

Brief analyses of Company Name and Business Name/Trade Name under Ethiopian Commercial registration and Licensing Proclamation (proclamation no 980/2016 & proclamation no 1150/2019)

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1. Introduction

A single business firm can have a company name and trade name. A company name/firm name is one attribute of a legal personality of the firm. Any business organization gets legal personality upon registration¹, to be registered name is a pre criteria set by law.² After registration business organization needs trade name for identification and advertisement of its product and business organization can have trade name and a business is consist of incorporeal elements, among them one is trade-name. A Trade name/business name is one of the first things that connect a customer to a company's products or service.³ A business organization can have a legal or registered name as well as a Business or trade name but these have important differences and registration requirements exist for the protection of business organization and customers.⁴ These two names are different in purpose and scope, but under Ethiopian Commercial registration and Licensing Proclamation and its amendments, regarding these two words there is ambiguity and vagueness of law and this causes difficulty of understanding these two names under these proclamations. In this paper I am going to elaborate the definition of a company name/firm name and Trade/Business name, the difference between a Business Name and a Company Name, and the importance of this distinction, Identifying currently existing legal terminology problem in Ethiopian Commercial registration and Licensing Proclamation (proclamation no 980/2016 & proclamation no 1150/2019) and making possible recommendation.

2. COMPANY NAME

Company name is also known as *Firm name, Legal Name, Business organization name and corporate name*. The Ethiopian commercial code had adopted the name *firm name*.⁵ Directive no 003/2007, Directive to accelerate registration of Business Organization Name defines that Firm name is name under which company is registered according to commercial code; Today in Ethiopia a lot of company name is being registered.⁶ It's the only name that provides legal personality for the company.⁷ It's a requirement for the formation and registration or legal personality of firms. A Company name is separate legal entity registered in front of a competent authority.⁸ Company Names are often followed by suffix indicating the legal structure of the entity; it always ends with a distinct suffix that contains the business organization name.⁹ In our commercial code there is no express definition given as to what constitutes a company/firm name. The Code's rules on share companies provide that company name shall be as "agreed but

¹ Commercial Code Of the Federal Democratic Republic of Ethiopia article 176

² Exception is Joint venture, Commercial Code Of the Federal Democratic Republic of Ethiopia article 176

³ An explanatory notes annex of Directive no 003/2007, Directive to accelerate registration of Business Organization Name /Amharic

⁴ <https://www.legalzoom.com/articles/trade-name-vs-busilness-name-whats-the-difference> accessed on September 12/2021

⁵ Commercial Code Of the Federal Democratic Republic of Ethiopia article 168,185,213 and 497

⁶ <https://ethiopianchamber.com/Data/Sites/1/psd-hub-publications/company-registration-in-ethiopia.pdf>

⁷ Directive no 003/2007, Directive to accelerate registration of Business Organization Name article 2/1

⁸ Directive no 003/2007, Directive to accelerate registration of Business Organization Name /Amharic article 2/1

⁹ Manaye Abera, Ethiopian Company Law page 58

shall not offend public policy or the rights of third parties and shall include the words 'Share Company'.¹⁰ Similarly, the rules of the Commercial Code on private limited companies provide that a private limited company may have a firm-name which may indicate the nature of its business and the firm-name shall be followed by the words "Private Limited Company" same provision applies to one man private limited company. Today we do have 7/seven Business organizations in Commercial code, among this an exceptional and secret business organization Joint venture does not need registration and it does not have legal personality.¹¹

Firm names in Ethiopian commercial code are provided as follow, Share company has a suffix Share Company¹², General partnership shall be followed by the suffix General partnership,¹³ Limited partnership has a suffix Limited Partnership¹⁴, Private Limited Company has a suffix Private Limited Company¹⁵, Regarding One man Company all the rules of the Code that govern a private limited company shall apply *mutatis mutandis* to a one person company so One man Company shall be followed by suffix Private Limited Company¹⁶.

3. TRADE NAME

Trade Name also called *Business Name, doing business as (DBA) name, Brand name*. It is an incorporeal element of business.¹⁷ Unlike a firm name a company may have several trade names.¹⁸ Under Ethiopian law, any person desiring to engage in a commercial activity shall register its trade name at the place where it is registering in the commercial register. The registration of a trade name shall be a *prima facie* evidence of entitlement to and validity of the same trade name. Trade name should be registered to get legal protection and there are requirements for registering a trade name,¹⁹ the law requires registration either at regional level or federal level.²⁰

4. The Difference Between Trade Name and Company Name.

Unlike the ordinary conception of Business name/Trade Name and Company name/firm name, there are fundamental differences between these two legal terms and they provide very different levels of protection in scope and the two words can't be used interchangeably.

