’s business or its products (e.g., Faster Consulting Services Inc.).

A proposed name which appears to lack any distinctiveness may have, in fact, acquired distinctiveness through extensive use. If this distinctiveness is demonstrated in writing, the name will be available.

Otherwise, the best way to overcome the objection of lacking distinctiveness is:

- (a) Only descriptive – add a distinctive word
 - e.g. a coined word like “Spillex” (Spillex Cleaning Services Corp.)
 - e.g. a dictionary word, that does not describe like “Star” (Star Theatres Inc.)
 - e.g. an individual’s name like “Turner” (Turner Shoes Ltd.)
- (b) Primarily a name – add a descriptive word like “Manufacturing”
 - e.g. Wilson Manufacturing Ltd.
- (c) Primarily a place – add a descriptive word like “Enterprises”
 - e.g. Red Lake Enterprises Inc.

7. Deceptively Misdescriptive (Regulation 31)

Reg. 31. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is deceptively misdescriptive if it is likely to mislead the public, in any language, with respect to any of the following:

- (a) the business, goods or services in association with which it is proposed to be used;
- (b) the conditions under which the goods or services will be produced or supplied or the persons to be employed in the production or supply of the goods or services; and

(c) the place of origin of the goods or services.

Use of the word “club” in corporate names

There is no general restriction on the use of the word “Club” in corporate names. The word may be used for business incorporations, but Corporations Canada will want to be satisfied that the use of the word does not imply to the public a not-for-profit corporation.

e.g. Rough Riders Football Club would be acceptable, as the general public would be aware that such a football club is a profit-making organization.

Use of the word “institute”, “association”, “foundation” or other such words

Generally, these terms connote a not-for-profit organization. Corporations Canada will, however, consider representations for the use of these words in names of business corporations. The representations should indicate the extent to which the proposed word has been used in the business of the proposed corporation or similar businesses.

8. Not-for-Profit Organizations

8.1 Non-Distinctive Names

Many not-for-profit corporations use highly descriptive, almost non-distinctive names. Typically, words like “Canadian” or “National” serve to give the name distinctiveness. For this reason, most not-for-profit names do not deserve a lot of protection. See section 8.5 for amount of protection given.

8.2 Government Connotation Implied

Because of the nature of the names of not-for-profit corporations, there may be a greater likelihood of name proposals which connote government sponsorship or control. Regulation 17 of the *Canada Corporations Regulations* will be strictly enforced by Corporations Canada.

e.g. Canadian Association of Postmasters - is not acceptable

8.3 Chamber of Commerce

The term “Chamber of Commerce” is available for use in the name of a not-for-profit corporation with suitable objects.

8.4 Legal Elements

The only legal elements which are permitted for not-for-profit corporations are:

“Incorporated” or “Inc.”
“Corporation” or “Corp.”

8.5 Not-for-profits and Confusion

If the name of a proposed not-for-profit corporation includes a geographical distinctive term and an organizational term as well as other descriptors (e.g., “Canada Ultralight Aircraft Association” or “Canada Dance Foundation”) and an existing not-for-profit corporation has the same organizational and descriptive terms with a different geographical qualification (e.g., “Calgary Ultralight Aircraft Association” and “Toronto Dance Foundation”) Corporations Canada requires the consent of the existing corporation. Applicants should note that a slight modification of their proposal would probably make it available (e.g., “Canada Ultralight Aircraft Society” or “Canada Dance Funding Society”).

9. Bilingual Names

9.1 General Rule:

The English and French forms of a corporate name do not have to be literal translations. However, a corporation cannot have French and English forms of a corporate name that are so different as to appear to belong to two different corporations. If there is concern this may be the case, the proposed name will be rejected.

