



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2012 MAR 20 A 11: 18

HEARINGS OFFICE

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

In the Matter of the	)	TN-2011-12
	)	(Consolidated Cases)
Trade Name)	
	)	DIRECTOR'S FINAL ORDER
"ASIANA AIRLINES")	
)	
<hr/>)	
In the Matter of the)	CN-2011-5
)	
Corporation Name)	DIRECTOR'S ORDER OF
)	ABATEMENT
"ASIANA AIRLINES")	
)	
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DIRECTOR'S FINAL ORDER
TN-2011-12

On February 29, 2012, 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 & Consumer Affairs ("Director"). Copies of the Hearings Officer's recommended decision were also transmitted to the parties. The parties were provided with an opportunity file written exceptions. Respondent Bob Choi filed written exceptions on March 12, 2012. Petitioners filed a written statement in support on March 14, 2012. Oral argument was not requested.

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 Petitioners'

petition to revoke the trade name “Asiana Airlines.” Accordingly, the Director orders that Certificate of Registration No. 4060160 issued to Respondent Bob Choi on January 24, 2008, be revoked on the basis of prior ownership pursuant to HRS §482-8.

**DIRECTOR’S ORDER OF ABATEMENT
CN-2011-5**

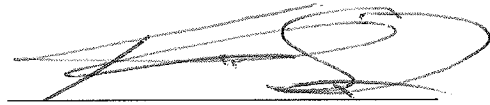
On February 29, 2012, the duly appointed Hearings Officer submitted his Findings of Fact, conclusions of Law and Recommended order in the above-captioned matter to the Director of the Department of Commerce and Consumer Affairs (“Director”). Copies of the Hearings Officer’s recommended decision were also transmitted to the parties. The parties were provided with an opportunity to file written exceptions. Respondent Asiana Airlines, Inc., a Hawaii corporation, through Mr. Bob Choi, its registered agent, filed written exceptions on March 12, 2012. Petitioners filed a written statement in support on March 14, 2012. Oral argument was not requested.

Upon review of the entire record of this proceeding, the Director adopts the Hearings Officer’s recommended decision as the Director’s Order of Abatement. Accordingly, the Director finds and concludes that Petitioners have established by a preponderance of the evidence that Petitioners have common law rights of ownership to the trade name “Asiana Airlines,” and that the use by Respondent Asiana Airlines, Inc., a Hawaii corporation, of “Asiana Airlines, Inc.” is confusing similar to Petitioners’ trade name and constitutes an infringement of Petitioners’ trade name.

Accordingly, the Director orders that within 60 days of its issuance, Respondent Asiana Airlines, Inc., a Hawaii corporation, 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 the Order within the 60-day period, the Respondent Asiana

Airlines, Inc., a Hawaii corporation, may be involuntarily dissolved or terminated or said Respondent's registration or certificate of authority may be cancelled or revoked upon the filing of an affidavit from Petitioners attesting: (1) to said Respondent's noncompliance with the Director's Order of Abatement herein; (2) that the time for appeal has lapsed; and (3) that no appeal has been timely filed by said Respondent. In that event, notice of the involuntary dissolution, termination, or cancellation shall be mailed to said Respondent at its last known mailing address, and said Respondent shall wind up its affairs in accordance with HRS Chapters 482, 414, 414D, 415A, 425, 425E, or 428, as applicable.

DATED: Honolulu, Hawaii, MAR 20 2012



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



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	)	TN-2011-12
	)	CN-2011-5
Trade Name	)	(Consolidated Cases)
)	
“ASIANA AIRLINES”	)	HEARINGS OFFICER’S FINDINGS OF
	)	FACT, CONCLUSIONS OF LAW AND
_____	)	RECOMMENDED ORDER
In the Matter of the)	
)	
Corporation Name	)	Senior Hearings Officer:
	)	David H. Karlen
“ASIANA AIRLINES”)	
_____)	

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

I. INTRODUCTION

On December 21, 2011, Petitioners KOREA KUMHO PETROCHEMICAL CO., LTD., Corporation Republic of Korea, KUMHO INDUSTRIAL CO., LTD., Corporation Republic of Korea and ASIANA AIRLINES, INC., Corporation Republic of Korea (collectively “Petitioners”) filed a Petition For Revocation (prior ownership); Verification; Declaration Of Wyeth M. Matsubara; Exhibits “A” Through “C”; Certificate Of Service with the Business Registration Division, Department of Commerce and Consumer Affairs, State of Hawai’i (“DCCA”) for use of the Trade Name “ASIANA AIRLINES.”.

The matter was assigned case number TN-2011-12. The Respondent in TN-2011-12 was Mr. Bob Choi, registrant of the trade name “Asiana Airlines” with the DCCA.

On December 21, 2011, Petitioners filed a Petition For Revocation (prior ownership); Verification; Declaration of Wyeth M. Matsubara; Exhibits “A” Through “C”; Certificate Of Service with the DCCA for use of the Corporate Name “ASIANA AIRLINES, INC.”.