¹⁰ Commercial Code Of the Federal Democratic Republic of Ethiopia article 246

¹¹ Commercial Code Of the Federal Democratic Republic of Ethiopia article 175 and 234

¹² Commercial Code Of the Federal Democratic Republic of Ethiopia article 246

¹³ Commercial Code Of the Federal Democratic Republic of Ethiopia article 186

¹⁴ Commercial Code Of the Federal Democratic Republic of Ethiopia article 213

¹⁵ Commercial Code Of the Federal Democratic Republic of Ethiopia article 497

¹⁶ Commercial Code Of the Federal Democratic Republic of Ethiopia article 545 and 497

¹⁷ Commercial Code Of the Federal Democratic Republic of Ethiopia article 109/2/A

¹⁸ Manaye Abera, Ethiopian company Law page 59

¹⁹ Small Business Administration. "Register Your Business." <https://www.sba.gov/business-guide/launch-your-business/register-your-business> Accessed on September 10, 2021.

²⁰ Ethiopian Commercial registration and Licensing Proclamation (proclamation no 980/2016 & proclamation no 1150/2019)

A Company name/Firm name is the name under which an entity is formed, or registered. The Firm names ends with a distinct suffix (i.e., Share company, Private Limited Company, General Partnership, etc.). A single company can have only single company name.²¹

A trade name is a fictitious/alternate name under which an entity may choose to operate. It may or may not be similar with company name²², and unlike company name a single company can have several trade names.

The following table briefly expresses the distinction between the two names.

Company Name, Firm Name	Trade Name, Business Name
- It's pre requirement for formation of company - It's mandatory requirement -is the name under which an entity is formed, or registered and gains legal personality. - A single company can have only one Firm Name - It's for personal identification -It's ends with a distinct suffix (i.e., Share company, Private Limited Company, General Partnership, etc.)	-It's for operation not for formation of company. - It's not mandatory requirement - Name under which an entity may choose to operate. - A single company can have more than one Trade name - It's for product identification - it does not end with distinct suffix

5. Company Name and Business Name/Trade Name under Ethiopian Commercial registration and Licensing Proclamation (proclamation no 980/2016 & proclamation no 1150/2019)

In legal sense it's only under exceptional circumstances in which a single word is used two express two different conditions/things. As much as possible the legislator should avoid ambiguity and vagueness. Strictly looking at an Ethiopian Commercial registration and Licensing Proclamation we see that the two different words i.e. Trade name and Company name is used interchangeably, which makes the proclamation ambiguous and the legislator failed to consider the legal meaning of the two words. The issue of Company name and Trade/business name is raised under different provisions of both proclamations while regulating different Business Organization recognized under Ethiopian Commercial law. When we came to Commercial Registration and Business Licensing Proclamation no 980/2016 under Article 2(10) (11) which defines Trade name and Name of Business, it defines in the following ways respectively;-

²¹ An explanatory notes annex of Directive no 003/2007, Directive to accelerate registration of Business Organization Name /Amharic

²² Ethiopian Commercial registration and Licensing Proclamation no 980/2016 article 15/3

“Trade Name” means a name that a given business person uses for his business or known by the society as such;

“Name of business” means a name that is used by a business organization for commercial registration and by which such business organization is recognized as a legal person by the registering office or third party;

In legal sense there is no difference between Trade Name and Name of business or Business name, but the proclamation uses these two similar names to elaborate two different names. In addition to that there is discrepancy between the Amharic version and the English version of the proclamation article 2/11, the prevailing version²³ provides that:

“የንግድ ድርጅት ስም” ማለት አንድ የንግድ ድርጅት ለንግድ ምዝገባ የሚጠቀምበት፣ በመዝጋቢው መሥሪያ ቤት እና በሦስተኛ ወገኖች የሕግ ሰውነት ያለው መሆኑ የሚታወቅበት ስም ነው፤

As we see above the Amharic version provides “የንግድ ድርጅት ስም” which means the name of business organizations. But the English version mistakenly provides that “Name of business” which means Business name or trade name. However the Definition provided under the English version of article 2/11 is not match with the words to be defined under this sub article. While the word refers to trade name, the definition expresses the name of Business organizations. Even the recent amendment failed to consider the variation between two versions and this ambiguity continued as it is. In future the English version of article 2/11 should be corrected as:

“Name of business Organizations/Firm Name ” means a name that is used by a business organization for commercial registration and by which such business organization is recognized as a legal person by the registering office or third party;

To suggest possible solution on this issue, it’s better to make it compatible with commercial code and it will be better if the proclamation uses firm name.

