

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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HEARINGS OFFICE

BUSINESS REGISTRATION DIVISION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Corporate Name:) CN-2009-1
)
"KA LOKAHI OKA) DIRECTOR'S
MALAMALAMA") FINAL ORDER
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)
)
_____)

DIRECTOR'S FINAL ORDER

I. INTRODUCTION

On February 6, 2009, Hoomana Naauao O Hawaii ("Petitioner") filed a petition for an order of abatement against the infringement of the name "Ka Lokahi oka Malamalama." The matter was scheduled for hearing, and the Notice of Hearing and Pre-hearing Conference was duly transmitted to the parties.

The parties requested that the hearing be continued to allow the parties to mediate the dispute. The mediation was unsuccessful and the matter proceeded to hearing.

The above-captioned matter was heard on November 10, 12, 13 and December 3 and 10, 2009. On or about November 5, 2010, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the Director of the Department of Commerce and Consumer Affairs ("Director"). Copies of the Hearings Officer's recommended decision were also transmitted to the parties. On November 23, 2010, written exceptions were filed by Respondent Ka Lokahi Oka Malamalama ("Respondent") and an opportunity to provide oral

argument was requested. Petitioner filed a statement in support of the recommended decision on December 8, 2010 and did not request oral argument.

Oral argument was granted and the matter was heard by the Director on April 13, 2011.

After review of the oral arguments and the entire record of the proceedings before the Hearings Officer and the Director, the Director hereby adopts the Hearings Officer's Findings of Fact and Conclusions of Law in part and amends in part. The Director's final order is as follows:

II. FINDINGS OF FACT:

1. Petitioner is a Hawaii non-profit corporation incorporated on February 20, 1911, with its principal place of business in the City and County of Honolulu, State of Hawaii, and has conducted church business since its inception.

2. Respondent is a Hawaii non-profit corporation formerly known as Ransom Ministries.

3. Petitioner, founded by John Kekipi in 1889, has conducted its church services in the Hawaiian language since the 1850's. Kekipi named his denomination "Hoomana Naauao," which non-members translate as meaning "reasonable service."

4. All of Petitioner's church buildings have names which end with "oka Malamalama."

5. Historical photographs, public service announcements, and newspaper articles feature Petitioner as the parent church to many churches located throughout the Hawaiian islands, including specific mention to the two churches on Lanai, one of which is the church involved in the dispute in this current action.

6. From 1995 through 1998, guest books maintained at the Lanai church reflect the name of the Lanai church as "Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii."

7. The Four Seasons Resort Lanai, which is owned by Castle & Cooke who were the landlords to the church property, is the current location of the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church.

8. The Four Seasons Resort Lanai acknowledged that the full name of the Lanai church is “Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii.”

9. According to the Petition for Charter dated February 14, 1911, which was approved by the Governor of the Territory of Hawaii, the Petitioner had “branch missions and churches at various places throughout the Territory of Hawaii.”

10. Petitioner was the parent church, like an umbrella, to individual churches under it.

11. The church named Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii at Koele on the island of Lanai was dedicated on March 16, 1930.

12. Petitioner has continuously maintained and operated the Lanai church under the name “Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii” since 1930.

13. There is no evidence that another church with the name Ka Lokahi oka Malamalama has been continuously operating since 1930.

14. Petitioner has used the name “Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii” solely and exclusively in connection with its church in Lanai.

15. Prior to the establishment of the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church, the family of Irene Perry, who include the Crockett family and others who have had a long and varying history with Petitioner, were members of Ka Lanakila oka Malamalama Hoomana Naauao o Hawaii from 1903 to 1930.

16. Subsequently, members of Irene Perry’s family were leaders and members of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church.

17. In 1932, Robert E. Crockett was a newly ordained minister of Petitioner and in 1929, he was appointed a Board Member and was the Kahu until his death in 1959.

18. In 1939, Irene Perry’s sister was also ordained as a minister of Petitioner.

19. On July 27, 2008, Irene Perry, while still a member of Petitioner and delegate of the general assembly of Petitioner, notified the lessor of the church property, Castle & Cooke, LLC, of the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church congregation’s decision to disassociate from Petitioner and requested a new lease for the church.

