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WHAT'S IN A NAME: THE U.C.C. FILING SYSTEM IN THE COURTS

WILLIAM C. HILLMAN*

Introduction

Since ancient times, granting an interest in personal property without a transfer of possession to the grantee has been highly suspect. When Pierce sold his sheep to Twyne for adequate (if antecedent) consideration, but retained possession, the transaction was held fraudulent and void against another creditor.¹ Similar decisions are found well into the present century. Hub Carpet Company assigned its accounts receivable to Ratner under an agreement which allowed Hub full control of the proceeds of the accounts. Justice Brandeis stated that the arrangement "imputes fraud conclusively because of the reservation of dominion inconsistent with the effective disposition of title and creation of a lien."²

These feelings were not unique to the common-law systems: "Under the [French] Civil Code, the taking of valid security in movable property, as in the Roman Law concept of 'pignus', still depends largely on the creditor acquiring and retaining physical possession of the collateral. Alternatively, the parties may nominate a third party to hold the collateral."³ Legislation to permit financing of commercial accounts receivable arrived in France only twenty years ago.⁴

With this background of antagonism to non-possessory security interests, the drafters of the Uniform Commercial Code, from necessity, adopted a filing system "not merely as an alternative to possession but as the exclusive method of perfection."⁵ The U.C.C. provides for perfection of security interests by possession⁶ and by inaction in the case of purchase money interests in certain consumer goods,⁷ but the primary method of perfection is by the filing of a financing statement signed by the debtor.⁸

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1. Twyne's Case, 3 Co. Rep. 806, 76 Eng. Rep. 809 (Star Chamber, 1601).

2. Benedict v. Ratner, 268 U.S. 353, 363 (1925).

3. Annandale, *Security in Movables: The Creditor's Remedies under French Law*, 10 J. INT'L BANKING & FIN. L. 441 (1990).

4. *Id.*

5. 1 G. GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY* § 15.1, at 463 (1965). For an extensive history of developments in non-possessory security interests, see *id.* §§ 21-28.

6. U.C.C. § 9-302(1)(a) (1990). All further references to the U.C.C. are to the 1990 official text unless otherwise noted. As to the effectiveness of possession by a bailee in possession, see the cases collected at 7 U.C.C. CASE DIG. ¶ 9305.5(5) (1984 & Supp. 1990).

7. U.C.C. § 9-302(1)(d).

8. *Id.* §§ 9-302, 9-402(1).

The drafters opted for a notice system in which the public record reflects only the broad outlines of the transaction.⁹ This choice was mandated by the possibility of including after-acquired collateral¹⁰ and future advances¹¹ within the granted security interest. Such a scheme requires a skeletal filing within which subsequent transactions can be included.

Indexing was to be by the most logical identifier — the name of the debtor.¹² In addition, the statute¹³ requires the debtor's mailing address, the secured party's name, "an address of the secured party from which information concerning the security may be obtained,"¹⁴ "a statement indicating the types, or describing the items, of collateral," and the signature of the debtor.¹⁵ Local variants have added other elements to the financing statement,¹⁶ but have aroused little judicial interest.

For whose benefit does the system exist? Certainly it is not the debtor. The debtor can be assumed to be aware of the transactions into which the debtor has entered. Nor is it for the benefit of the secured party who has a relationship with the debtor. Such agreements are valid between the parties without perfection. All that is required is non-public attachment.¹⁷

The system serves the secured party as against strangers to the transaction, and those third parties themselves. It "put[s] a person *on notice* of the existence of a security interest in a particular type of property so that further inquiry can be made . . ."¹⁸ Because the third party can discover the non-possessory security interest, it cannot be heard to complain in the manner of *Twyne's Case* or *Benedict v. Ratner*.

Given this goal, it would seem logical that the notice must be reasonably available to its beneficiary, and that the system's emphasis should be on the accessibility of the record through the purity of the primary filing identifier — the debtor's name. This has proven to be true, but significantly harder to demonstrate than to state, as is shown by the hundreds of reported cases dealing with the adequacy of the statement of the debtor's name.

9. *Id.* § 9-402(1).

10. *Id.* § 9-204(1).

11. *Id.* § 9-204(3).

