

# The Wrong Suffix Won't Suffice:

Missing “-ing” in a Debtor’s Name on a  
UCC-1 Costs Creditor Its Security Interest

A CREDITOR CAN PROTECT ITSELF FROM COLLECTION RISK BY HAVING ITS CUSTOMER GRANT THE CREDITOR A SECURITY INTEREST IN THE CUSTOMER’S ASSETS TO SECURE OBLIGATIONS OWING TO THE CREDITOR.

To perfect the security interest, the creditor usually must file a financing statement according to Article 9 of the Uniform Commercial Code (UCC), as adopted in the applicable state where the creditor is filing the financing statement. UCC Article 9’s requirements are intended to ensure that the financing statement sufficiently identifies the debtor and the pledged collateral so as to put other potential creditors on notice of the existence of the security interest.

A recent decision of the United States Bankruptcy Court for the Eastern District of Texas—*In re East Texas Machining & Manufacturing, LLC*—has made clear that even a minor spelling error in a debtor’s name in a UCC-1 financing statement can leave the creditor with an unperfected security interest subject to avoidance by a bankruptcy trustee or



debtor-in-possession. The secured creditor had filed a financing statement listing the debtor as “East Texas Machine & Manufacturing, LLC” instead of the debtor’s correct legal name, “East Texas Machining & Manufacturing, LLC”—omitting only the suffix “-ing” from the word “Machining.” This seemingly trivial but fatal mistake rendered the creditor’s \$500,000 security interest unperfected and avoidable.

### **THE REQUIREMENTS FOR CREATING AND PERFECTING A SECURITY INTEREST UNDER UCC ARTICLE 9**

A trade creditor seeking to obtain a valid, perfected and enforceable security interest in its customer’s personal property must comply with UCC Article 9. First, a creditor must satisfy the requirements for

UCC SECTION 9 506(B) FURTHER STATES THAT A FINANCING STATEMENT IS “SERIOUSLY MISLEADING” IF IT FAILS TO SUFFICIENTLY STATE THE DEBTOR’S NAME IN ACCORDANCE WITH UCC SECTION 9-503(A). **THIS IS SOMETIMES REFERRED TO AS THE “ZERO-TOLERANCE RULE.”**

the creation or attachment of a security interest in its customer’s personal property that will serve as collateral securing payment of the creditor’s claim. A security interest is created by the customer’s execution of a security agreement that adequately describes the creditor’s collateral by category or type. A collateral description, such as all of a debtor’s present and future accounts, inventory, equipment, and general intangibles and all cash and non-cash proceeds thereof, should suffice. A collateral description such as “all of a debtor’s assets” will not suffice.

Second, the security interest must be perfected according to UCC Article 9’s requirements. A creditor usually perfects a security interest in personal property by filing a UCC-1 financing statement in the appropriate filing office. A UCC-1 financing statement must, among other things, identify the debtor by its correct legal name. The comments to UCC Section 9-503 state that properly identifying the debtor’s name “is particularly important” since “those who wish to find financing statements search for them under the debtor’s name.”

The public filing of a UCC-1 financing statement serves two main purposes: it confirms a secured creditor’s priority rights in the collateral identified in the financing statement and provides notice to third parties that a secured creditor is claiming an interest in the assets identified in the financing statement. Properly identifying the debtor in a financing statement is paramount to achieving these purposes. According to UCC Section 9-503(a)(1):

CREDITORS FILING UCC-1 FINANCING STATEMENTS  
MUST DO THEIR DILIGENCE AND BE EXTREMELY CAREFUL  
TO ENSURE THAT THEIR FINANCING STATEMENTS  
**MEET ALL OF THE REQUIREMENTS OF ARTICLE 9,  
INCLUDING PROPERLY IDENTIFYING THE DEBTOR  
ENTITY BY ITS CORRECT LEGAL NAME.**

"[I]f the debtor is a registered organization, ... [a financing statement sufficiently provides the name of the debtor] only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend or restate the registered organization's name."

According to UCC Section 9-506(a), a UCC-1 financing statement that "substantially" complies with UCC Article 9's requirements is effective even if it contains minor errors or omissions, unless they make the financing statement "seriously misleading." UCC Section 9-506(b) further states that a financing statement is "seriously misleading" if it fails to sufficiently state the debtor's name in accordance with UCC Section 9-503(a). This is sometimes referred to as the "zero-tolerance rule."

That said, UCC Section 9-506(c) provides the following safe harbor exception to this zero-tolerance rule: "[I]f a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails to sufficiently provide the name of the debtor in accordance with Section 9-503(a), the name provided does not make the financing statement seriously misleading."

**BACKGROUND REGARDING THE  
IN RE EAST TEXAS MACHINING &  
MANUFACTURING, LLC DECISION**

East Texas Machining & Manufacturing, LLC (ETMM) is a Texas limited liability company that operated in the metal and firearm manufacturing industry. STV Engine 001, LLC (STV) loaned ETMM \$500,000, ostensibly secured by a security interest in all of ETMM's personal property, inventory and equipment. Both parties signed a promissory note and a security agreement memorializing their agreement.

To perfect its security interest, STV filed a UCC-1 financing statement with the Texas Secretary of State under filing number 20-0017723991 on May 13, 2020.

However, STV's financing statement incorrectly stated ETMM's name as "East Texas Machine & Manufacturing, LLC" instead of the correct name on ETMM's certificate of formation: "East Texas Machining & Manufacturing, LLC." The difference was subtle—the omission of the simple suffix, "ing" from the word "Machining"—but it proved fatal to STV's secured claim.