20. Not all members of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii agreed to dissociate.

21. In response to Irene Perry's request for a new lease for the church, Gary Yokoyama, on behalf of Castle & Cooke, required that some type of properly incorporated nonprofit entity be formed that could sign the lease.

22. Irene Perry along with others who wished to disassociate took over the inactive nonprofit known as Ransom Ministries.

23. Ransom Ministries filed with the Department of Commerce and Consumer Affairs ("DCCA") Articles of Amendment to Change Corporate Name from Ransom Ministries to Ka Lokahi oka Malamalama effective October 7, 2008.

24. On or about October 15, 2008, Ransom Ministries, operating as Ka Lokahi oka Malamalama, filed with the DCCA an annual report listing then still current members of Petitioner, Irene Perry, Moana Frietas, Momi Suzuki and Jerry Frietas.

25. Ransom Ministries filed with the DCCA for the name change while its members were still associated with Petitioner.

26. Irene Perry, Moana Frietas, Momi Suzuki and Jerry Frietas did not disassociate from Petitioner until December 4, 2008.

III. CONCLUSIONS OF LAW:

1. In *Stout v. Laws*, 37 Hse. 382, 477 P.2d 166 (1946), the Hawaii Supreme Court stated:

Trade names may be established without registration under the Acts of Congress relating to trademarks or copyrights and without registration under the local law pertaining to trademarks and trade names. They are acquired by adoption and use for a period of time sufficiently long for the public to associate the name with the business to which it is applied. They belong to the one who first uses them and gives them value.

Id. at 385.

2. According to the principles of *Stout*, ownership rights to trade names are acquired through their adoption by a viable business entity within the stream of commerce. The registration of a trade name or trademark is evidence used to indicate use

rather than proof of ownership, and the continued registration of a trade name is only as good – when challenged – as the underlying basis upon which it rests. *Out of the Blue Productions*, TN-94-5 (DFO August 16, 1995); *Kona Gold Coffee Drink*, TN-83-23 (DFO April 10, 1990).

3. It is well-settled that the ownership right to a trade name is developed through continuous and active use in the market place and not by mere registration. *Waikiki Surf Club*, TN-89-19 (DFO January 9, 1991).

4. The origins of the name may be in dispute but the important factor here is first usage in the stream of commerce or in this case, holding the name out to the public in connection with church operations.

5. The evidence presented was sufficient to prove that Petitioner was the first to use the name “Ka Lokahi oka Malamalama” in the public sphere in connection with its church operations on the island of Lanai since 1930.

6. The evidence also proved that Petitioner actively and continuously used the name “Ka Lokahi oka Malamalama” for the past eighty (80) years and has a superior right to the name.

7. The evidence did not establish that Petitioner intended to abandon its rights to the name.

8. Based on the foregoing findings and conclusions, the Director finds and concludes that Petitioner has proved by a preponderance of the evidence that Petitioner has common law rights of ownership to the name “Ka Lokahi oka Malamalama.”

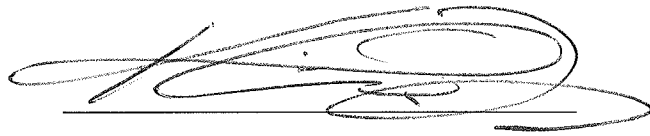
IV. ORDER:

Accordingly, the Director hereby issues an Order of Abatement that within 60 days of the issuance, Respondent shall (1) change its registered name; (2) register the new name with the Director; and (3) transact business in this State under its new name. If Respondent fails to comply with this Order of Abatement within the 60-day period, the Director may involuntarily dissolve or terminate Respondent, or cancel or revoke Respondent’s registration upon the filing of an affidavit from Petitioner attesting (1) to Respondent’s noncompliance with the Order of Abatement, (2) that the time to appeal has lapsed; and (3) that no appeal has been timely filed by Respondent. In such event, notice of

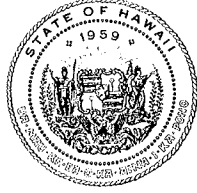
the involuntary dissolution, termination, or cancellation shall be mailed to Respondent at its last known mailing address and Respondent shall wind up its affairs in accordance with HRS Chapters 482 and 428, as applicable.

The Director further orders that each party bear its own attorney's fees and costs incurred in relation to the hearings before the Hearings Officer and the Director.