This matter was assigned case number CN-2011-5. The Respondent in this matter was Asiana Airlines, Inc., a Hawaii corporation. Said Respondent’s registered agent is Mr. Bob Choi.

The two matters were consolidated. On January 10, 2012, the Office of Administrative Hearings (“OAH”) of the Department of Commerce and Consumer Affairs (“DCCA”) filed and issued a Notice of Hearing and Pre-Hearing Conference (“Notice of Hearing”). The Notice of Hearing:(1) acknowledgment receipt and filing of Petitioners’ Petitions; (2) scheduled the pre-hearing conference for February 6, 2012 at 9:00 a.m. and the hearing for February 27, 2012 at 9:00 a.m. at DCCA; (3) set forth exchange of witness and exhibit lists at the pre-hearing conference on February 6, 2012; and (4) required Respondent BOB CHOI (“Respondent”) to file a written response that substantially addressed the issue(s) raised in the Petitions no later than 10-days before the pre-hearing conference.

The certified mail receipt for the Notice of Hearing showed that the Notice of Hearing was received on behalf of Mr. Bob Choi on January 11, 2012.

On January 23, 2012, Mr. Bob Choi sent a letter to the Hearings Officer stating that: (1) he had received the Notice of Hearing; (2) that he had been away on an overseas trip; and (3) that he requested an extension of 3-4 months to do research and seek legal counsel.

On January 26, 2012, the Hearings Officer sent Mr. Bob Choi a letter: (1) acknowledging receipt of his letter; (2) denying his request for extension of time; (3) stating that he should come to the pre-hearing conference to discuss the hearing date and his request

for extension of time; and (4) stating that all future submissions to the Hearings Officer be also sent to Petitioners' attorney.

The certified mail receipt for the Hearings Officer's letter of January 26, 2012 showed that the letter was received on behalf of Mr. Bob Choi on January 27, 2012.

Neither Respondent filed any written response, much less a response that substantially addressed the issue(s) raised in the Petitions, by January 27, 2012 pursuant to the Notice of Hearing and Pre-Hearing Conference.

On February 6, 2012, Petitioners filed their Witness List, Exhibit List and Exhibits "A" through "M".

On February 6, 2012, Respondents did not file and exchange their Witness List, Exhibit List and Exhibits.

On February 6, 2012, the Hearings Officer held the scheduled Pre-Hearing Conference. Wyeth M. Matsubara, Esq., Petitioners' attorney was present and ready to exchange their witness and exhibit list. Respondents did not appear. The hearing date was confirmed for February 27, 2012.

On February 6, 2012, Petitioners mailed file-marked copies of their Witness List, Exhibit List and Exhibits "A" through "M" to Respondents.

On February 23, 2012, Petitioners filed and mailed their First Amended Exhibit List and Exhibit "N".

On February 27, 2012, the Hearings Officer held the hearing of the Petitioners' Petitions for Revocation. Wyeth M. Matsubara, Esq., along with Mr. Yong Joon Choi and Ms. Helen Lee appeared on behalf of Petitioners. Respondents did not appear at the hearing

and did not file any motions to continue the hearing date. Mr. Yong Joon Choi testified for Petitioners.

Having reviewed and considered the evidence and arguments presented 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.

II. FINDINGS OF FACT

1. Petitioners (hereinafter also referred to as “Asiana Airlines”) are a major airline operator in the air transportation business based in Asiana Town in Osae-dong, Kangseo-ku Seoul, Korea and was founded on February 17, 1988.

2. Asiana Airlines, along with air transportation passenger service operations, also conducts in-flight sales, refueling services, cargo, freight service, travel reservations and many other travel related services.

3. Asiana Airlines, as part of its business operations, owns 71 aircrafts (Boeing 737, 747, 767, 777 and Airbus 320, 321, 330) offers daily departures throughout Asia, Europe, North America, and Oceania, operates in 12 domestic and 86 international passenger routes and 23 cargo routes in over 22 countries around the world.

4. Asiana Airlines, among the passenger routes described, also has flights between Honolulu and South Korea.

5. Asiana Airlines is also going to substantially increase its Honolulu-Korea passenger route service in the upcoming months.

6. The priority date established by Petitioners’ registration is September 19, 1988, when Petitioners registered the trade name with the United States Patent And Trademark Office and continued to register subsequent trade names and marks to ensure

appropriate protections of Asiana Airlines' other related air transportation businesses and company design logo.

7. Petitioners, since their registration in 1988, have continuously, openly and actively used their registered trade names and marks in open commerce all over the world including Hawai'i.

8. Respondent Bob Choi registered the trade name "Asiana Airlines" with DCCA on January 24, 2008, and received Certificate of Registration No. 4060160. This was twenty (20) years after Petitioners filed with the United States Patent And Trademark Office.

