

Guidance for Selecting Business Organization Names in West Virginia

The West Virginia Secretary of State (WVSOS) approves and maintains a registry of business organizations and other legal entity names. West Virginia law requires organization names to be “distinguishable upon the records of the Secretary of State” from the name of any other registered organization.

This guidance document is intended to inform businesses, entrepreneurs, and other organizations of the standards, policies, and logic that WVSOS uses when determining whether a name is “distinguishable.”

Defining “Distinguishability”:

Under West Virginia law, “distinguishability” means:

A difference between names which would allow a person to recognize or perceive the name of the business as being **noticeably different** including:

- (1) **At least a one-word difference** between names when the words are common terms and the company is or might appear to be in a similar business; and
- (2) **At least a word order difference** between names when the different word is a proper name or an unusual term, or when the company is clearly in a different type of business from the existing name.

However, a one-word difference is not always distinguishable enough to be **noticeably different**. The following example shows a one-word difference that is not distinguishable:

“Capitol Letters, Inc.”
“Capital Letters, Inc.”

In these close cases, WVSOS uses various tests. Often multiple tests are used, but not always. Each case is different depending on the proposed name, the type of business and industry, and the existing names on record.

Tests and Examples for Determining Distinguishability:

The tests listed below help WVSOS ensure existing registered names are protected and reduce opportunities for public confusion. ***However, the tests and examples are not exclusive and do not limit WVSOS’ statutory discretion for determining whether a proposed name is distinguishable from an existing name.***

1. Basic “noticeably different” tests – is the proposed name distinguishable from existing names when read, said aloud, or viewed in a list with similar names?

- a. Consider linguistic and phonetic differences. Names that are too close may not be approvable, even when the names are different and have separate meanings. (Tip: adding words, syllables, or unusual terms help with distinguishability.)

E.g. “Squash Farm” and “Squash Pharm” are not distinguishable
“Squash Farm” and “Squash Pharmaceuticals” are distinguishable
“Squash Farm” and “Squash Pharm Dispensary” are distinguishable

- b. Consider the name order in alphabetical listings (e.g. phone book) or internet search engines. Slight variations or making one word plural are not noticeably different. But a one-word difference is sometimes enough to distinguish between the names.

E.g. “Apple Sauce” and “Apple Sauces” are not distinguishable
“Apple Sauce Co.” and “Apple Slice Co.” are distinguishable

- c. Try the “Billboard Test.” If a person riding in a vehicle on the highway reads one name on a billboard, then in one mile reads another similar name on a different billboard, could the driver distinguish between the two names? (Tip: adding a preposition alone does not help distinguishability, but changing the word order and adding a preposition can help distinguishability.)

E.g. “Smiley Towing” and “Smiley’s Towing” are not distinguishable
“Smiley Towing” and “Smiley Street Towing” are distinguishable
“Smiley Towing” and “Towing by Smiley” are distinguishable

- d. Consider variations of a root word, tense, or number.

E.g. “Greater Products” and “Greatest Products” are not distinguishable
“Magic Professionals” and “Magical Professionals” are not distinguishable

2. Business Type or Industry Test – does a proposed name suggest that the organization is in particular industry, like real estate or vehicle sales?

Tip: some industries have limited options for name distinguishability. Sometimes, a one-word or word-order difference may be enough to distinguish between two or more organizations using generic or synonymous names.

- a. Simple one-word and word-order differences:

E.g. “Clint’s Preowned Cars” and “Cletus’ Preowned Cars” are distinguishable
“Amanda Vehicle Sales” and “Armada Vehicle Sales” are distinguishable
“Big Tom’s Auto Sales” and “Auto Sales by Big Tom” are distinguishable

b. The real estate/property industry:

E.g. "K&C Real Estate" and "K&C Realty" are not distinguishable
"K&C Real Estate" and "K&C Properties" are distinguishable
"K&C Properties" and "K&C Property Management" are distinguishable

c. Holdings companies:

E.g. "Farthing Holdings" and "Farthing Holdco" are not distinguishable
"Farthing Holdings" and "Farthing Investments" are distinguishable

d. Enterprises and endeavors:

E.g. "Kingdom Endeavors" and "Kingdom Enterprises" are not distinguishable
"Kingdom Endeavors" and "Kingdom Investments" are distinguishable

e. Transportation or trucking companies:

E.g. "Jack's Transport" and "Jack's Trucking" are not distinguishable
"Jack's Transport" and "Jack's Hauling" are distinguishable

f. Construction, contracting, and building companies:

E.g. "ABC Construction" and "ABC Contracting" are not distinguishable
"ABC Construction" and "ABC Builders" are distinguishable

"Gold Buildings" and "Gold Builders" are not distinguishable
"Gold Buildings" and "Gold Construction" are distinguishable

g. Services and solutions companies:

E.g. "Bo's Handy Solutions" and "Bo's Handy Services" are not Distinguishable
"Bo's Handy Solutions" and "Handy Services from Bo" are Distinguishable

**3. Misleading Name Test – would a proposed name tend to mislead the public?
Does it create a false implication, such as government affiliation?**

a. Generally approvable names include the full name or abbreviation of a country, region, state, county, city, or recognized subdivision.

E.g. "Midwest Tour Guides" is approvable
"Charleston Visitor Services" is approvable
"L.A. County Beverage Corp." is approvable

- b. Generally not approvable names imply association with a governmental organization or authority, such as the name of an existing government body or using terms including but not limited to “Agency,” “Commission,” “Department,” “Bureau,” “Division,” “Municipal,” or “Board.”