12. *Id.* § 9-403(4). Prior to the 1972 revision, § 9-402(1) did not explicitly require the statement of the debtor's name, only the signature, although the suggested form did contain a place for the name. It was held, most logically, that the requirement was implicit, *In re Moore*, 21 Bankr. 898, 904 (Bankr. E.D. Tenn. 1982), and the lapse is corrected in the current version.

13. U.C.C. § 9-402(1).

14. This is to facilitate the debtor's right to request information under *id.* § 9-208. Other parties have no right to inquire.

15. The requirement for the signature of the secured party was a casualty of the 1972 revision.

16. *See, e.g.*, CAL. COM. CODE § 9402 (West 1990).

17. U.C.C. § 9-203(2).

18. *Heights v. Citizens Nat'l Bank*, 463 Pa. 48, 342 A.2d 738, 743 (1975) (emphasis in original). *See also* *Marine Drilling Co. v. Hobbs Trailers*, 697 S.W.2d 831 (Tex. Ct. App. 1985); *Waterfield v. Burnett (In re Burnett)*, 21 Bankr. 752 (Bankr. N.M. 1982); *Abney v. I.T.T. Diversified Credit Corp.*, 11 Bankr. 965 (Bankr. N.D. Ga. 1981).

The Debtor's Identity and Name

If the debtor's name is stated correctly in the most minute particulars, one would expect that the secured party has done all that must be done in this particular. Generally speaking, the courts have agreed.¹⁹ The cases which have arisen often concern an issue more basic; they revolve around the identity of the debtor to be named.

Where the transaction is in the form of what is often called a "third-party pledge," the Code seeks to solve the problem neatly by making the owner of the collateral, who does not owe the obligation secured, a "debtor" for article 9 purposes.²⁰ It would seem logical that the owner of the collateral should be the one to sign the security documentation, including the financing statement.²¹

Nevertheless, it has been held that the borrower has sufficient rights in the collateral²² to grant a security interest in it,²³ and accordingly that the borrower is the "debtor" to appear on the notice filing.²⁴ This view flies in the face of the logic of the filing system. What stranger to the transaction would seek knowledge of security interests against the owner's property by searching in the name of the borrower?²⁵

Trade Names

Prior to the 1972 amendments, section 9-402 was silent on the subject of the adequacy of a trade name as the stated name of the debtor. The earlier cases seemed to support the adequacy of a trade name designation,²⁶ and

19. See *In re Brawn*, 6 U.C.C. Rep. Serv. (Callaghan) 1031 (Bankr. D. Me. 1969); *Kreling v. ANB Credit Corp. (In re Graham)*, 18 U.C.C. Rep. Serv. (Callaghan) 1318 (Bankr. W.D. Mich. 1975). Both cases explore the issue of "last name first" and the consequences of violating the printed instructions of the form.

20. U.C.C. § 9-105(1)(d). Aside from the perplexing use of a word to mean two different things or persons in the same sentence, the construction leads to yet another question. If, "where the debtor and the owner of the collateral are not the same person, the term 'debtor' means the owner of the collateral," what do we now call the person who was described as "debtor" at the beginning of the quoted phrase?

21. *Northwestern Bank v. First Virginia Bank*, 585 F. Supp. 425, 428 (W.D. Va. 1984). See also *In re Kors, Inc.*, 50 Bankr. 874 (Bankr. D. Vt. 1985), *aff'd sub nom. Robinson v. Howard Bank (In re Kors, Inc.)*, 819 F.2d 19 (2d Cir. 1987).

22. See U.C.C. § 9-203(1).

23. *Merchants Bank v. Atchison (In re Atchison)*, 832 F.2d 1236, 1239 (11th Cir. 1987). See also *Merchants Nat'l Bank v. Halberstadt*, 425 N.W.2d 429 (Iowa Ct. App. 1988).

24. *U.S. Small Business Admin. v. Guaranty Bank & Trust Co. (In re Whatley)*, 874 F.2d 997, 1003-04 (5th Cir. 1989).