ETMM filed a Chapter 11, Subchapter V petition on Dec. 14, 2023. On Jan. 8, 2024, STV filed a proof of claim in ETMM's bankruptcy case, which included a copy of its financing statement. ETMM subsequently filed an adversary proceeding on Oct. 16, 2024, seeking to avoid STV's security interest. ETMM moved for partial summary judgment, arguing that STV's security interest was "unperfected, invalid and unenforceable" and, therefore, avoidable pursuant to 11 U.S.C. § 544(a). STV opposed the motion, framing the issue as whether the mistake in its financing statement was "seriously misleading"—which STV disputed.

Critically, searching the online records database of the Office of the Texas Secretary of State using ETMM's correct name failed to reveal STV's financing statement. This fact proved dispositive to the court's decision in *In re East Texas Machining & Manufacturing, LLC*.

**THE IN RE EAST TEXAS MACHINING  
& MANUFACTURING, LLC DECISION**

Applying Texas's version of UCC Article 9, the court concluded that Texas law is clear: a financing statement is sufficient to perfect a security interest in a registered organization's personal property only if the name on the financing statement matches the registered organization's most recent public organic record stating or changing its name. ETMM is a registered organization, and its certificate of formation filed in accordance with Texas law is a public organic record.

Under Texas law, errors in a debtor's name may destroy the effectiveness of a financing statement. The court emphasized that parties must comply with financing statement name requirements because the lien filing system's purpose is to notify creditors of existing security interests, and "such errors may prevent a search from discovering the financing

statement.” A financing statement that is “seriously misleading” fails to give proper notice of the asserted security interest and, therefore, is considered ineffective to perfect a security interest in the personal property described in the financing statement.

To determine whether a financing statement is seriously misleading, many courts deploy a simple test: if a search of the financing statement records of the office of the applicable secretary of state using the debtor’s correct legal name does not provide the financing statement containing the debtor’s erroneous name, the creditor’s failure to use the debtor’s correct name makes the financing statement seriously misleading. Other courts have found that strict compliance with Section 9-503 is required to achieve perfection, including cases where a financing statement was found to be “ineffective as a matter of law when a computer search under the debtor’s correct name fails to reveal it” and in another case where a Texas financing statement was found “seriously misleading and thus ineffective due to the omission of a single letter from the debtor’s name.”

Applying these principles, the court noted that ETMM’s name on its certificate of formation is “East Texas Machining & Manufacturing,” but STV’s financing statement incorrectly shows ETMM’s name as “East Texas Machine & Manufacturing.” The parties’ evidence demonstrated that a search of the financing statement records of the Office of the Texas Secretary of State under ETMM’s correct name did not reveal STV’s financing statement. Accordingly, the court held that STV’s financing statement did not satisfy the name requirements in Texas Business & Commerce Code Section 9-503(a)(1), was seriously misleading under Section 9-506(b), and was therefore ineffective. As a result, STV’s security interest was unperfected and avoidable under the Bankruptcy Code.<sup>1</sup>

The court granted ETMM’s motion for summary judgment, holding that STV’s security interest in ETMM’s property was unperfected and avoided, and downgrading STV’s claim to a lower priority unsecured status.

## CONCLUSION

The *East Texas Machining & Manufacturing* decision serves as yet another cautionary tale for a creditor seeking to perfect a security interest by filing a financing statement in accordance with UCC Article 9. The seemingly immaterial difference between “Machining” and “Machine” cost STV its security interest in ETMM’s personal property.

Creditors filing UCC-1 financing statements must do their diligence and be extremely careful to ensure that their financing statements meet all of the requirements of Article 9, including properly identifying the debtor entity by its correct legal name. Time and time again, as demonstrated by the *East Texas Machining &*

*Manufacturing* decision, even the slightest deviations in the debtor’s correct legal name in a financing statement can result in a court’s avoidance of the creditor’s unperfected security interest, leaving the creditor with an unsecured claim and exposing the creditor to increased collection risk. **BC**

**1** Under Bankruptcy Code Section 544(a)(1), a debtor-in-possession has the same status as a hypothetical creditor owning a judicial lien perfected on the bankruptcy petition date. This statutory power provides the debtor-in-possession with the ability to seek priority over other claims and interests in property that remain unperfected as of the date of the commencement of the bankruptcy case. The court explained that under Texas law, an unperfected security interest is subordinate to the rights of a perfected judicial lien, and that Texas law defines a “lien creditor” as including “a trustee in bankruptcy from the date of the filing of the petition.” Therefore, under Texas law, the moment ETMM filed for bankruptcy, ETMM became a lien creditor whose rights trump creditors holding unperfected security interests.



**BRUCE NATHAN**, Partner,  
Lowenstein Sandler LLP’s Bankruptcy  
& Restructuring Department,  
bnathan@lowenstein.com. With  
approximately 45 years of experience  
in the bankruptcy and insolvency

field, Bruce is a recognized nationwide leader in trade creditor rights and the representation of trade creditors. Bruce has represented trade and other unsecured creditors, unsecured creditors’ committees, secured creditors, and other interested parties in many of the larger Chapter 11 cases that have been filed.



**MICHAEL PAPANDREA**, Partner,  
Lowenstein Sandler LLP’s Bankruptcy  
& Restructuring Department,  
mpapandrea@lowenstein.com.  
Mike provides counsel to debtors,  
creditors’ committees, trade

creditors, liquidating trustees and other interested parties with respect to corporate bankruptcy and creditors’ rights matters, including bankruptcy-related litigation. As a seasoned creditors’ rights advocate, Mike works tirelessly to understand clients’ needs and provide practical solutions that are reasonable, balanced and favorable to the clients he serves.