DATED: Honolulu, Hawaii, MAR 14 2012

A handwritten signature in black ink, appearing to read 'KEALI'I S. LOPEZ', written over a horizontal line.

KEALI'I S. LOPEZ
Director
Department of Commerce and Consumer Affairs



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS
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BUSINESS REGISTRATION DIVISION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Corporate Name,) CN-2009-1
)
"KA LOKAHI OKA) HEARINGS OFFICER'S
MALAMALAMA") FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND RECOMMENDED
) ORDER
)

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On February 6, 2009, Hoomana Naauao o Hawaii ("Petitioner"), filed a petition for an order of abatement against the infringement of the name, "Ka Lokahi oka Malamalama". The matter was scheduled for hearing, and the Notice of Hearing and Pre-hearing Conference was duly transmitted to the parties.

Respondent Ka Lokahi oka Malamalama ("Respondent") and Petitioner thereafter requested that the hearing be continued to allow the parties to mediate the dispute. The mediation, however, was unsuccessful and the matter proceeded to hearing.

On November 10, 2009, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer. Petitioner was represented by David J. Gierlach, Esq. Respondent was represented by James Hochberg, Esq. The hearing continued on November 12, 2009, November 13, 2009 and December 3, 2009, and concluded on December 10, 2009. At the close of the hearing, the Hearings Officer directed the parties to file proposed findings of fact and conclusions of law. Accordingly, on February 19, 2010,

Petitioner filed its proposed findings of fact and conclusions of law and on February 22, 2010, Respondent filed its proposed findings and conclusions.

Having reviewed and considered the evidence and arguments presented by the respective parties at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order. The parties' proposed findings and conclusions were adopted to the extent that they were consistent with the established factual evidence and applicable legal authority, and were rejected or modified to the extent that they were inconsistent with established factual evidence and applicable legal authority, or were otherwise irrelevant.

II. FINDINGS OF FACT

1. Petitioner is a Hawaii non-profit corporation incorporated on February 20, 1911, with its principal place of business in the City and County of Honolulu, State of Hawaii, and has conducted church business since its inception.

2. Respondent is a Hawaii non-profit corporation formerly known as Ransom Ministries.

3. The officers and directors of Respondent, Irene Perry (President/Director), Moana Freitas (Vice President/Director), Momi Suzuki (Treasurer/Director), and Jerry Freitas (Director), were previously members of Petitioner.

4. The first church of Petitioner was founded in Kohala, Hawaii, on April 16, 1853.

5. Petitioner, founded by John Kekipi in 1889, has conducted its church services in the Hawaiian language since the 1850s. Kekipi named his denomination "Hoomana Naauao," which non-members translate as meaning "reasonable service." Petitioner's churches (currently Ke Alaula oka Malamalama, KeKilohana oka Malamalama, Ka Mauloa oka Malamalama, Ka Lokahi oka Malamalama, and Ka Lanakila oka Malamalama) are used for the practice of its Christian beliefs.

6. All of Petitioner's church buildings have names which end with "oka Malamalama."

7. Petitioner was the parent company or mother church, like an umbrella, and the individual churches were under it.

8. The Lanai congregation agreed to name the church, “Ka Lokahi oka Malamalama”, which was approved by Petitioner.

9. Photographs, public service announcements, and newspaper articles feature Petitioner and its churches located throughout the Hawaiian Islands.

10. Current and former members of Petitioner acknowledged that the full name of the Lanai church was, “Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii” and that Ka Lokahi oka Malamalama is part of and under Petitioner.

11. From 1995 through 1998, guest books maintained at the Lanai church reflected the name of the Lanai church as “Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii”.

12. The Four Seasons Resort Lanai, which is owned by Castle & Cooke and is the current location of the Ka Lokahi oka Malamalama church, also acknowledged that the full name of the Lanai church is “Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii.”

13. According to the Petition for Charter dated February 14, 1911, which was approved by the Governor of the Territory of Hawaii, Petitioner’s purposes “are purely those of religion, charity, education and general relief” and that “its main church and mission is at Koula, near King and South Streets in said Honolulu, with branch missions and churches at various places throughout the Territory of Hawaii.”