25. On a related but more prosaic note, for a true bundle of confusion one can examine the family car cases, see, e.g., *In re Lefebvre*, 27 Bankr. 40 (Bankr. D. Vt. 1983); *General Motors Acceptance Corp. v. Washington Trust Co.*, 120 R.I. 197, 386 A.2d 1096 (1978), or the husband-wife "partnership" issues, *Citizens State Bank v. Davison (In re Davison)*, 738 F.2d 931 (8th Cir. 1984), and the decision on remand, 75 Bankr. 738 (Bankr. W.D. Mo. 1985); *Ledford v. Thorp Fin. Servs. (In re Joyce)*, 52 Bankr. 45 (Bankr. S.D. Ohio 1985).

26. *In re Matfield Constr. Co.*, 10 U.C.C. Rep. Serv. (Callaghan) 907 (M.D. Ga. 1971); *In re Uptown Variety*, 6 U.C.C. Rep. Serv. (Callaghan) 221 (Bankr. D. Or. 1969); *In re Platt*, 257 F. Supp. 478 (E.D. Pa. 1966); *In re Bengtson*, 3 U.C.C. Rep. Serv. (Callaghan) 283 (Bankr. D. Conn. 1965).

there were a number of statements such as “filing under an assumed trade name is effective unless it is misleading” evidencing such support.²⁷ One court formulated the following “general rule”:

[A] financing statement, in order to perfect a security interest, must, in the case of an individual, or individuals, doing business under a trade name show the name of the individual legally responsible for the debt unless the trade name and the individual debtor’s name are so similar that a prospective creditor, upon seeing the trade name in the records, would be alerted that there might be a prior security interest in the involved collateral.²⁸

Unfortunately, this pragmatic approach to the issue did not prevail. The clear trend of the later decisions was to invalidate such filings²⁹ under the theory that “the filing of a financing statement in which an individual debtor is designated under an assumed business name is not calculated to give notice to the present or future creditors of such individual”³⁰

This absolutist approach to the indexing philosophy has the virtue of certainty, if nothing else. In the occasional case, however, a trade name might appear to give better notice than the true name, as demonstrated by the lower court opinion in *In re Beacon Realty Investment Co.*,³¹ a case decided after the 1972 amendments. There, the debtor was a partnership doing business as “Hilton Inn” in Salina, Kansas. It conducted all of its activities under the trade name, and no document was brought before the

27. *Brushwood v. Citizens Bank (In re Glasco, Inc.)*, 642 F.2d 793, 796 (5th Cir. Unit B Apr. 1981) (quoting *Siljeg v. National Bank of Commerce*, 509 F.2d 1009, 1012-13 (9th Cir. 1975)). *Brushwood* was a most criticized decision. See, e.g., DeKoven, *U.C.C. Survey: Secured Transactions*, 37 Bus. LAW. 1011, 1033 (1982). Other cases to the same effect include *Willson v. Habersham Bank*, 11 U.C.C. Rep. Serv. 2d (Callaghan) 721, 722 (Bankr. N.D. Ga. 1990) (“If the Georgia legislature intended that a filing under a trade name would be per se insufficient, it could have written the statute accordingly.”); *U.S. Cylinders, Inc. v. Vital Breathing Prods., Inc. (In re Vital Breathing Prods., Inc.)*, 98 Bankr. 97 (Bankr. N.D. Ga. 1988); *National Bank v. West Texas Wholesale Supply Co. (In re McBee)*, 714 F.2d 1316 (5th Cir. 1983); *Siljeg v. National Bank of Commerce*, 509 F.2d 1009 (9th Cir. 1975).

28. *McMillan v. First Nat’l Bank & Trust Co. (In re Fowler)*, 407 F. Supp. 799, 803 (W.D. Okla. 1975).

29. *Bell v. Ameritrust Co. (In re Moore)*, 21 Bankr. 898 (Bankr. E.D. Tenn. 1982); *Citizens Bank v. Ansley*, 467 F. Supp. 51 (M.D. Ga.), *aff’d*, 604 F.2d 648 (5th Cir. 1979) (incorrect trade name); *In re James Wells Enters.*, 21 U.C.C. Rep. Serv. (Callaghan) 900 (M.D. Fla. 1977); *In re Webster*, 20 U.C.C. Rep. Serv. (Callaghan) 802 (Bankr. W.D. Mich. 1976); *In re Pasco Sales Co.*, 52 A.D.2d 138, 383 N.Y.S.2d 42 (App. Div. 1976); *In re Firth*, 363 F. Supp. 369 (M.D. Ga. 1973); *Bank of Tupelo v. Pongetti (In re Hill)*, 363 F. Supp. 1205 (N.D. Miss. 1973); *Northern Commercial Corp. v. Friedman (In re Leichter)*, 471 F.2d 785 (2d Cir. 1972).

