



Subject Field of Subordinate CAs

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The Problem

- A customer came to us asking for a custom Subordinate CA containing their country code and O=<trademark>, but that trademark was generic like “Certification Authority”.
- We verified that they owned the trademark in their country, but would that cert violate the letter or spirit of the BRs?

Current State

- **BRs say:**
 - **7.1.2.2 Subordinate CA Certificate:**
 - h) Subject Information
 - The Certificate Subject **MUST** contain the following:
 - `countryName` (OID 2.5.4.6). This field **MUST** contain the two-letter ISO 3166-1 country code for the country in which the CA's place of business is located.
 - `organizationName` (OID 2.5.4.10). This field **MUST** contain the name (or abbreviation thereof), *trademark*, or other meaningful identifier for the CA, provided that they accurately identify the CA.
 - The field **MUST NOT** contain exclusively a generic designation such as "CA1".
 - The words "meaningful", "accurately identify" and "generic" are subjective, and we think that allowing the use of a trademark further leads to confusion.
 - Essentially same language is used for root certificates

Current State

- **BRs say:**
 - **3.1.6. Recognition, authentication, and role of *trademarks***
 - (blank)
 - **3.2.2.2 DBA/*Tradenname***
 - If the Subject Identity Information is to include a DBA or *tradenname*, the CA SHALL verify the Applicant's right to use the DBA/*tradenname* using at least one of the following:
 - 1. Documentation provided by, or communication with, a government agency in the jurisdiction of the Applicant's legal creation, existence, or recognition;
 - 2. A Reliable Data Source;
 - 3. Communication with a government agency responsible for the management of such DBAs or *tradenames*;
 - 4. An Attestation Letter accompanied by documentary support; or
 - 5. A utility bill, bank statement, credit card statement, government-issued tax document, or other form of identification that the CA determines to be reliable.

Current State

- **BRs say:**
 - **7.1.4.2 Certificate field:** subject:organizationalUnitName
 - The CA SHALL implement a process that prevents an OU attribute from including a name, DBA, *tradenname*, *trademark*, address, location, or other text that refers to a specific natural person or Legal Entity unless the CA has verified this information in accordance with Section 3.2 and the Certificate also contains subject:organizationName, subject:localityName, and subject:countryName attributes, also verified in accordance with Section 3.2.2.1.
- But tradenames and trademarks have different legal definitions in the US. Not sure about the rest of the world...

Feedback

- **PB:** DBA and Tradename are very different from trademarks. I think it would be a huge disservice to remove these...
- **GK:** It seems to me that the EV standard would probably be appropriate here: “...the Subject’s full legal organization name as listed in the official records of the Incorporating or Registration Agency in the Subject’s Jurisdiction of Incorporation or Registration or as otherwise verified by the CA as provided herein...In addition, an assumed name or DBA name used by the Subject MAY be included at the beginning of this field, provided that it is followed by the full legal organization name in parenthesis.”
- **JR:** Trademarks are a recognition of an entity’s legal right to use a specific term because of its association with a particular brand. A trademark is only recognized in the area of its use, both geographical and product line. For example, there could easily be several different companies using a term like “Frosted Flakes” if one of them was a cereal company and the other was a shampoo product line. Trade names are just a subset of a trademark in that it relates to the name of a business rather than some distinct way of branding.

Black's Law Dictionary

- **Trade-mark.** Generally speaking, a distinctive mark of authenticity, through which the products of particular manufacturers or the vendible commodities of particular merchants may be distinguished from those of others. It may consist in any symbol or in any form of words, but, as its office is to point out distinctively the origin or ownership of the articles to which it is affixed, it follows that no sign or form of words can be appropriated as a valid trade-mark which, from the nature of the fact conveyed by its primary meaning, others may employ with equal truth and with equal right for the same purpose.
- The term "trade-mark" includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others. (Citation from some other document) Exclusive rights to use a trade-mark are granted by *the federal government* for twenty-eight years.
- **Trade-name.** Any designation which (a) is adopted and used by person to denominate goods which he markets, or services which he renders, or business which he conducts, or has come to be so used by others, and (b) through its association with such goods, services or business, has acquired a special significance as the name thereof, and (c) the use of which for the purpose stated in (a) is prohibited neither by legislative enactment nor by otherwise defined public policy.
- A name used in trade to designate a particular business of certain individuals considered somewhat as an entity, or the place at which a business is located, or of a class of goods, but which is not a technical trade-mark either because not applied or affixed to goods sent into the market or because not capable of exclusive appropriation by anyone as a trade-mark. *Trade-names may, or may not, be exclusive.* Non-exclusive "trade-names" are names that are *publici juris* in their primary sense, and which in a secondary sense have come to be understood as indicating the goods or businesses of a particular trader.
- MD: <https://oami.europa.eu/ohimportal/en/trade-mark-definition>

PB: Trademark and Tradename Differences

- Trade name is just one term of many that have roughly equivalent meaning. A few examples:
- Here in the State of Washington in the US, the official term for doing business as is "Trade Name". (<http://bls.dor.wa.gov/tradename.aspx>)
- In the State of California in the US the term is "fictitious business name". (<http://business.ca.gov/StartaBusiness/RegisteringaBusiness/FictitiousBusinessName.aspx>)
- In the State of Maine in the US, there are two similar terms "assumed name" and "fictitious name". (<http://www.maine.gov/sos/cec/forms/mbca5.pdf>)
- In Canada, the term is "operating name". (<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/lf-vnts/chngprtngnm-eng.html>)
- In Australia, the current term is "business name" but "trading name" was used until 2012. (<http://asic.gov.au/for-business/registering-a-business-name/before-you-start/trading-names/the-difference-between-a-trading-name-business-name-and-company-name/>)
- In the UK, it seems the term is also "business name". (<https://www.gov.uk/choose-company-name>)
- New Zealand handily defines both Trading Name and Trade Mark: <https://www.business.govt.nz/companies/help-support/glossary#T>
- Interestingly, I was unable to find any jurisdiction where the correct term is "doing business as" name.
- Trade mark is defined, among other places, in the TRIPS agreement, administered by the WTO. (https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#trademark) I am not aware of any jurisdiction where a trademark registration allows conducting business under that name without also filing a trading/trade/fictitious/assumed/operating name.

More Feedback

- **PB:** I'm in favor of dropping trademark altogether. I think we should define the name of the CA as being either their company, business, fictitious, operating, trading or equivalent name.
- **JR:** I'm not in favor of this. Registered trademarks are easily identifiable as associated with a particular entity, especially with the address information included. If you wanted to improve the process, require that the serial number of the registration be included in the cert rather than banning use of the mark. Fictitious, operating, and trading names are not necessarily registered in all jurisdictions.