14. The Petition for Charter dated February 14, 1911 further states that Petitioner “will greatly increase its holdings of property and greatly extend its work and will.”

15. Pursuant to the Statement of Property of Petitioner attached to its Petition for Charter dated February 14, 1911, “[a]ll the buildings are owned by the church.”

16. According to Petitioner’s Charter of Incorporation dated February 20, 1911, Petitioner has “all the rights, privileges, powers and immunities which are now or may hereafter be secured by law to incorporated ecclesiastical, eleemosynary and educational bodies, and especially with power among other things . . . maintain churches, . . . in the Territory of Hawaii.”

17. According to Petitioner's Constitution of the Evangelical Island General Assembly, By-Laws and Rules, "[t]here shall be established one general assembly to be known as the Evangelical Island General Assembly of the Hoomana Naauao o Hawaii, which shall be the governing body of the church. Its headquarters shall be in Honolulu."

18. Section 15 of Petitioner's By-Laws affirms that the general assembly shall always be regarded as the superior and governing body having control over all subordinate associates: "No question or subjects of deliberation by this association shall be submitted to a board of local district church control with intent to relegate its authority to such subordinate body, and this association shall always be regarded as the superior and governing body having control over all subordinate associations. Decisions of this body shall be respected by the subordinate bodies."

19. The general assembly meets once a year in the month of July. When the general assembly is not in session, the board of directors governs Petitioner.

20. According to Petitioner's Constitution of the Evangelical Island General Assembly, By-Laws and Rules, the general assembly owns and governs the churches, including the Lanai church named Ka Lokahi oka Malamalama.

21. Section 5 of Petitioner's Constitution further states that, "[f]rom out of this assembly there shall be established associate branches on each island, and they shall be called, the island evangelical assembly. Such island assemblies shall be governed by and under this constitution, by-laws and rules of this association; and such island assemblies shall elect officers as follows: President, Vice-President, Secretary and Treasurer who shall be elected in July of each year, in each jurisdiction."

22. Pursuant to Petitioner's Charter of Incorporation and Constitution, By Laws and Rules, Ka Lokahi oka Malamalama became a part of the island evangelical assembly, is governed by and under Petitioner's Constitution, By-Laws and Rules, and has its own elected officers.

23. Section 6 of Petitioner's Constitution states that, "Delegates shall be elected from each island association, or district association, to represent each and every society organized."

24. Section 3 of Petitioner's Constitution states that the elected Delegates, together with the pastors of churches, evangelical teachers, delegates from the evangelical schools (classes), presidents of young people's societies, the delegates from the young people's societies, the general superintendent of Sunday schools elected for the whole islands, and the members of the Board of Trustees, are authorized to participate at the annual general assembly.

25. Members of Petitioner are also permitted to attend the general assembly to observe.

26. Section 6 of Petitioner's By-Laws states that in order for a Delegate to be a member of the association and thus participate at the annual general assembly, "the general secretary shall have received his commission duly signed by the secretary and president of each district organization written upon legal cap paper and in ink or upon blanks furnished."

27. Pursuant to Section 6 of Petitioner's By-Laws, various members of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii received their commission to participate as Delegates at the annual general assemblies on behalf of the members of Ka Lokahi oka Malamalama.

28. Rule 4 of Petitioner's Rules states that Church Reports shall be presented by the pastor, church delegates from the several districts, and by the island church delegates at the annual general assembly.

29. The church named Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii at Koele on the island of Lanai was dedicated on March 16, 1930.

30. Petitioner has maintained and operated the Lanai church under the trade name, "Ka Lokahi oka Malamalama Ho'omana Na'auao o Hawaii since 1930.

31. Petitioner has used the name, "Ka Lokahi oka Malamalama" solely and exclusively in connection with its church in Lanai

32. Prior to the establishment of the Ka Lokahi oka Malamalama Hoomana Naauao O Hawaii church, Irene Perry's family were members of Ka Lanakila oka Malamalama Hoomana Naauao o Hawaii from 1903 to 1930.

33. At the annual Convention of Petitioner on July 29, 1932, Robert E. Cockett and James Kauila were newly ordained as ministers of Petitioner.