30. *In re Levins*, 7 U.C.C. Rep. Serv. (Callaghan) 1076, 1082 (Bankr. E.D. N.Y. 1970). See also *In re Jones*, 11 U.C.C. Rep. Serv. (Callaghan) 249 (Bankr. W.D. Mich. 1972), *In re Eichler*, 9 U.C.C. Rep. Serv. (Callaghan) 1400 (Bankr. E.D. Wis. 1971, *aff’d*, 9 U.C.C. Rep. Serv. (Callaghan) 1406 (Bankr. E.D. Wis. 1971); *Coca-Cola Bottling Plants, Inc. v. Tabenken (In re Brawn)*, 7 U.C.C. Rep. Serv. (Callaghan) 565 (Bankr. D. Me. 1970).

31. 44 Bankr. 875 (Bankr. D. Kan. 1984), *rev’d sub nom. Pearson v. Salina Coffee House*, 61 Bankr. 538 (D. Kan. 1986), *aff’d*, 831 F.2d 1531 (10th Cir. 1987).

court which used the correct name of the partnership.³² The bankruptcy court held that “from a purely practical standpoint a filing solely under the partnership name would likely have been ‘seriously misleading’”³³ The district court reversed, and the reversal was affirmed by the court of appeals.³⁴

The 1972 revision added a new subsection, the first sentence of which provides that “[a] financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners.”³⁵ While this language does not state its converse, that is, that a filing under a trade name does not sufficiently show the name of the debtor, this latter reading appears to have been the intent of the drafters, for the official comment notes that “[t]rade names are deemed to be too uncertain and too likely not to be known to the secured party or person searching the record, to form the basis for a filing system.”³⁶ Despite this gloss on the statutory text, the drafters did seem a bit hesitant to disavow trade names altogether:

If the debtor operates a business as sole proprietor under a trade name it will be essential that the debtor’s individual name be used whether or not his trade name is added The better practice will be to use both the debtor’s own name and the trade name and to have the filing officer index the financing statement against each. If double indexing is impractical, separate financing statements may be filed, one showing the debtor’s individual name and the other the trade name.³⁷

If the drafters really meant what is said in the comment, which would also apply to entities operating under fictitious or assumed names, the second sentence of the quoted commentary is wrong as a matter of law. In any event, the cases since the amendment generally hold that a filing under a trade name is fatally inadequate.³⁸ This is true even though one can find some cases which have upheld filings in the trade name, although those cases generally involve a rural county (local filing) or a name similar to the actual name of the debtor.³⁹

32. *Id.* at 1887.

33. *Id.* at 1891.

34. *Pearson v. Salina Coffee House, Inc.*, 61 Bankr. 538, 541 (Bankr. D. Kan. 1986), *aff’d*, 831 F.2d 1531, 1537 (10th Cir. 1987). The court of appeals decision collects many of the trade name cases.

35. U.C.C. § 9-407(7).

36. U.C.C. § 9-402 comment 7.

37. Funk, *The Proposed Revision of Article 9 of the Uniform Commercial Code (Part 2): Changes as to Particular Types of Property, Filing, Multiple State Transactions, Enforcement, and Other Matters*, 27 Bus. Law. 321, 330 (1971). The author was a member of the committee which prepared the revisions but states that the article reflects only his personal views.

38. Among the most recent cases are *Pokela v. Red Owl Stores, Inc. (In re Dakota Country Store Foods, Inc.)*, 107 Bankr. 977, 991 (Bankr. D.S.D. 1989); *In re Pretzer*, 100 Bankr. 879 (Bankr. N.D. Ohio 1989); *In re Davadick*, 82 Bankr. 391 (Bankr. W.D. Pa. 1988).

