

CORPORATIONS:

Incorporation fees, similarity in names.

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March 8, 1933

Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Mr. Brown:

We are replying to your letter of date February 23, 1933.

You state that the National Cloak and Suit Company was organized under the laws of the State of New York and the name changed by amendment, to National Bellas Hess Co., Inc., that \$1861.25 was demanded of the latter company on the amendment, payment of which was refused; that on April 28, 1932, the National Bellas Hess Co., Inc., went into receivership which has not yet been terminated; that on February 7, 1932, The National Bellas Hess, Inc., was incorporated under the laws of the State of Delaware and application made to the Corporation Department of your office in September, 1932, for license to transact business in this state, accompanied by a check for \$786.50, which check was refused on the theory as I gather it, that the National Bellas Hess, Inc., was in fact the same company as National Bellas Hess Co., Inc., and the former company being in default to the state you would not license the latter without payment of back dues from the former company.

You state that:

"The records of this office show that the charter of the original National Bellas Hess Co., Inc., was canceled January 1, 1933, for failing to comply with Section 4619 Revised Statutes Missouri, 1929".

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If the latter statement is correct then the National Bellas Hess Co., Inc., is not in existence in this state and there is no question before you as to the similarity of the names National Bellas Hess Co., Inc., and National Bellas Hess, Inc., as the former company has ceased to exist. If both corporations are in existence then in determining whether the National Bellas Hess, Inc., should be licensed in this state on account of the similarity of its name to National Bellas Hess Co., Inc., the matter is in your discretion and upon which we express no opinion. The law to guide you in this respect is stated in State ex rel Hutchinson v. McGrath, 92 Mo. 355, 358. The Supreme Court of this state saying:

"It is the evident purpose of our statute to protect, to some extent, these common-law rights, and, to do this, both as to the corporation first adopting the name, and as to the public, which may be misled by the similarity of the two names. It is difficult to state a precise rule by which one name may be said to be an imitation of another, in the sense of the statute. Where, however, the names so far resemble each other, that a person using that care, caution, and observation which the public uses, and may be expected to use, would mistake one for the other, then the new name is to be regarded as an imitation of the former. The character of the business, and the location of the two corporations, must be considered. Now, in the present case, both corporations are located in the same city. Both are created for precisely the same purposes, i. e., to establish and maintain a place, with a suitable building, for the public and private sale of real estate, stocks, and other property. The only difference between the two names consists in the use of the words "and stock". These words appear in the name of the former corporation, but are omitted in the name adopted by the relators. The omission of them from the combination with the other words, it is believed, does not furnish a fair distinguishing feature. A reasonably prudent person would be constantly liable to mistake the one for the other. It is doubtless the purpose of both corporations to encourage the public sale of property, real and personal, at their places of business, under mortgages, deeds of trust, and the like, and the names ought not to be so similar as to lead to confusion and litigation".

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If the National Bellas Hess Co., Inc., is yet in existence we fail to find any authority of your department to refuse to license the National Bellas Hess, Inc., on the ground that the National Bellas Hess Co., Inc., is derelict in its obligations to the state, unless it is a fact that the National Bellas Hess, Inc., is but the alter ego of the National Bellas Hess Co., Inc., and being used for the purpose of evading the payment of legal fees to the state by the National Bellas Hess Co., Inc.

If in fact the National Bellas Hess Co., Inc., is no longer an existing corporation under the laws of this state, then in our opinion it is your duty to accept the legal incorporation fees of the National Bellas Hess, Inc., as a new corporation unless you find the facts as above detailed and if the National Bellas Hess Co., Inc., is yet in existence as a corporation under the laws of this state, then unless you find the facts as above detailed your sole duty is to determine whether or not the name National Bellas Hess, Inc., is the same name or an imitation of the name National Bellas Hess Co., Inc., under Section 4541 Revised Statutes Missouri, 1929, the above facts and the question named are matters for you to pass upon and upon which we express no opinion.

Very truly yours,

GILBERT LAMB,
Assistant Attorney General.

APPROVED:

Attorney General.

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