9.2 Guidelines within the General Rule:

Corporations Canada will permit English and French forms of a corporate name in the following situations:

- 1) The name is made up only of generic words, literally translated. There is no separate distinctive element although the name as a whole is distinctive.
e.g., Think Retail Inc.
Pensez Détail Inc.
- 2) The name consists only of a distinctive element, which is partly translated. The part that is translated is descriptive and the other part is identical in both English and French.
e.g., Techni-Glass (or Techniglass) Inc.
Techni-Verre (or Techniverre) Inc.
- 3) The name consists of both distinctive and descriptive elements, both of which are very literally translated.
e.g., Édition Entre-Nous Inc.
Between-Us Publishing Inc.
- 4) Generally speaking, a corporation with a corporate name whose distinctive feature is an acronym may not have an alternate version of the acronym in the other official language even if the acronym is formed by letters which reflect a translation of the descriptive words of the name.

e.g. Service Informatique SI Inc.
CS Computer Service Inc. not available without proof of acquired secondary meaning in the acronyms

The name of a not-for-profit corporation in which an acronym (relating to the descriptive words of the name) forms a part, may be available although the acronym is different in the English and French versions of the name. This will occur if the name would be available without the acronym and the acronym forms a non-substantive part of the name.

e.g. Institut de Recherches Aérospatiale du Canada IRAC
ARIC Aerospace Research Institute of Canada

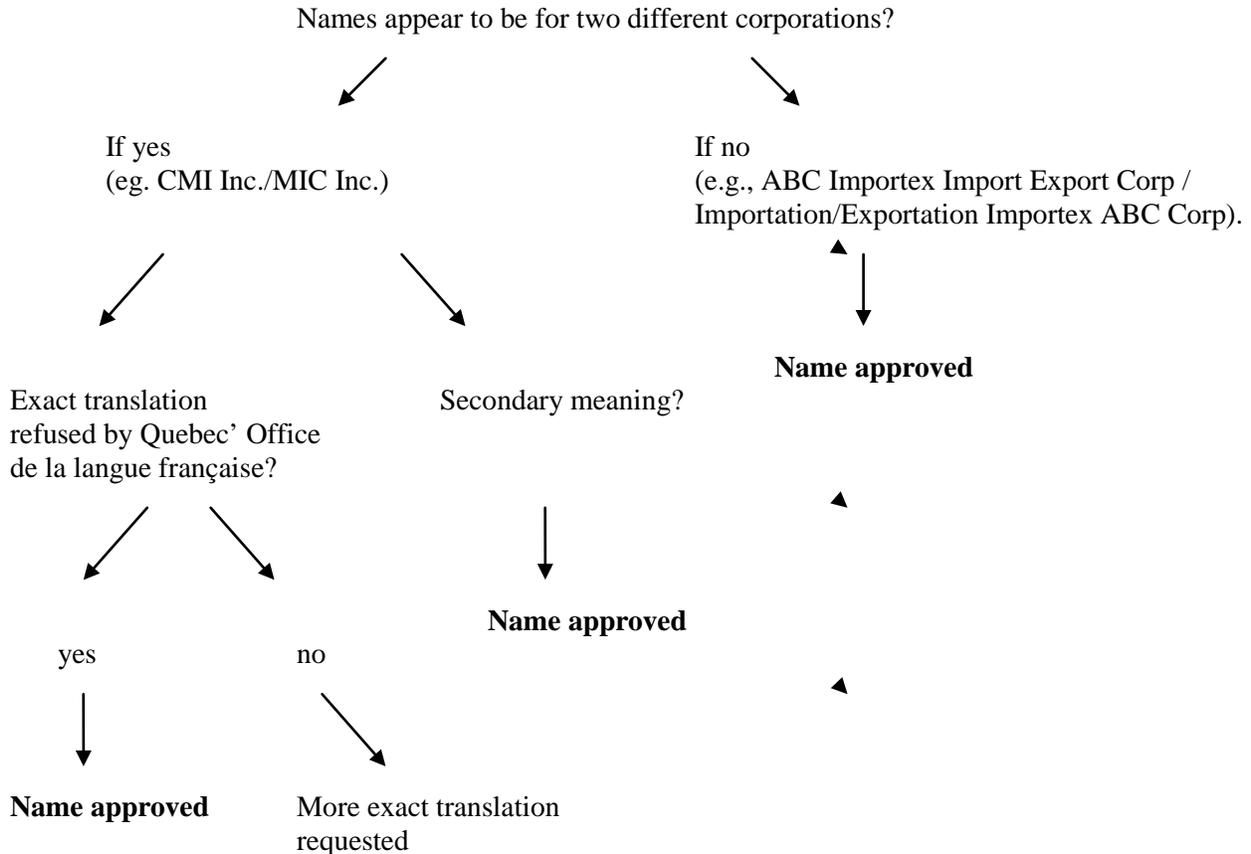
Note 1: For corporations operating in Quebec, provincial legislation may require a French form of the corporate name.