When we examine different provisions of the proclamation, other than the definitional provisions, we found that Company name and Commercial registration is interchangeably used by this proclamation to show company name. Under the title “ Powers and duties of the relevant authority ”²⁴ the Company name/firm name is not expressly referred/ rather it’s hidden within the word “Commercial registration” and trade name is expressly referred in all its sub articles of this provision which deals with commercial registration.

Contrary to the above provisions article 5 uses the firm name expressly.²⁵ The term Company name and name of business is used respectively in order to clarify the condition under which Business Company can be registered as of legal entity. Amazingly, except under these articles there is no place where the term Company name or Name of Business is used in this proclamation to refer the legal name of the Company.

The next most important point where the interchangeable use of the two words expressly indicated is that the commercial Registration and Business licensing amendment proclamation no 1150/2019 which made amendments concerning the caption of article 14 and 15 Registration of Company name and Trade name. The proclamation 1150/2019, in its amendments, deletes the

²³ Proclamation No. 3/1995 Federal Negarit Gazeta Establishment Proclamation 2/4, in case of discrepancy Amharic version shall prevail.

²⁴ proclamation no 980/2016 Ethiopian Commercial registration and Licensing Proclamation Article 4/ 1-4

²⁵ proclamation no 980/2016 Ethiopian Commercial registration and Licensing Proclamation Article 5/5-7

caption of part three of Proclamation no 980/2016, “Registration of Trade Name” and replaced by “*Registration of Company and Trade Names*”. This amendment is a basic improvement made to the caption of Part three. The new caption come with amendment is common for both of “Registration of Company names” (Art.14) and “Registration of Trade Names” (Art. 15) of the proclamation. Secondly, the above Proclamation amends the title of Art.14 of proclamation no 980/106 from “Trade Name” to “*Registration of Company Names*”. This amendment is also important for it tries to clarify the Registration of Company name from that of Registration of trade name, though change is made only to the caption of the provision. Surprisingly, the amendment failed to consider the variation between article 14 and sub article 1 upto 5, While the Amharic version of article 14 refers to Company name, The English version expressly mentions trade name and it uses trade name as company name. The amended English caption and the following five sub articles do not match. Even though this Problem can be solved by allowing the prevalence Amharic version as provided under *Proclamation No. 3/1995 Federal Negarit Gazeta Establishment Proclamation* 2/4, the permanent solution will be more clarifying the proclamation through amendment. In addition, the amending proclamation²⁶ come up with new caption of Article 15 of the proclamation no 980/2016 with little improvements from “Registration of Trade Name” to “Registration of Trade Names “Under this amendments, even though there is an improvements which enables the use of Company name and Trade name in their perspective areas, the amending proclamation fails to amend those sub articles having problems. Lastly, The English version of the newly added sub article 16(4) clearly state that “*Trade name expressed under this article shall be applicable to company names*” and indicating that the use of trade name in lieu of Company name is intentional, But the Amharic version provides that:

“ይ/ በዚህ አንቀጽ ስለገገድ ስም የተገለፁት
ለድርጅት ስምም ያገለግላሉ።”

Unlike that of English version which lacks clarity, The Amharic version shows that the registration criteria set for trade name also serves for company name. *(The Amharic version of article 16/4 consists the word ስለ which means about , so it's about Trade Name and company name not interchangeable use of these two names)*

6. Conclusion and Recommendations

In nutshell Company name and trade name are two different names and applies in different circumstances. As mentioned under Directive no 003/2007, Directive to accelerate registration of Business Organization Name and its annex explanatory notes, while company name is for personal identification, trade name is for product identification. Regarding the existing legal terminology problem on use of Trade Name and Company name under Ethiopian Commercial registration and Licensing Proclamation and its amendments, there is clear discrepancy between Amharic and English version of the proclamation and it could be resolved by allowing Amharic version to prevail and amending the proclamation to avoid this discrepancy will be permanent solution.

²⁶ Proclamation no 1150/2019 Ethiopian Commercial registration and Licensing Proclamation/amendment