39. *In re Ballard*, 100 Bankr. 526 (Bankr. D. Nev. 1989); *Pongetti v. Deposit Guar. Nat’l*

If one would disregard the official comment and the quoted language of a drafter,⁴⁰ it might be possible to adopt instead the reasoning of the Fifth Circuit:

We recognize that in most cases of individual ownership, filing under a trade name will be seriously misleading and thus insufficient to perfect a security interest. Similarly, we agree that the Code recognizes the norm We disagree, however, with the court's presumption that this general rule is absolute and is to be applied rigidly without reference to the Code's overriding goal of sufficient "notice." Rather, in some cases filing under a trade name would not be seriously misleading and would provide creditors with equal, if not superior, notice of prior security interests. . . . [W]here the debtor is an individual or partnership, the Code provides that it is "sufficient" to file under the respective individual or partnership name. . . . The Code, however, does not address the converse proposition of whether filing under the assumed name is sufficient.⁴¹

The quoted language comes close to achieving the Code's purposes of making the notice readily available to those with a desire to know. The correct name is always proper; however, a trade name may also be proper.

Errors and Misnomers

If the correct name is correct, and a trade name is possibly correct under some circumstances and in some courts, is an incorrect name ever correct? The issue must be addressed in the context of subsection 9-402(8) of the Code which announces that a "financing statement substantially complying . . . is effective even though it contains minor errors which are not seriously misleading." When is a name which is incorrect *not* seriously misleading?

Among the earlier decisions is the Second Circuit holding that it was not misleading to describe "Excel Stores, Inc." as "Excel Department Stores,"⁴²

Bank (*In re Strickland*), 94 Bankr. 898 (Bankr. N.D. Miss. 1988); *In re Swati, Inc.*, 54 Bankr. 498 (Bankr. N.D. Ill. 1985) ("not per se insufficient"); *Armstrong v. United States (In re Alexander)*, 39 Bankr. 110 (Bankr. D.N.D. 1984).

40. To do so would be consistent with Lord Chancellor Halsbury's statement: "[I]n construing a statute I believe the worst person to construe it is the person who is responsible for its drafting. He is very much disposed to confuse what he intended to do with the effect of the language which is in fact employed. At the time he drafted the statute . . . he may have been under the impression that he had given full effect to what was intended, but he may be mistaken in construing it afterwards just because what was in his mind was what was intended, though, perhaps, it was not done." *Hilder v. Dexter*, [1902] A.C. 474, 477.

41. *National Bank v. West Texas Wholesale Supply Co. (In re McBee)*, 714 F.2d 1316, 1321-22 (5th Cir. 1983). Subsequent language in the opinion makes clear that it would be applied to corporate debtors using trade names also. *Id.* at 1324 n.6.

42. *In re Excel Stores, Inc.*, 341 F.2d 961, 963 (2d Cir. 1965). See also *TMMB Funding v. Associated Food Stores, Inc.*, 136 A.D.2d 540, 523 N.Y.S.2d 161 (App. Div. 1988).

and a bankruptcy judge holding that designating "Raymond F. Sargent, Inc." as "Raymond F. Sargent Co., Inc." was terminally defective.⁴³ The later cases have generally fallen between the two extremes. The general rule seems to be that an error in spelling the last name of an individual debtor⁴⁴ or the first word of the name of a business entity⁴⁵ is fatal, but there is contrary authority.⁴⁶ One singularly intelligent decision holds that a misspelling is not seriously misleading if it would not affect the indexing of the financing statement.⁴⁷

Change of Name; Incorporation

All that has been said assumes a static situation — that the debtor's name is the debtor's name is the debtor's name, now and forever more — and if the debtor's name changes, it should have no effect on the granted and perfected security interest. This would reflect the same principle that requires no refileing when the debtor or the collateral moves within the state.⁴⁸

Prior to the 1972 amendments to section 9-402, the cases generally held that when a corporation changed its name,⁴⁹ or a proprietorship or partnership changed its trade name,⁵⁰ or a woman changed her name through marriage,⁵¹ no refileing was necessary to continue the perfection of pre-change security interests. However, if the secured party knew that a change was imminent, or had in fact been made, the result was not infrequently held to be otherwise.⁵²

43. *In re Raymond F. Sargent, Inc.*, 8 U.C.C. Rep. Serv. (Callaghan) 583, 592 (Bankr. D. Me. 1970). This has been described as a "fanatical and impossible reading" of the statute. *In re Reeco Elec. Co.*, 415 F. Supp. 238 (D. Me. 1976).