Note 2: If selecting a French form for a corporate name for the purposes of carrying on business in Quebec, it is advisable to check the acceptability of the translation with the Office de la langue française. If the Office de la langue française advises that a rejected French form is the only French form acceptable for use in the Province of Quebec, every effort will be made to find a way

to accept that French form.

Note 3: Only the distinctive part of the name can be in a language which is neither English nor French. Descriptive words, if there are any, must be in English or French (e.g., La Parilla Restaurant Inc). (See 8.3.8 for entire name in another language)

Bilingual name



9.3 Fee for Articles of Amendment not required

- (a) There is no fee for filing articles of amendment only to add the French or English version of a corporate name.
- (b) If articles of amendment are filed requesting that a legal element common to both language versions (e.g., such as “Inc.”) replace the existing legal element (e.g., “Ltd.”), Corporations Canada will assume that this is to create a French version of the name. Corporations Canada will not require the filing fee despite the fact that technically the English version is also being amended.

9.4 Searching each version

Articles filed under both linguistic versions are very often accompanied by only one search report. Often two are necessary. Filing only one report results in rejection of the articles by Corporations Canada. The following criteria should be used to judge whether or not a bilingual name (whether with separate or combined English and French versions) requires two searches:

- (1) identical names require only one search report:
e.g. Avitek Ltd./Avitek Ltee
Dubois Distributions Ltd./Distributions Dubois Ltee
- (2) names which are exact translations with phonetic differences require two searches unless the English and French versions share a substantial, distinctive component and differ only in respect of a minor, ordinary descriptive term, in which case the name can be searched in such a way that one search will suffice.
e.g. Placements Protar Holdings Inc. – one search
Gestion Quadra Inc./Quadra Management Inc. – one search

In other words, if the bilingual name has a short distinctive part with a long and differing descriptive part, two search reports would be required.

e.g. LB Plumbing + Heating Inc.
Tuyauterie et Chauffage LB Inc. – two searches

Similarly, if the descriptive part of a bilingual name is unusual, two search reports would be required.

e.g. Collecte de sang Croix Bleue Inc.
Blue Cross Blood Collection Inc. – two searches

9.5 Legal Element

Section 10 of the CBCA states that one of the following legal elements must be part of the name every corporation:

- Limited
- Limitée
- Incorporated
- Incorporée
- Corporation
- Société par actions de régime fédéral
- the corresponding abbreviation, Ltd., Ltée., Inc., Corp., or S.A.R.F.

A corporate name which, in the English version, has the legal element “Limited”, must in the French version use the legal element “Limitée”.

In addition, the legal element for both versions must be either in long form or in the abbreviated form.

In a combined English and French form of the name, the only acceptable legal element is “Inc.” and it must be located at the end of the name (See Regulation 32).

e.g. Coiffures CHICO Hairdressing Inc.

Note 1: Remember that if a corporation chooses a combined form for its name, it must use and be legally designated by that form. The English and the French forms cannot be used separately.

