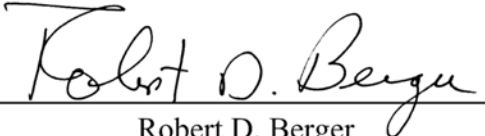


The relief described hereinbelow is SO ORDERED.

SIGNED this 2nd day of December, 2024.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

TW AUTOMATION, LC,

Debtor.

Case No. 23-21184

Chapter 11

ORDER

The debtor in this case, TW Automation, LC, pledged its assets to secure a loan from the U.S. Small Business Administration ("SBA"). However, the UCC-1 financing statement filed by the SBA's third-party contractor listed the debtor's name incorrectly as "TW Automation LLC." The issue before the Court is whether the SBA's filing statement was effective under Kan. Stat. Ann. § 84-9-506. The Court concludes that it was not.

Kan. Stat. Ann. § 84-9-506 provides:

(a) **Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) **Financing statement seriously misleading.** Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with K.S.A. 84-9-503(a), and amendments thereto, is seriously misleading.

(c) **Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with K.S.A. 84-9-503(a), and amendments thereto, the name provided does not make the financing statement seriously misleading.

And under Kan. Stat. Ann. § 84-9-503(a):

(a) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

(1) . . . if the debtor is a registered organization . . . , only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with, issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend or restate the registered organization's name.

Here, the SBA's financing statement did not sufficiently provide the debtor's name in accordance with § 84-9-503(a), listing it as "TW Automation LLC" instead of "TW Automation, LC." Therefore, under § 84-9-506, the SBA's financing statement is seriously misleading—and thus ineffective—unless a search of the debtor's correct

name, “TW Automation, LC,” using the filing office’s standard search logic would disclose a financing statement with the name “TW Automation LLC.”

The standard search logic is found in Kan. Admin. Reg. § 7-17-22:

(a) Search results shall be produced by applying only standardized search logic to each name presented to the filing officer. Human judgment shall not play a role in determining the results of the search. The standardized search logic used shall meet the following criteria:

- (1) There is no limit to the number of matches that may be returned in response to the search criteria.
- (2) The characters searched are letters “a” through “z” and numbers 0 through 9.
- (3) No distinction is made between uppercase and lowercase letters, and all letters are converted to uppercase in the filing office database.
- (4) Punctuation marks, accents, and suffixes are disregarded. Punctuation marks and accents shall mean all characters other than the letters “a” through “z” and the numbers 0 through 9.
- (5) Words and abbreviations at the end of a name that indicate the existence or nature of an organization are disregarded. These words and abbreviations shall include the following:

- (A) Association;
- (B) bank;
- (C) church;
- (D) college;
- (E) company;
- (F) corporation;
- (G) club;

- (H) foundation;
- (I) fund;
- (J) incorporated;
- (K) institute;
- (L) limited;
- (M) society;
- (N) syndicate;
- (O) trust;
- (P) union;
- (Q) university;
- (R) limited partnership;
- (S) LP;
- (T) limited liability company;
- (U) LLC;
- (V) limited liability partnership
- (W) LLP;
- (X) professional association;
- (Y) chartered; and
- (Z) the following abbreviations: co., corp., inc., ltd., and P.A.

(6) The word “the” at the beginning of the search criteria is disregarded.

(7) All spaces are disregarded.

...

(b) After using the criteria in subsection (a) to modify the name of the debtor requested to be searched, the search shall reveal only names of debtors that are contained in unexpired financing statements and exactly match the name requested, as modified.

The question here is whether “LC” is disregarded under § 7-17-22. If it is, then a search of the name “TW Automation, LC,” would disclose the SBA’s filing statement. If not, the inverse is true. The effectiveness of the SBA’s filing statement thus turns on the application of § 7-17-22.

The SBA argues that “LC” is disregarded under § 7-17-22(a) because “[a]s to debtor, the ‘LC’ is an abbreviation at the end of its name that could indicate its existence or nature,” and “[s]ection (a)(5) requires that ‘[w]ords and abbreviations at the end of a name that indicate the existence or nature of an organization are disregarded.’”¹ The SBA adds that although the term “LC” is not specifically listed in § 7-17-22(a)(5), “the term ‘including’ does not ordinarily introduce an exhaustive list”²—and “common sense clearly indicates the inappropriateness of applying the negative-implication canon” (under which “expression of one item of an associated group or series excludes another left unmentioned”) when the term “including” is used.³

¹ ECF 129 at 2 (second alteration in original).

² ECF 129 at 4 (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 132-33 (2012)).

³ ECF 129 at 3-4 (quoting *United States v. Porter*, 745 F.3d 1035, 1046 (10th Cir. 2014), and *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017)).

The debtor responds, quoting the Kansas Supreme Court, that “[b]ecause the primary purpose of a financing statement is to provide notice to third parties that the creditor has an interest in the debtor’s property and the financing statements are indexed under the debtor’s name, it is particularly important to require exactness in the name used, the debtor’s legal name.”⁴ The debtor also argues—pointing out that the Kansas filing office did not disregard the “LC” when conducting an *actual* search of the debtor’s correct name—that “the abbreviation ‘LC’ is not interchangeable with ‘LLC’ in the Kansas Secretary of State’s search system.”⁵

The Court agrees with the SBA that the word “include” does not ordinarily introduce an exhaustive list. The Court also agrees that “LC” at the end of a debtor’s name could indicate the existence or nature of an organization. However, § 7-17-22(a)(5) must be read in light of § 7-17-22(a)’s prefatory language: “Human judgment shall not play a role in determining the results of the search.” To determine that “LC,” or any other term not listed in § 7-17-22(a)(5), nevertheless “indicates the existence or nature of an organization” would *require* the exercise of human judgment. If human judgment cannot be used, then the list of disregarded terms in § 7-17-22(a)(5) must be exhaustive—even though introduced by the exemplary word “include.” To disregard additional terms such as “LC” would violate the prefatory language of § 7-17-22(a).

⁴ ECF 128 at 4-5 (quoting *Pankratz Implement Co. v. Citizens Nat’l Bank*, 130 P.3d 57, 67 (Kan. 2006)).

⁵ ECF 128 at 2, 5 & Ex. B.

The Court concludes that “LC” is not disregarded under the search logic of Kan. Admin. Reg. § 7-17-22, and that a search of the name “TW Automation, LC,” would not (and did not) disclose a financing statement under the name “TW Automation LLC.” The SBA’s financing statement is therefore seriously misleading under Kan. Stat. Ann. § 84-9-506(b), and thus ineffective under Kan. Stat. Ann. § 84-9-506(a).

IT IS SO ORDERED.

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