**Title:** LENDERS BEWARE! Avoid Use of Trade Names in Financing Statements

**Subtitle:**

**Meta Description:** LENDERS BEWARE! Avoid Use of Trade Names in Financing Statements

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**Formatted Content:**

**Raw Content:** <div dir="ltr" style="text-align: left;">
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"><span class="Apple-style-span">A recent federal court appellate ruling has stripped a bank of its liens, even though the bank properly listed its borrower's full corporate name in the UCC-1 financing statement.  The problem was that the bank also included the borrower's </span><span style="text-align: justify; text-decoration: underline;">trade name</span><span class="Apple-style-span" style="text-align: justify;"> in the same box. </span></span></div>
<div style="margin: 0pt; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"> </span></div>
<div style="margin: 0pt; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">In <span style="text-decoration: underline;">Hastings State Bank v. Stalnaker (In re EDM Corp.)</span>, borrower was incorporated as "EDM Corporation" and commonly known as "EDM Equipment."  Bank #1 gave EDM a loan and filed a UCC-1 financing statement under "EDM Corporation d/b/a EDM Equipment." </span></div>
<div style="margin: 0pt; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"> </span></div>
<div style="margin: 0pt; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">Bank #2 then extended credit to EDM, having first run a UCC search which did not reveal Bank #1's financing statement.  The standard search logic used by the Secretary of State's office did not identify "EDM Corporation d/b/a EDM Equipment" as being the same entity as "EDM Corporation." </span></div>
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<div style="margin: 0pt; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">Under revised Article 9, UCC-1 financing statement data is entered and indexed based on the <span style="text-decoration: underline;">exact</span> name listed in the financing statement box for the borrower's name.  Article 9-503 further requires that the borrower's name in the UCC-1 be exactly as listed in the public records of the borrower's place of organization.  The court interpreted this to mean that trade or other names may be added to the UCC-1 box for other or additional names <span style="text-decoration: underline;">but not used in the box requiring the borrower's name</span>.</span></div>
<div style="margin: 0pt; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"> </span></div>
<div style="margin: 0pt; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">In the <span style="text-decoration: underline;">EDM</span> case, Bank #1's UCC-1 had added such superfluous information to the name box.  The court therefore held Bank #1's lien improperly perfected.  Bank #2's lien was accordingly given first priority in the collateral.</span></div>
<div style="margin: 0pt; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"> </span></div>
<div style="margin: 0pt; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">Perfecting liens under Revised Article 9 of the Uniform Commercial Code can be a minefield.  Contact your counsel if you have any questions.</span></div>
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