Note 2: Corporations Canada will reject use of the legal element “S.A.R.F.” with the English form of a name since “S.A.R.F.” does not have an English equivalent.

e.g. Exeter Shoes S.A.R.F. – unacceptable

9.6 Confusing Descriptive Terms

Because a holding corporation and an investment corporation may well be carrying on the same business (i.e. investments) and because applicants are inclined to use the word “Placements” as a translation for both “Holdings” and “Investments”, granting names such as those below will likely cause confusion.

Corporations Canada will not grant proposed names with the descriptive features of “Holdings”, “Placements”, “Investments”, “Gestion”, “Management”, and “Investissements” if the existing trade names have the same distinctive feature and one of the above descriptive features.

e.g. XYZ Holdings Inc. – existing
XYZ Placements Inc. – proposed (not acceptable)
XYZ Investments Inc. – proposed (not acceptable)

Both proposed names are not acceptable because there is a likelihood of confusion with the existing corporation name.

9.7 Translation of distinctive element

The distinctive element is the only feature in a corporate name which does not require translation for the alternate linguistic version. In addition, the distinctive element is the only element in a corporate name which could be in a foreign language and in this case a descriptive word may be unnecessary if there is no question of confusion. If the foreign word is a surname, however, a descriptive word may be necessary to satisfy the statutory provisions or Regulation 30.

e.g. Etoile Manufacturing Limited – acceptable
Investissements Maple Leaf Limitee – acceptable
Vitello Restaurants Inc. – acceptable

9.8 Equivalent name for use outside Canada

If an applicant proposes a corporate name in English or French or both in its Articles of Incorporation, it can also (in item 7 of Form 1) specify an equivalent name in French or English or any other language for use outside the country. However, it cannot specify another name for use outside the country that is other than a translated version of the English or French name under which it has been incorporated. This would mislead the public. To be very clear, if an applicant proposes, for example, an English name under item 1, he or she may insert an Italian or even a French version of that name under item 7 for use outside the country. Please note that English and French forms of the corporate name do not necessarily both have to appear in item 1. This is the applicant’s choice. For use in Canada, they would have to appear in item 1.

10. Other Issues

10.1 Use of the Words “Broadcasting”, “Radio”, “Television”

When must an applicant request consent from the Canadian Radio-Television and Telecommunications Commission (CRTC) for a proposed name using the words “Broadcasting”, “Radio” and “Television”?

CBCA gives Corporations Canada no authority to deny applicants the right to use these words. However, the CRTC will deny the applicant a licence to operate if the applicant is not qualified.

10.2 USA – Securities and Exchange Commission Names

NUANS® reports may cite corporate names which originate from the Securities & Exchange Commission in the United States. These companies are generally considered to be multi-national corporations doing business in Canada.

It has been the policy of Corporations Canada to consider such names in the name-granting process. If a proposed name is refused because it is confusing with a USA-SEC name, the applicant is advised but NOT required to find out from the available sources (see telephone and address below) whether or not the company is doing business in Canada. If the name is not checked, it may be granted with full assumption of risk IN WRITING on the applicant's part.

Public Reference: Securities & Exchange Commission
 100 F. Street, NE
 Washington, D.C. 20549
 Telephone: 202-942-8088
 Internet: <http://www.sec.gov>
 Email: publicinfo@sec.gov

10.3 Number of Corporate Name Search Reports Required

There will be cases where one name search will suffice for several different but related name requests.

This is more likely to be the case if the names requested are for proposed affiliated corporations distinguished only by the geographical location in brackets.

e.g. XYZ Tools (Ottawa) Inc.
 XYZ Tools (Hamilton) Inc.
 XYZ Tools (Toronto) Inc.

At the moment, however, there is no firm rule as to when only a single search report will be required. Each case should be referred to Corporations Canada for individual consideration.

With respect to Bilingual Names, see section 9 for guidelines concerning whether two searches are required for a bilingual name.

