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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) TN 2010-2
Trade Name) DIRECTOR'S FINAL ORDER
"AADVANCED FIRE PROTECTION)
SERVICES.")
_____)

DIRECTOR'S FINAL ORDER

On September 14, 2010, the duly appointed Hearings Officer issued her Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the parties. The parties were provided with an opportunity to file written exceptions, however no exceptions were filed.

Upon review of the entire record of this proceeding, the Director adopts the Hearings Officer's proposed decision as the Director's Final Order and grants Petitioner's petition to revoke the trade name "Aadvanced Fire Protection Services". Accordingly, the Director orders that Certificate of Registration No. 4046234 issued to Respondent on August 27, 2006 be revoked on the bases of non-use pursuant to HRS § 482-6 and prior ownership pursuant to HRS § 482-8.

DATED: Honolulu, Hawaii, 18 OCT 10


RONALD BOYER
Director
Dept. of Commerce
and Consumer Affairs



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2010 SEP 14 A 10:03

HEARINGS OFFICER

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

In the Matter of the)	TN 2010-2
)	
Trade Name)	HEARINGS OFFICER'S FINDINGS
)	OF FACT, CONCLUSIONS OF
"AADVANCED FIRE PROTECTION)	LAW AND RECOMMENDED
SERVICES.")	ORDER
)	
)	
)	

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

I. INTRODUCTION

On March 18, 2010, Bryan K. Marks, on behalf of Advanced Fire Protection and Advanced Fire Protection, LLC ("Petitioner") filed a petition requesting that the certificate of registration for the trade name "Aadvanced Fire Protection Services", issued by the Department of Commerce and Consumer Affairs as certificate of registration no. 4046234 to George T. Shansey ("Respondent") be revoked. The matter was set for hearing and the petition and Notice of Hearing and Pre-Hearing Conference ("Notice") were transmitted to the parties. Respondent received a copy of the Petition and Notice by certified mail on May 11, 2010.

On July 28, 2010, a hearing was conducted by the undersigned Hearings Officer. Mr. Marks appeared on behalf of Petitioner. Respondent failed to enter an appearance. Since proper service was made, the hearing proceeded as scheduled.

Having reviewed and considered the evidence and argument presented at the hearing, together with the entire record of this proceeding, the Hearings Officer renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT

1. On August 27, 2006, the Department of Commerce and Consumer Affairs issued Certificate of Registration No. 4046234 to Respondent for the trade name “Aadvanced Fire Protection”. The purpose of Respondent’s business is “fire protection and fire safety in homes and businesses”. The registration expires on August 26, 2011.

2. A general excise tax license has not been issued to Respondent under “Aadvanced Fire Protection Services” but Respondent has a general excise and use tax under the name “George Shansey Advanced Fire Protection”. The Department of Taxation’s listing states that Respondent’s business began on August 7, 2006.

3. “Aadvanced Fire Protection Services” is not listed in the 2010 Hawaiian Telcom Yellow Pages under “Fire Protection Services”.

4. “Aadvanced Fire Protection Services” does not come up on any online search.

5. “Aadvanced Fire Protection Services” is not licensed with the Fire Prevention Bureau for the Honolulu Fire Department.

6. Petitioner registered “Advanced Fire Protection” as a trade name on September 30, 1998 and this registration expires on September 29, 2014.

7. Advanced Fire Protection, LLC was organized on June 19, 2000. Its purpose is to “sell, service and install fire protection equipment and safety products.”

8. Petitioner’s business is based on Maui, and it sells, installs, and services automatic fire suppression systems as well as fire extinguishers, hoses, and safety protects. With new installation work outside Maui County, they only work with a general contactor.

9. Over the past three years, Petitioner has received numerous complaints about an “Advanced Fire Protection” that operates on Oahu. These complaints come to him because the complainants believe that Petitioner is “Aadvanced Fire Protection Services”.

III. CONCLUSIONS OF LAW

Petitioner seeks revocation of the trade name “Aadvanced Fire Protection Services” on the grounds of non-use under Hawaii Revised Statutes (“HRS”) § 482-6 and prior

ownership under HRS § 482-8 . In order to show non-use, Petitioner must show by a preponderance of the evidence that Respondent did not use the trade name “Advanced Fire Protection Services” for three hundred sixty-five (365) consecutive days immediately preceding the date of the filing of the petition which was March 18, 2010.

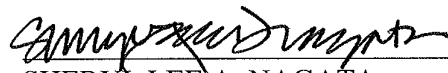
The evidence presented established that Respondent was not issued a general excise and use tax licenses under “Advanced Fire Protection Services”, did not list “Advanced Fire Protection Services” in the Oahu telephone directory and an online search did not reflect Respondent’s use of “Advanced Fire Protection Services”. Accordingly, the Hearings Officer concludes that Petitioner has proven by a preponderance of the evidence that Respondent has not used the trade name “Advanced Fire Protection Services” for three hundred sixty-five days prior to the filing of the petition.

Ownership rights to trade names are developed through continuous and active use in the marketplace and not by mere registration. *In re Opal of the Sea*, TM 82-19 (Director’s Final Order December 3, 1982). Based on the record in this case, it is clear that Petitioner, who began using “Advanced Fire Protection” since 1998, has continuously and actively used “Advanced Fire Protection” since that time.¹ Accordingly, the Hearings Officer finds that Petitioner has established by a preponderance of the evidence that it is the owner of “Advanced Fire Protection”.

IV. RECOMMENDED ORDER

For the reasons set forth above, the Hearings Officer recommends that the Director order that Certificate of Registration No. 4046234 issued to Respondent on be revoked on the bases of non-use pursuant to HRS § 482-6 and prior ownership pursuant to HRS § 482-8.

DATED: Honolulu, Hawaii, SEP 14 2010.



SHERYL LEE A. NAGATA
Acting Senior Hearings Officer
Dept. of Commerce
and Consumer Affairs

¹ The fact that Respondent’s trade name has the extra “a” in the word ‘advanced’ is inconsequential as Hawai’i Administrative Rules § 16-36-15(a)(2) provides that a name is “substantially identical” if: “[t]he name or marks are pronounced the same and the only variation is that a word (or words) is spelled differently. For example, ‘The Flour Shop, Inc.’ or ‘The Flower Shop, Inc.’; Waimanalo Suns, Inc.” or “Wamanalo Sons, Inc.”; or “Beach Days, Inc.” or Beach Daze, Inc.”