



DELBERT HOSEMANN
Secretary of State

2009 Business Reform Study Groups
Minutes of the Trade Name Laws Study Group, Meeting #1
August 12, 2009

This meeting of the Trade Name Laws Study Group (hereinafter the "Study Group" or the "committee") was called to order on Wednesday, August 12, 2009 at 11:00 A.M. at the offices of Watkins Ludlam Winter and Stennis, P.A., 190 East Capitol Street, Suite 800, Jackson, Mississippi. A list of the persons in attendance is attached as Exhibit A.

Welcome and Introduction

Cheryn Baker, Assistant Secretary of State for the Policy and Research Division (the "Division"), welcomed everyone, and thanked Co-Chairman Whit Rayner and Watkins Ludlam for hosting the meeting. Cory Wilson, Chief of Staff, who thanked the committee on behalf of Secretary Hosemann who was unable to attend, mentioned that nothing is "off the table" in these study group meetings, and the goal is to make Mississippi the most business-friendly state in the Union.

Remarks by Co-Chair

Co-Chair Anne Turner introduced herself and mentioned that the materials offer a good overview of the benefits of trade name registration. She expressed her belief that adoption of some form of trade name registration is a worthwhile goal.

Outline of the Issues

Doug Jennings, Senior Attorney for the Division outlined the relevant trade name registration issues based on the research memorandum included in the materials.

1. Purpose of Trade Name Registration Statutes: The principal purpose behind such laws (which have been adopted in forty-five states) is to provide protection to businesses and the general public in dealing with businesses that operate under a fictitious name. Creditors, such as banks, have a particular interest in a system that allows them to verify the identity of the person or entity with whom they are doing business, but the statutes also protect any individual or business that engages in business activities with other entities that operate under a fictitious name.

2. Trade Name Registration versus Trademark Registration: Mr. Jennings explained that the purpose of a trademark is to distinguish one's business from other businesses, and to inform the consumers that a product or service comes from a certain source. Conversely, trade name registration laws provide the general public and businesses with information about the owners of businesses that use trade names. While trademark law deals with exclusivity and intellectual property rights, these areas are not the provenance of trade name registration law. There is a need to conceptually differentiate the two areas, which several states have failed to do.

3. Statewide versus County Registration: Most states have adopted a statewide registration system with a central filing location. However, some states require registration on a county-by-county basis, which can create difficulties for not only the entity that may have to register in several counties, but also for individuals who have to check with multiple counties to find the information they are seeking. There was a general consensus among the committee members that a statewide registration system with a single, central filing location is the best option.

4. Optional versus Mandatory Registration: Most states have made registration mandatory. However, many of those states carve out exceptions for various business entities such as corporations and LLCs, due to the fact that those types of entities are subject to other filing requirements that provide for identification information. The Group discussed the possibility of adopting an optional registration statute that would provide businesses with incentives to register, such as use of the state court system and the ability to secure lending.

5. Exclusive Rights: Some states offer entities that register their trade name exclusive rights to use of that name. However, such a system creates some conflict with intellectual property rights. Providing exclusive rights is a common result of confusing trademark and trade name law. Exclusivity should be left to trademark law.

General Discussion and Suggestions for Further Research

Treatment of Existing Businesses: Several members were concerned with how the trade name registration of existing businesses would be handled retroactively under a registration law. The Study Group will review and consider what other states have done, not only to collect the newly-registered names, but also to grandfather and transition existing businesses into the system.

Mr. Riley suggested that perhaps a form could be sent out to existing businesses requesting minimal information – i.e. trade name, company or person that operates under the name, and an address. However, the magnitude of such a project must be considered in any decisions the committee makes. By most estimates, sole proprietorships account for the majority of businesses currently operating.

One final consideration is the treatment of franchises. Since franchises are owned and operated by other entities, there will be an inundation of similar trade name registrations. One of

the committee members suggested researching how other states handle registrations for franchises.

Incentives for Registration: Several members voiced support for an optional system that offers an incentive for businesses to register, such as the ability to utilize the court system or to secure a loan. While it may not produce immediate results, over time it will be in the best interest of businesses to register their name and a substantial database will develop. The Division will research the incentives other states have used and provide this information to the Group.

It was generally agreed upon that the purpose of the trade name registration statute would be to provide the public with a tool to help them verify the identity of a business operating under a fictitious name at a particular address or place of business. For example, members mentioned that a common problem in the banking industry is the inability to verify the identity of a customer who tries to open an account with a check that has a company's trade name and address on it. With a database of trade names and their addresses to consult, the bank should nevertheless be able to identify whether their customer's information matches that of at least one of the registered entities in the database.

Narrowing the Scope: Mr. Wilson suggested that the committee may be able to narrow the scope of the issues, given the fact that there seemed to be a general consensus that a trade name registration statute would be beneficial for Mississippi. One of the committee members expressed interest in hearing from the legislators on the matter before moving forward with any decisions. Two of the members representing the legislature expressed positive support for trade name registration, provided certain issues are further researched and addressed, such as how the registration of existing businesses will be handled.

Upon a motion and a second, the Group unanimously recommended that Mississippi adopt a trade name registration statute with a statewide filing system.

Reminder of Upcoming Meetings

After a reminder of the upcoming meetings, scheduled for September 2 and 16, the meeting was adjourned at 12:12 p.m.

Respectfully Submitted,



Cheryn Baker
Assistant Secretary of State
Policy and Research

Exhibit A
to the August 12, 2009 Minutes of Trade Name Laws Study Group, Meeting #1

Members in Attendance:

1. Thomas Alexander
2. Elisabeth Byrd
3. Stephen Carmody
4. Joy Phillips
5. Marc Porter
6. Caryn Quilter
7. Whit Rayner, Co-Chair
8. Tom Riley, Assistant Secretary of State, Business Services
9. Anne Turner, Co-Chair
10. Rep. Shaun Walley

Members Attending by Telephone:

1. Sen. Videt Carmichael
2. Michael Goggans

Secretary of State Personnel in Attendance:

1. Cory Wilson, Chief of Staff
2. Cheryn Baker, Assistant Secretary of State, Policy and Research Division
3. Martin Hegwood, Senior Policy Counsel, Policy and Research Division
4. Doug Jennings, Senior Attorney, Policy and Research Division
5. Brian Bledsoe, Special Counsel to Secretary, Policy and Research Division
6. Michael Kelly, Intern, Policy & Research Division