10.4 Where no complete NUANS® search report is required

In the case of an application made pursuant to Regulation 22(2), a NUANS® pre-search will be conducted by Corporations Canada in place of a complete NUANS® search.

A complete NUANS® search report will not be required if articles of continuance are filed at the same time as articles of amalgamation and if the certificate of amalgamation is to be issued in a name different from the name of the continued corporation and on the same day as the certificate of continuance.

If articles of continuance are filed at the same time as articles of amalgamation and if the certificate of amalgamation is to be issued in a name different from the name of the continued corporation and within a very short period of time (e.g., less than 24 hours) after the certificate of continuance. A NUANS® search report will not be required, if the applicant undertakes:

- to file a complete NUANS® search immediately if the amalgamation does not take effect as planned, and change its name if Corporations Canada decides it is necessary; and

- not to provide a consent under Regulation 24 for another entity to use its continued name, unless that name has been determined to be not confusing by Corporations Canada on the basis of a complete NUANS[®] search report obtained by the entity at that time.

Depending on the length of time between the continuance and the amalgamation, the continued corporation may also be asked to undertake that it will not carry on business between the date of continuance and the date of amalgamation.

In the case of all other applications, a complete NUANS[®] search is required.

10.5 Trade name

A corporation may carry on business under, or identify itself by a name other than its corporate name if that other name does not contain, either the word or expression “Limited”, “Limitée”, “Incorporated”, “Incorporée”, “Corporation” or “Société par actions de régime fédéral” or the corresponding abbreviation. Provincial law governs the registration of trade names.

10.6 Numbered Name

If requested to do so by the incorporators of a corporation, Corporations Canada shall assign to the corporation as its name, a designating number followed by the word “Canada” and a legal element. If the applicant does not choose a legal element, then the numbered name will use “CANADA INC.”

10.7 Internet Domain Names as Corporate Name

Suffixes like “.ca” or “.com” will not be treated as distinctive elements of a corporate name. The name will be treated as if it did not have the suffix. If the name has some distinctiveness without the suffix (e.g., “Doc Systems Inc.”) and it is not confusing, it will be approved. If the name has no distinctiveness without the suffix, it will be rejected since the suffix does not add distinctiveness (e.g., “Cars.ca Inc.”); would not be accepted because the name “Cars Inc.” would not be accepted, being merely descriptive of the wares.

Annex A

CANADA BUSINESS CORPORATIONS REGULATIONS, 2001

PART 2

CORPORATE NAMES

INTERPRETATION

17. (1) The following definitions apply in this Part.

“corporate name” means the name of a corporation. (*Version anglaise seulement*)

“distinctive”, in relation to a trade-name, considered as a whole and by its separate elements, means a trade-name that distinguishes the business in association with which it is used or intended to be used by its owner from any other business or that is adapted to so distinguish them. (*distinctive*)

“official mark” means an official mark referred to in subparagraph 9(1)(n)(iii) of the *Trade-marks Act*. (*marque officielle*)

“trade-mark” means a trade-mark as defined in section 2 of the *Trade-marks Act*. (*marque de commerce*)

“trade-name” means a name that has been reserved by the Director under subsection 11(1) of the Act, or the name under which a business is carried on, or intended to be carried on, whether it is a corporate name or the name of a body corporate, trust, partnership, sole proprietorship or individual. (*dénomination commerciale*)

“use” means the actual use by a person that carries on business in Canada or elsewhere. (*emploi*)

(2) For greater certainty, this Part applies to the corporate name of an amalgamated corporation.

CONFUSING NAMES

18. A corporate name is confusing with

(a) a trade-mark or an official mark if it is the same as that trade-mark or official mark or if the use of both the corporate name and either the trade-mark or the official mark, as the case may be, is likely to lead to the inference that the business carried on or intended to be carried on under the corporate name and the business connected with the trade-mark or official mark, as the case may be, are one business, whether or not the nature of the business of each is generally the same; or

(b) a trade-name if it is the same as that trade-name or if the use of both names is likely to lead to the inference that the business carried on or intended to be carried on under the corporate name and the business carried on under the trade-name are one business, whether or not the nature of the business of each is generally the same.

19. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if its use causes confusion with a trade-mark, official mark or trade-name, having regard to the circumstances, including

(a) the inherent distinctiveness of the whole or any element of the trade-mark, official mark or trade-name and the extent to which it has become known;

(b) the length of time that the trade-mark, official mark or trade-name has been in use;

(c) the nature of the goods, services or business with which the trade-mark, official mark or trade-name is associated;

(d) the nature of the trade with which the trade-mark, official mark or trade-name is associated;

(e) the degree of resemblance between the proposed corporate name and the trade-mark, official mark or trade-name in appearance or sound or in the ideas suggested by them; and

(f) the geographical area in Canada in which the trade name or proposed corporate name is likely to be

used.

20. Despite section 19, a corporate name that is confusing with the name of a body corporate that has not carried on business in the two years immediately before the day on which the Director receives the documents referred to in subsection 8(1), section 178 or subsection 185(4), 187(4), 191(5), 192(7) or 209(3) of the Act or a request to reserve a name under subsection 11(1) of the Act is not prohibited for that reason alone if

(a) the body corporate has been dissolved; or

(b) in the case of a body corporate that has not been dissolved, it consents in writing to the use of the name and undertakes in writing to dissolve immediately or to change its name before the corporation that proposes to use the name begins using it.

21. Despite section 19, if a word in a corporate name is confusing with the distinctive element of a trade-mark, official mark or trade-name, the corporate name is not prohibited for that reason alone if the person who owns the trade-mark, official mark or trade-name consents in writing to the use of the corporate name.

22. (1) Despite section 19, a corporate name that is confusing with the name of a body corporate is not prohibited for that reason alone if

(a) the corporate name is the name of an existing or a proposed corporation that is the successor to the business of the body corporate and the body corporate has ceased or will, in the immediate future, cease to carry on business under that corporate name and undertakes in writing to dissolve or to change its name before the successor corporation begins carrying on business under that name; and

(b) the corporate name of the existing or proposed corporation sets out in numerals the year of incorporation, or the year of the most recent amendment to the corporate name, in parentheses, immediately before the word or expression “Limited”, “Limitée”, “Incorporated”, “Incorporée”, “Corporation”, “Société par actions de régime fédéral” or “Société commerciale canadienne” or the abbreviation “Ltd.”, “Ltée”, “Inc.”, “Corp.”, “S.A.R.F.” or “S.C.C.”.

(2) If a corporate name is changed so that the reference to the year of incorporation or the year of the most recent amendment to the corporate name is deleted at least two years after it is introduced, it is not prohibited for that reason alone.

23. Despite section 19, if the corporate name of an amalgamated corporation is the same as the name of one of the amalgamating corporations, it is not prohibited for that reason alone.

24. (1) Despite section 19, the corporate name of an existing corporation that is the same as the name of an affiliated body corporate from which the corporation has acquired or will, in the immediate future, acquire all or substantially all of the property of the body corporate is not prohibited for that reason alone if the body corporate undertakes in writing to dissolve, or to change its name, before the corporation begins using the corporate name.

(2) Despite section 19, if the corporate name of a proposed corporation is the same as the name of a body corporate that is to be an affiliate of the proposed corporation from which the proposed corporation will, in the immediate future, acquire all or substantially all of the property of the body corporate, the corporate name is not prohibited for that reason alone if the body corporate undertakes in writing to dissolve, or to change its name, before the proposed corporation begins using the corporate name.

GENERAL PROHIBITIONS

25. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if the name contains any of the following elements:

(a) “cooperative”, “coopérative”, “co-op” or “pool”, if it connotes a cooperative venture;

(b) “Parliament Hill” or “Colline du Parlement”;

- (c) “Royal Canadian Mounted Police”, “Gendarmerie royale du Canada”, “RCMP” or “GRC”; and
- (d) “United Nations”, “Nations Unies”, “UN” or “ONU”, if it connotes a relationship to the United Nations.

26. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if it connotes that the corporation

- (a) carries on business under royal, vice-regal or governmental patronage, approval or authority, unless Her Majesty or a person, society, authority or organization referred to in paragraph 9(2)(a) of the *Trade-marks Act* consents in writing to the use of the name;
- (b) is sponsored or controlled by or is connected with the Government of Canada, the government of a province, the government of a country other than Canada or a political subdivision or agency of any such government, unless the appropriate government, political subdivision or agency consents in writing to the use of the name;
- (c) is sponsored or controlled by or is connected with a university or an association of accountants, architects, engineers, lawyers, physicians or surgeons or another professional association recognized by the laws of Canada or a province, unless the appropriate university or professional association consents in writing to the use of the name;
- (d) carries on the business of a bank, loan company, insurance company, trust company or another financial intermediary that is regulated by the laws of Canada, unless the Superintendent of Financial Institutions consents in writing to the use of the name; or
- (e) carries on the business of a stock exchange that is regulated by the laws of a province, unless the relevant provincial securities regulator consents in writing to the use of the name.

27. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if it contains a word or phrase, or connotes a business, that is obscene.

28. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if an element of the name is the family name of an individual, whether or not preceded by their given name or initials, unless the individual or their heir or personal representative consents in writing to the use of their name and the individual has or had a material interest in the corporation.

29. For greater certainty, a corporate name is not prohibited only because it contains alphabetic or numeric characters, initials, punctuation marks or any combination of those elements.

NON-DISTINCTIVE NAMES

30. (1) For the purpose of paragraph 12(1)(a) of the Act, a corporate name is prohibited if it

- (a) is only descriptive, in any language, of the business of the corporation, of the goods and services in which the corporation deals or intends to deal, or of the quality, function or other characteristic of those goods and services;
- (b) is primarily or only the name or family name, used alone, of an individual who is living or has died within 30 years before the day on which the Director receives any of the documents referred to in subsection 8(1), section 178 or subsection 185(4), 187(4), 191(5), 192(7) or 209(3) of the Act or a request to reserve a name under subsection 11(1) of the Act; or
- (c) is primarily or only a geographic name that is used alone.

(2) Subsection (1) does not apply if a person proposing to use the corporate name establishes that it has been used in Canada or elsewhere by them or by their predecessors so as to have become distinctive in Canada on the day referred to in paragraph (1)(b).

DECEPTIVELY MISDESCRIPTIVE NAMES

31. For the purpose of paragraph 12(1)(a) of the Act, a corporate name is deceptively misdescriptive if it is likely to mislead the public, in any language, with respect to any of the following:

- (a) the business, goods or services in association with which it is proposed to be used;
- (b) the conditions under which the goods or services will be produced or supplied or the persons to be employed in the production or supply of the goods or services; and
- (c) the place of origin of the goods or services.

32. For the purpose of subsection 10(3) of the Act, a combined English and French form of the name of a corporation shall include, from among the words and expressions set out in subsection 10(1) of the Act, only the expression “Inc.” which is to be placed at the end of the corporate name.

PART 8.1

FUNDAMENTAL CHANGES

72.1 (1) Despite subparagraph 184(1)(b)(ii) of the Act, the resolutions approving the amalgamation of a holding corporation with one or more of its subsidiary corporations may provide that the corporate name set out in the articles of amalgamation is not the same as that set out in the articles of the amalgamating holding corporation.

(2) Despite subparagraph 184(2)(b)(ii) of the Act, the resolutions approving the amalgamation of two or more wholly owned subsidiary corporations of the same holding body corporate may provide that the corporate name set out in the articles of amalgamation is not the same as that set out in the articles of the amalgamating subsidiary corporation whose shares are not cancelled.