44. *Bank of North America v. Bank of Nutley*, 94 N.J. Super. 220, 227 A.2d 535 (1967); *John Deere Co. v. William C. Pahl Constr. Co.*, 59 Misc.2d 872, 300 N.Y.S.2d 701 (Sup. Ct. 1969), *aff'd*, 34 A.D.2d 85, 310 N.Y.S.2d 945 (1970); *In re Brawn*, 6 U.C.C. Rep. Serv. (Callaghan) 1031 (Bankr. D. Me. 1969).

45. *Reisdorf Bros. v. Clinton Corn Processing Co.*, 130 A.D.2d 951, 516 N.Y.S.2d 375 (App. Div. 1987).

46. *Borg-Warner Acceptance Corp. v. Fedders Fin. Corp.* (*In re Hammons*), 614 F.2d 399 (5th Cir. 1980).

47. *American City Bank v. Western Auto Supply Co.*, 631 S.W.2d 410, 417 (Tenn. Ct. App. 1981).

48. U.C.C. § 9-401(3).

49. *In re Bud Long Chevrolet, Inc.*, 39 Bankr. 499 (Bankr. D.N.M. 1984); *Official Creditor's Comm. v. Security Trust Co.* (*In re Icon Indus., Inc.*), 10 Bankr. 693 (Bankr. W.D.N.Y. 1981); *Leech v. White* (*In re Thermal Barriers, Inc.*), 8 Bankr. 294 (E.D. Mich. 1981); *Continental Oil Co. v. Citizens Trust & Sav. Bank*, 397 Mich. 203, 244 N.W.2d 243 (1976); *In re Grape Arbor, Inc.*, 6 U.C.C. Rep. Serv. (Callaghan) 632 (Bankr. E.D. Pa. 1969). See also *Siljeg v. National Bank of Commerce*, 509 F.2d 1009 (9th Cir. 1975).

50. *Borg-Warner Acceptance Corp. v. Wolfe City Nat'l Bank*, 544 S.W.2d 947 (Tex. Civ. App. 1976).

51. *In re Gac*, 11 U.C.C. Rep. Serv. (Callaghan) 412 (Bankr. W.D. Mich. 1972).

52. *In re DG & Assocs.*, 9 Bankr. 94 (Bankr. E.D. Tenn. 1981); *King v. Williams* (*In re Conger Printing Co.*), 18 U.C.C. Rep. Serv. (Callaghan) 224 (Bankr. D. Or. 1975); *Burnett v. H.O.U. Corp.* (*In re Kalamazoo Steel Process, Inc.*), 503 F.2d 1218 (6th Cir. 1974). The

The sense of the pre-amendment cases was that the secured party's burden ended when it had caused the financing statement to reflect the debtor's name as best as the secured party knew it at the time. Inconsistent with that interpretation are the few cases intimating that if the name change was really radical, a refiling might be necessary.⁵³

A more serious problem arose when the debtor did not change its name but actually disappeared by transferring the encumbered assets to another entity. In the most common example, the debtor "incorporates." Certainly this is a more serious change than a mere change of name. Nevertheless, a majority of the pre-1972 cases held that "a debtor cannot destroy the perfected security interest of a secured party by merely changing its name or corporate structure, particularly when there is no evidence to indicate that the secured party had knowledge thereof."⁵⁴ The 1972 amendments contained the following language:

Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in the collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.⁵⁵

The Official Comments indicate that the new requirement

provides some guidelines when mergers or other changes of corporate structure of the debtor occur with the result that a filed financing statement might become seriously misleading. . . . [T]he principle sought to be achieved . . . is that after a change which would be seriously misleading, the old financing statement is not effective as to new collateral acquired more than four months after the change, unless a new appropriate financing statement is filed before the expiration of the four months. The old financing statement, if legally still valid under the circumstances,

same principle was applied after the adoption of the 1972 amendments. *Woods v. Bath Indus. Sales, Inc.*, 549 A.2d 1129 (Me. 1988).