34. At the annual Convention of Petitioner on July 8, 1939, Rev. Robert E. Cockett was appointed as a Board Member of Petitioner pursuant to the Charter of Incorporation and the Constitution of Petitioner, and was the Kahu (Pastor) of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church until his death in 1959.

35. At the annual Convention of Petitioner held in July 1939, Mary Kalawaia, Irene Perry's sister, was also newly ordained as a minister of Petitioner.

36. In July 1939, Rev. Robert E. Cockett presented his president's report of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii to Petitioner's annual general assembly.

37. As a Board Member of Petitioner, Rev. Robert E. Cockett also signed as a Trustee of Petitioner a deed for the transfer of real property located at Kaunakakai, Molokai.

38. Mary Kalawaia also presented her report of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii to Petitioner's annual general assembly held in July 1939.

39. Rev. Robert E. Cockett, as the Kahu (Pastor) of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii, together with delegate Rev. Mary Kalawaia, presented the Church Reports at Petitioner's annual general assembly in July 1955.

40. On or about September 11, 1954, Rev. Robert E. Cockett, as a Trustee and Board Member of Petitioner, entered into negotiations with W. W. Aldrich of Hawaiian Pineapple Company to lease the land from Hawaiian Pineapple Company which the Ka Lokahi Oka Malamalama Hoomana Naauao o Hawaii church was located on in Koele, Lanai.

41. In his September 11, 1954 letter to Rev. Robert E. Cockett, W.W. Aldrich stated it was his understanding that if the lease was recorded, an exemption from taxation may be obtained.

42. W. W. Aldrich also acknowledged in his September 11, 1954 letter that the church building is the property of the congregation.

43. On or about October 21, 1954, Petitioner's Board member and Trustee Rev. Robert E. Cockett, accepted the terms and conditions of Hawaiian Pineapple Company to lease the land in Koele, Lanai.

44. On or about August 19, 1955, Petitioner's Board member and Trustee Rev. Robert E. Cockett, and Rev. Mary K. Kalawaia, duly ordained clergy of Petitioner, executed on behalf of Petitioner that certain Lease by and between Hawaiian Pineapple Company, Limited, as Lessor, and Hoomana Naauao o Hawaii, as Lessee, effective September 1, 1954.

45. During this time period, the Kahu or pastor of each church had the authority to sign a lease on behalf of Petitioner.

46. According to the August 19, 1955 Lease, if the Lessee (Petitioner) "fail[ed] to pay the said rental or any part thereof within ten (10) days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall fail to observe or perform faithfully any of the covenants or agreements herein contained and on the part of the Lessee to be observed and performed and any such default shall continue for a period of thirty (30) days after mailing notice of such default by registered mail to the last known address of the Lessee, then and in any such event, the Lessor . . . , at the option of the Lessor terminate and cancel this lease."

47. Pursuant to paragraph 13, page 7, of the August 18, 1955 Lease, Petitioner, as Lessee, "shall and will remove from said premises any buildings, structures and/or fixtures which are now located on the premises or which may have been placed therein by the Lessee during said term, as well as any and all personal property situate thereon."

48. In his August 25, 1955 letter to Rev. Robert E. Cockett of Petitioner, W.W. Aldrich advised Petitioner that the August 19, 1955 Lease could not be recorded because the land involved was part of a large Land Court lot, and therefore Petitioner would be unable to obtain the exemption from real property taxes.

49. According to Petitioner's Annual Eleemosynary Corporation Exhibit for the fiscal period ending July 31, 1955, the Ka Lokahi oka Malamalama church building was not identified as an asset of Petitioner apparently because the property was not tax exempt.

50. The lease term was extended by that certain Extension of Lease dated July 29, 1974, by and between Castle & Cooke, Inc., as Lessor, and Hoomana Naauao o Hawaii, as Lessee.

51. In the late 1980s, the Ka Lokahi Oka Malamalama Hoomana Naauao o Hawaii church was relocated by the Lessor, Castle & Cooke, Inc., from Koele to The Lodge at Koele.

52. Although the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church was relocated to The Lodge at Koele, the Lessor, Castle & Cooke, Inc., agreed that the August 19, 1955 Lease applied to the current location of the church.

