

**MARCH 2008**

**ARE YOU SECURED?  
IT'S THE LITTLE THINGS THAT CAN MEAN THE MOST**

Seemingly minute errors in a UCC-1 financing statement can have significant repercussions to a creditor's security interest. Recently, a United States Bankruptcy Court in Virginia held that the absence of the abbreviation "Inc." from the debtor's name in a financing statement rendered that financing statement ineffective to perfect the creditor's security interest, leaving the would-be secured creditor completely unsecured.

In that case,<sup>1</sup> the debtor ("Tyringham Holdings, Inc.") held a number of pieces of jewelry consigned to it by a creditor ("Suna"). Suna held a security interest in the consigned inventory and attempted to perfect the security interest by filing a financing statement with the Virginia State Corporation Commission. The financing statement covered 65 pieces of jewelry totaling \$310,925.00, and it listed the debtor's name as "Tyringham Holdings," without the "Inc." After the debtor filed for Chapter 11, the creditors' committee in the bankruptcy proceeding was trying to free up as many of the debtor's assets as possible for sale. Accordingly, the committee challenged Suna's status as a secured creditor at that time.

An official UCC search certified by the Virginia State Corporation Commission revealed a search conducted under the name "Tyringham Holdings, Inc." which did not reveal Suna's financing statement. Suna performed other UCC searches which did disclose the existence of the creditor's financing statement, however such searches featured methodology that was different than the official search certified by the Virginia State Corporation Commission.

Generally, where a filed financing statement is required to perfect a security interest, the name of the corporate debtor, as indicated on the public record of the debtor's jurisdiction of organization, must be listed on the financing statement for it to be valid. While Suna believed that the term "Inc." was nothing more than a "noise word,"<sup>2</sup> the court believed that the failure to include the word made the financing statement "seriously misleading" since the state's own certified search did

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<sup>1</sup> *In re Tyringham Holdings, Inc.*, 354 B.R. 363 (Bankr. E.D. Va. 2006).

<sup>2</sup> Noise words, for these purposes, are words that are removed or ignored in the process of performing an electronic database search for financing statements.

not reveal the existence of such security interest. The court reasoned that “[w]hile the application of the filing office’s standard search logic may lead to situations where it appears that a relatively minor error in a financing statement leads to a security interest becoming unperfected, it is not that difficult to ensure that a financing statement is filed with the correct name of the debtor. Little more is asked of a creditor than to accurately record the debtor’s name, according to the statute.”

The ramifications of this ruling with respect to secured transactions are significant. Essentially, courts are going to be very strict in determining whether or not a creditor complied with the appropriate statute when trying to perfect a security interest. Such a position makes it imperative that creditors perform their pre-closing due diligence very carefully in order to avoid the unfortunate situation of losing their status as a perfected secured creditor.

Recent changes to the Uniform Commercial Code provide, in the vast majority of cases, for filings against companies based on their place of formation (i.e., their state of incorporation). Proper due diligence should include a review of state web sites or formation documents (e.g., certificate of incorporation) to verify the proper jurisdiction to file UCC financing statements. That same due diligence will result in verification of the proper name of the debtor to include on the financing statement and avoid the problem confronted in *In re Tyringham*.



*Moritt Hock Hamroff & Horowitz LLP is a broad based commercial law firm with 35 lawyers and a staff of paralegals. The firm has extensive experience in litigation; creditors’ rights and bankruptcy; real estate law; trusts, estates & taxation; direct marketing, advertising & new media; intellectual property & unfair competition; employment law; healthcare law; corporate & securities law; equipment & vehicle leasing; financial services & secured lending; and not-for-profit law.*

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