E.g. “I.R.S. Co.” is not approvable
“West Virginia Secretary of State, LLC” is not approvable
“Municipal Water Board, Inc.” is not approvable

“Corporate Board Supplies, LLC” is approvable
“The Bureau, Co.” is approvable

- c. Generally not approvable names imply tax-exempt status in situations where the public could be misled.

E.g. Names may not include the words “Charities,” “Charitable Foundation,” or “Foundation” unless the organization is registered as a nonprofit or charitable organization, or the use of the identifier has a different meaning.

4. Common ownership test – is the proposed business associated with the existing business by common ownership or operation?

- a. Common ownership (*i.e.* the same owners of the existing and proposed business) increases the approvability.

E.g. “Hops and Scotch Beer and Spirits” and “Hops and Scotch Beer and Spirits on Fifth” are approvable if they share common ownership

Note: if the two entities’ names are substantially similar, and the ownership is partially common but not exactly the same, approvability significantly decreases.

- b. Business operation association suggests exclusivity and codependence. If the existing business will be associated with the proposed business for certain business operations, it would generally be approvable with names only slightly distinguishable.

E.g. “Jim’s Furniture Warehouse” and “Jim’s Furniture Warehouse Shipper” are approvable, especially if they share common ownership. However, if ownership is not common, approvability decreases.

5. Vulgarity and Offensive Language test – does the name contain words or phrases that are generally considered by the reasonable person as vulgar? While free speech rights must be protected, WVSOS has a compelling government interest in protecting the public from overly offensive and harmful vernacular.

E.g. Profanity and slurs against an ethnic group, religion, gender, or heredity

6. **Key Word Test** – does the name have at least one key-word difference? If so, it is likely noticeably different.

E.g. "United" and "United Makers" are distinguishable

7. **Article and Conjunction Test** – does the name simply use an article to distinguish from an existing name? Unlike key words, articles such as "The," "A," or "An," and conjunctions such as "And," "But," or "Or," are not sufficient for distinguishing names.

E.g. "The Big Company" is not distinguishable from "A Big Company"

8. **Compound Word Test** – does the name add or remove a space or spaces, so that the proposed name creates a new or compound word? Does the new word have a different meaning? The more distinguishability, the more likely the name is approvable.

E.g. "Got Ham, Inc." and "Gotham, Inc." are distinguishable
"Ban Nana's Bad Jokes" and "Banana Bad Jokes" are distinguishable

9. **Business Organization Types Test** – does the name differ only on the organization type? If so, it is not distinguishable.

E.g. "Storm Chasers Ltd." and "Storm Chasers Co." are not distinguishable
"Carpet, Inc." and "Carpet, Corp." is not distinguishable

10. **The Punctuation Test** – does the name use punctuation, contractions, or abbreviations to distinguish from an existing name? Generally, punctuation alone is not distinguishable, and no distinction between upper- and lower-case letters, typeface, or font will be recognized. Accent marks above letters and other English language diacritics will not generally be recognized. Subscript or superscript characters will typically be treated as standard characters.

E.g. "Knight and Day" and "Knight & Day" are not distinguishable
"Hill Supermarket" and "Hill's Supermarket" are not distinguishable
"P.L.A.Y., Inc." and "Play, Inc." is not distinguishable
"Barnstormers" and "Barn-Stormers" are not distinguishable
"Do Not Stop, Inc." and "Don't Stop, Co." are not distinguishable
"Mister Coffee, LLC" and "Mr. Coffee, Ltd." are not distinguishable
"Gargleblaster" and "Gargleblaster⁴²" are not distinguishable

11. **Foreign Language Test** – foreign language names are distinguishable over their English translation.

E.g. “La Fleur” and “The Flower” are distinguishable
"Casa Blanca Prod." and "White House Prod." are distinguishable
"El Rodeo" and "The Rodeo" are distinguishable
(Note: the Articles test does not typically apply when the foreign spelling of an article is noticeably different from the English spelling)

12. The Initial or Acronym Test – does the name include initials, or an acronym? If so, the distinguishability may vary depending on the number of letters that are different, other words in the name, and any obvious industry or business type distinguishability. The greater the degree of differences, the more likely the name is approvable.

E.g. All letters in the initial chain match, and are in the same order
“ABC Corp.” and “ABC Group Corp.” is not distinguishable

All letters in the initial chain match, but are in a different order
“ABC Corp.” and “CBA Corp.” are distinguishable
“A.B. & C. Corp.” and “A.C. & B. Corp.” are distinguishable

One letter in the acronym is different
“MMC Realty” and “MMG Realty” are distinguishable

NOTE: initials and acronyms are typically viewed similarly as individual words. Where “MMC Realty” and “MMG Realty” only differ on a single letter, the acronym “MMC” is noticeable different than “MMG”. However, these cases are often very close, and not all examples provided will apply to every scenario.

Overlap Between Business Names and “Trademarks”

While a business or other organization name is not usually considered a “trademark” or “service mark,” it can be entitled to protection under trademark laws if it is used by the business to identify products or services and it is distinctive enough.

For example, the Snapple Beverage Corporation manufactured goods whose source could be identified by the “Snapple” trademark. Apple Computer Corporation sells personal computers under the trademark “Apple.”

Before you choose or try to register a business name, you should also consider conducting a trademark search with the U.S. Patent and Trademark Office (USPTO). If you register in your state, you can prevent businesses in the same state from using the same name. However, if you want to market your service to more than one state or across any border, you may want to register your trademark with the USPTO. Registration with the USPTO puts everyone in the United States on notice of your trademark.