53. The members of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii were aware, among other things, that (a) only Petitioner's ministers could perform marriages, blessings, baptisms or conduct sermons at the church; (b) only members of Petitioner are allowed to be married (blessed, or baptized) at the church; (c) the church was not to be used or rented for any services of any kind for anyone, however guests were welcome to participate in the services. The members of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii never contested this policy imposed by Petitioner.

54. Abiding by Petitioner's policy, Jerry Freitas became a member of Petitioner so that he could marry Moana Freitas in the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church.

55. Jerry Freitas was baptized and received a certificate from Petitioner showing that he was a member.

56. The Lodge at Koele was also notified of Petitioner's policy that only members of Petitioner are allowed to be married, blessed or baptized at the church, and that Petitioner was not in the marriage services business.

57. At the annual Convention of Petitioner on July 30, 2005, Jerry Freitas was newly ordained as a minister of Petitioner after several prior efforts seeking ordination had been rejected by Petitioner.

58. Members of Petitioner acknowledged that Jerry Freitas was a minister ordained and sent by Petitioner to the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church.

59. At the annual Convention of Petitioner in July 2005, Moana Freitas presented the Financial Report of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii to Petitioner at the annual general assembly.

60. In July 2005, Jerry Freitas was also appointed as a Board Member of Petitioner pursuant to the Charter of Incorporation and the Constitution of Petitioner at the annual general assembly until his termination in July 2008.

61. At the July 2005 annual general assembly, Rev. Jerry Freitas reported, among other things, that the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church was in need of repair and requested approval to initiate the repairs to show that an effort was being made to restore the church in order to request financial assistance from the Lessor.

62. Pursuant to paragraph 12, page 7, of the August 19, 1955 Lease, Petitioner as Lessee, was required to first obtain written approval from the Lessor prior to making any and all constructions, replacements, alterations, additions and/or remodeling to the premises.

63. On or about September 27, 2005, Rev. Jerry Freitas, on behalf of Petitioner, submitted to the Lessor, Castle & Cooke, Inc., a request for approval to make repairs and improvements to the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church.

64. The request included a proposal from Wasco Builders, LLC dated December 7, 2005. According to the proposal, Wasco Builders agreed to secure all materials for the repairs and improvements through donations and believed it could accomplish this goal "with the letters gained from the Mother Church in Honolulu."

65. Rev. Jerry Freitas, on behalf of and in the name of Petitioner, also applied for a building permit with the County of Maui for the rehabilitation and repair work to the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church, which included a floor plan for the proposed repair work containing the name, "Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii Church."

66. On or about January 6, 2006, the Lessor, Castle & Cooke, Inc., reviewed and approved the plans submitted by Rev. Jerry Freitas on behalf of Petitioner to repair and improve the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church.

67. Rev. Jerry Freitas was appointed from the district church of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii to represent the church in the annual general assembly of Petitioner which was held on July 24, 25, and 27, 2008.

68. According to the report prepared by the delegates and officers of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii in July 2008, which was signed by Jerry Freitas, the officers of Ka Lokahi oka Malamalama were: Rev. Bettina Recca, as President (Pelekikena), Rev. Jerry Freitas, as Vice President (Hope Pelekikena), Moana Freitas, as Secretary (Kekauolelo), and Momi Suzuki, as Treasurer (Puuku).

69. However, according to the First Hawaiian Bank signature card, Moana Freitas signed as President and Momi Suzuki signed as Secretary on behalf of Petitioner without the approval and consent of the officers of Ka Lokahi oka Malamalama and the board of directors of Petitioner.

70. In July 2008, Rev. Jerry Freitas presented the Church Report to Petitioner at the annual general assembly. During the presentation, another request was made for Petitioner to appoint a resident Kahu for the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church.

71. During the July 2008 general assembly, Irene Perry, as a Delegate from Ka Lokahi oka Malamalama, presented the Financial Report of Ka Lokahi oka Malamalama to Petitioner.

72. At no time did the members of Petitioner, as delegates from Ka Lokahi oka Malamalama, refuse to submit the required financial reports to Petitioner.

73. At the July 2008 annual general assembly of Petitioner, Jerry Freitas was also terminated from his duties as a minister of Petitioner on July 24, 2008.