53. *Corwin v. RCA Corp. (In re Kittyhawk Television Corp.)*, 516 F.2d 24 (6th Cir. 1975). See also *White Motor Credit Corp. v. Euclid Nat'l Bank*, 63 Ohio Misc. 7, 409 N.E.2d 1063 (1978), *aff'd*, 30 U.C.C. Rep. Serv. (Callaghan) 331 (Ohio Ct. App. 1980).

54. *Inter Mountain Ass'n of Credit Men v. Villager, Inc.*, 527 P.2d 664, 671 (Utah 1974). See also *Peoples Bank v. Galliker Dairy Co.*, 374 Pa. Super. 147, 542 A.2d 539 (1988); *Avdoyan v. Sun Bank (In re Sofa Centre, Inc.)*, 18 U.C.C. Rep. Serv. (Callaghan) 536 (Bankr. M.D. Fla. 1975); *Litron Indus. Credit Corp. v. Mullen (In re Smith-Whitehead, Inc.)*, 17 U.C.C. Rep. Serv. (Callaghan) 589 (Bankr. S.D. Fla. 1975); *In re Vieths, Inc.*, 9 U.C.C. Rep. Serv. (Callaghan) 943 (Bankr. E.D. Wis. 1971).

55. U.C.C. § 9-402(7).

would continue to protect collateral acquired within the four months. . . .⁵⁶

The new language was a valiant attempt to accomplish two goals. The latter sentence would break out the incorporation and other transfer cases; the former would quantify the amount of change necessary to require refiling. It has failed to accomplish either.⁵⁷

There has been surprisingly little litigation on the name change issue, but what there is fully demonstrates that the law has not been improved by the amendment. One of the earlier cases resulted in the holding that a change from "Tri-State Moulded Plastics" to "Tri-State Molded Plastics" was a seriously misleading transformation.⁵⁸ The court relied primarily on the fact that the minor change was sufficient to lead astray the literal-minded computer at the Ohio Secretary of State's office.⁵⁹ On rehearing, the judge indicated that he "might reach the same conclusion" even without the evidence of computer literacy,⁶⁰ thus severely damaging the logic of the approach taken.

Another case involved the merger of Jabro Parts Warehouse, Inc. into Centennial Industries.⁶¹ Credit had been extended to Jabro prior to the merger, and a security interest was properly perfected by filing. After the merger (known to the creditor) Jabro operated as a division of Centennial under a trade name identical to its former corporate name. It was held that refiling was required by the 1972 amendments.⁶²

Conclusion

Whether one considers the Uniform Commercial Code "a finely tuned statutory mechanism"⁶³ or at times "as unintelligible as the Latin phrases which preceded it,"⁶⁴ one fact remains amply demonstrated: "[I]t is most improbable that its sponsors anticipated the extent to which secured credit under the . . . Code would be jeopardized by the errors and omissions of secured parties in satisfying the simple requirements of a sufficient financing statement."⁶⁵ That which we call a rose by any other name would smell as sweet, but a financing statement requires the real thing.

56. U.C.C. § 9-402(7) comment 7.

57. An excellent summary of the confusion is found in *Bank of Yellville v. Scott* (*In re Scott*), 113 Bankr. 516 (Bankr. W.D. Ark. 1990).

58. *Huntington Nat'l Bank v. Tri-State Molded Plastics, Inc.* (*In re Tyler*), 23 Bankr. 806 (Bankr. S.D. Fla. 1982).

59. *Id.* at 810.

60. *Id.* at 811.

61. *Maremont Mktg., Inc. v. Centennial Indus., Inc.* (*In re Centennial Indus., Inc.*), 3 Bankr. 416 (Bankr. S.D.N.Y. 1980).

62. *See also* *Dietrich-Post Co. v. Alaska Nat'l Bank* (*In re McCauley's Reprographics, Inc.*), 638 F.2d 117 (9th Cir. 1981).

63. *Union Bank v. First Nat'l Bank*, 621 F.2d 790, 792 (5th Cir. 1978).

64. *Inmi-Etti v. Aluisi*, 63 Md. App. 293, 492 A.2d 917, 920 (1985).

65. *Coca-Cola Bottling Plants, Inc. v. Tabenken* (*In re Brawn*), 7 U.C.C. Rep. Serv. (Callaghan) 565, 575 (Bankr. D. Me. 1970).