74. Immediately after Jerry Freitas' termination from his duties as a minister of Petitioner, Irene Perry, while still a member of Petitioner and a delegate of the general assembly, notified the Lessor, Castle & Cooke, LLC, on July 27, 2008 of the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church congregation's decision to disassociate from Petitioner and requested a new lease for the church.

75. Not all members of Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii agreed to dissociate from Hoomana.

76. In response to Irene Perry's request for a new lease for the church, Gary Yokoyama, on behalf of Castle & Cooke, required that some type of properly incorporated non-profit entity be formed that could sign the lease.

77. In the meantime, on or about October 7, 2008, Petitioner notified the Lessor, Castle & Cooke, and The Lodge at Koele that the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church no longer had a resident minister.

78. On or about October 7, 2008, Petitioner also notified members of the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church, including Jerry Freitas who was still a member of Petitioner, of a meeting to be held after communion service on October 19, 2008 to discuss the future of the church.

79. Upon receipt of Petitioner's letter of October 7, 2008 and Castle & Cooke's requirement that a non-profit entity be formed to sign a new lease, Irene Perry, Momi Suzuki, Moana Freitas, and Jerry Freitas took over the inactive non-profit corporation known as Ransom Ministries from Roberto Ortiz.

80. Ransom Ministries filed with the Department of Commerce and Consumer Affairs ("DCCA") Articles of Amendment to Change Corporate Name from Ransom Ministries to Ka Lokahi oka Malamalama effective October 7, 2008.

81. Petitioner did not give Ransom Ministries permission to use the name, "Ka Lokahi oka Malamalama" nor did Respondent claim that it owned or had a right to use the "Ka Lokahi oka Malamalama" name.

82. On or about October 15, 2008, Ransom Ministries, operating as Ka Lokahi oka Malamalama, also filed with the DCCA its Domestic Nonprofit Corporation Annual Report as of July 1, 2008, listing then still current members of Petitioner, Irene Perry, Moana Freitas, Momi Suzuki, and Jerry Freitas.

83. As of October 15, 2008, Irene Perry, Moana Freitas, Momi Suzuki, and Jerry Freitas were still members of Petitioner and did not dissociate from Petitioner until December 4, 2008.

84. On or about November 18, 2008, the Lessor, Castle & Cooke, LLC, provided to Irene Perry a Letter Agreement to enter into a new license agreement to occupy and use the Ka Lokahi oka Malamalama Hoomana Naauao o Hawaii church to the non-profit corporation now known as Ka Lokahi oka Malamalama (fka Ransom Ministries) under certain terms and conditions, including the right of Castle & Cooke, LLC to “use or direct the use of the Church and Church Properties not more than twenty (20) times per year or more than two (2) times in any given month in a manner which would be consistent with customary church uses and purposes (e.g. weddings).”

85. While still a member of Petitioner, Irene Perry agreed and accepted the terms and conditions set forth in Castle & Cooke, LLC’s Letter Agreement dated November 18, 2008 and signed as the President of Respondent Ka Lokahi oka Malamalama on November 27, 2008.

86. Upon receipt of Irene Perry’s acknowledgment and acceptance of the terms and conditions of Castle & Cooke, LLC’s Letter Agreement dated November 18, 2008, Castle & Cooke sent Petitioner a notice of cancellation of the August 19, 1955 Lease dated December 4, 2008.

87. Gary Yokoyama, the Vice President and Attorney for Castle & Cooke, the successor Lessor of the August 19, 1955 Lease, testified that he was aware of the dispute between the parent organization (Petitioner) and the Lanai congregation (Ka Lokahi oka Malamalama) and that he wanted the Lanai people to have the church.

88. Gary Yokoyama further testified that Petitioner did not breach the terms of the August 19, 1955 Lease nor was the dispute between Petitioner and the Lanai congregation a breach of the Lease.

89. On or about January 19, 2009, Petitioner filed applications for registration of trade name to register the names of its churches, including Ka Lokahi oka Malamalama, unaware of the fact that Ransom Ministries had changed its corporate name to Ka Lokahi oka Malamalama on or about October 15, 2008.

90. On or about January 22, 2009, Petitioner was notified by the DCCA that the application for the trade name, Ka Lokahi oka Malamalama, had been rejected and that the name was already registered to someone else.

91. Petitioner did not consent to or authorize Ransom Ministries to use the name Ka Lokahi oka Malamalama.

92. Learning that Ransom Ministries changed its corporate name to Ka Lokahi oka Malamalama, Petitioner requested documentation from Respondent, including Respondent's 501(c)(3) exemption application.

93. The federal employer identification number (EIN) to open the bank account at First Hawaiian Bank for Ka Lokahi oka Malamalama belongs to Petitioner.

94. On May 18, 2009, Jerry Freitas asked Roberto Joseph Ortiz to call the Internal Revenue Service ("IRS") to inquire about the EIN number for Ka Lokahi oka Malamalama without Petitioner's consent or approval.

95. Roberto Ortiz instructed the IRS to fax the EIN verification letter dated May 18, 2009 to him rather than to Petitioner.

96. Neither Ortiz nor Jerry Freitas forwarded to Petitioner the May 18, 2009 letter from the IRS addressed to Ka Lokahi oka Malamalama c/o Petitioner at its Queen Street address.

97. Although Petitioner and its churches each maintain their own bank accounts, Petitioner has maintained a checking account and has been responsible for the payments of the operating expenses and liability insurance for the Lanai church under the trade name, "Ka Lokahi oka Malamalama".

III. CONCLUSIONS OF LAW

1. In *Stout v. Laws*, 37 Haw. 382, 477 P.2d 166 (1946), the Hawaii Supreme Court stated:

Trade names may be established without registration under the Acts of Congress relating to trademarks or copyrights and without registration under the local law

pertaining to trademarks and trade names. They are acquired by adoption and use for a period of time sufficiently long for the public to associate the name with the business to which it is applied. They belong to the one who first uses them and gives them value.

Id. at 385.

2. According to the principles of *Stout*, ownership rights to trade names are acquired through their adoption by a viable business entity within the stream of commerce. The registration of a trade name or trademark is a reflection of purported ownership rather than proof of ownership, and the continued registration of a mark is only as good - when challenged - as the underlying basis upon which it rests. *Out of the Blue Productions, TN-94-5 (DFO August 16, 1995); Kona Gold Coffee Drink, TN-89-23 (DFO April 10, 1990).*

3. It is well-settled that the ownership right to a trade name is developed through continuous and active use in the market place and not by mere registration. *Waikiki Surf Club, TN-89-19 (DFO January 9, 1991).*

4. The evidence presented was sufficient to prove that Petitioner originated the “Ka Lokahi oka Malamalama” name and began using the name in connection with its church operations on the island of Lanai since 1930.

5. The evidence also proved that Petitioner actively and continuously used the name, “Ka Lokahi oka Malamalama” for the past eighty (80) years and has a superior right to the name.

6. The evidence did not establish that Petitioner intended to abandon its rights to the name.

7. Based on the foregoing findings and conclusions, the Hearings Officer recommends that the Director of the Department of Commerce and Consumer Affairs (“Director”) find and conclude that Petitioner has proven by a preponderance of the evidence that Petitioner has common law rights of ownership to the name, “Ka Lokahi oka Malamalama”.

8. Accordingly, the Hearings Officer further recommends that the Director issue an Order of Abatement requiring that within 60 days of its issuance, Respondent shall (1) change its registered name; (2) register the new name with the Director; and (3) transact business in this State under its new name. The Hearings Officer also recommends that the Director's Order of Abatement provide that if Respondent fails to comply with the Order within the 60-day period, the Director may involuntarily dissolve or terminate Respondent, or cancel or revoke Respondent's registration or certificate of authority upon the filing of an affidavit from Petitioner attesting (1) to Respondent's noncompliance with the Director's Order of Abatement, (2) that the time to appeal has lapsed; and (3) that no appeal has been timely filed by Respondent. In that event, notice of the involuntary dissolution, termination, or cancellation shall be mailed to Respondent at its last known mailing address and Respondent shall wind up its affairs in accordance with HRS Chapters 482 and 428, as applicable.

9. The Hearings Officer further recommends that each party bear its own attorney's fees and costs incurred in the matter.¹

DATED: Honolulu, Hawaii, NOV - 5 2010



CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs

¹ This decision does not address either party's rights over any bank accounts or the lease upon which the Lanai church is situated. These issues are beyond the scope of this proceeding and the Hearings Officer's authority.