9. On his registration form, Respondent Bob Choi listed his address as "POB 240326, Honolulu, HI 96824, USA."

9. The DCCA instruction form clearly indicates to all applicants, including Respondent Bob Choi, that it is the applicant's responsibility to look around the state to ensure that they are not using a name which is already in use and that "First and foremost, please keep in mind that registration of a trade name with the Department DOES NOT grant ownership of the trade name."

10. Respondent Bob Choi has not actively and openly used his trade name before the consuming public.

11. Respondent Asiana Airlines, Inc., a Hawaii corporation, was incorporated as a domestic profit corporation with the DCCA on November 15, 2011, under File Number 234374 D1. The corporate filing papers had been sent to the DCCA on November 4, 2011. Said Respondent's corporate filing states that its business address is 1440 Kapiolani Boulevard, Suite 1200, Honolulu, HI 96814. Said filing further states that Mr. Bob Choi is

the registered agent for said Respondent and that Mr. Choi's address is the same as said Respondent's business address.

12. Neither Respondent has any advertising or signage on the building directory or on the door of the suite listed as the address for the Respondents in the above-mentioned corporation registration to indicate Asiana Airlines conducts business at the registered business address at 1440 Kapiolani Boulevard, Suite 1200, Honolulu, Hawai'i 96814.

12. Respondents' trade name and corporate name, "ASIANA AIRLINES" and "ASIANA AIRLINES, INC." are substantially identical, and confusingly similar, to Petitioners' mark and corporate name "ASIANA AIRLINES" and "ASIANA AIRLINES, INC."

III. CONCLUSIONS OF LAW

Petitioners have requested an order of revocation of trade name registration with DCCA pursuant to Hawaii Revised Statutes ("HRS") §482-8 which states:

“§482-8 Revocation of trade name registration. (a) Any person claiming to be the owner of a trade name or mark whose common law rights are infringed upon, or any entity registered or authorized to transact business under the laws of this State whose common law right to its entity name are infringed upon, by a trade name for which a certificate of registration pursuant to this chapter has been issued to any other person may file a petition in the office of the director for the revocation of the registration of that trade name. The petition shall set forth the facts and authority supporting the claim that the petitioner has common law rights of ownership of the trade name, mark, or entity name, that these rights are being infringed upon by the other registered trade name that is confusingly similar to the petitioner's trade name, mark, or entity name, and that the certificate of registration should be revoked.

(b) Any person with a registered trade name in this State, or any entity registered or authorized to transact business under the laws of this State, claiming that another subsequently registered trade name is substantially identical to its registered trade name or entity name, respectively, may file a petition in the office of the director for the revocation of the registration of the subsequently registered trade

name. The petition shall set forth the facts and authority supporting the claim that the petitioner's registered trade name or entity name is substantially identical to the subsequently registered trade name, the petitioner's trade name or entity name was registered before the subsequently registered trade name, and the registration of the subsequently registered trade name should be revoked.

(c) The petitioner, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5 and the registrant shall be given the opportunity for a hearing in accordance with chapter 91.

(d) After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts shall warrant."

In the present case, there is no dispute that Petitioners have been a federal registrant of "Asiana Airlines" since September 19, 1988 and have actively and continuously used the name since then. Furthermore, there was no evidence that Respondent Bob Choi has ever used the name "Asiana Airlines" since registering on January 24, 2008. Petitioners' registration in 1988 is clearly superior to said Respondent's 2008 registration.

Ownership rights to trade names are developed through continuous and active use in the marketplace and not by mere registration.

The Hearings Officer finds that Petitioners have proven by a preponderance of the evidence that they have superior rights to the trade name, "Asiana Airlines".

With respect to Respondent Asiana Airlines, Inc., a Hawaii corporation, Petitioners have more properly been considered to have requested an order of abatement for the infringement of their trade name pursuant to HRS §482-8.5(a), which provides that:

Any person claiming to be the owner of a trade name or mark who believes that the name of any entity registered or authorized to transact business under the laws of this State is confusingly similar to its trade name or mark may file a petition with the director for an administrative order of abatement to address the infringement of its trade name or mark. The petition shall set forth the facts and authority supporting the claim that the petitioner has common law rights of ownership of the trade name or mark, that these rights are being infringed upon by a registered or authorized entity whose

name is confusingly similar to the petitioner's trade name or mark, and that further use of the entity name should be abated.

In order to prevail on this claim, Petitioners must prove by a preponderance of the evidence that they have common law rights of ownership of the trade name "Asiana Airlines" and that it is confusing similar to "Asiana Airlines, Inc."

Based upon the preponderance of the evidence, the Hearings Officer concludes that Petitioners have common law rights of ownership to the trade name "Asiana Airlines" and that the use by Respondent Asiana Airlines, Inc., a Hawaii corporation, of the name "Asiana Airlines, Inc., is confusingly similar to Petitioners' trade name and, as such, constitutes an infringement of Petitioners' trade name.

IV. RECOMMENDED ORDER

For the reasons set forth above, the Hearings Officer recommends that the Director of the DCCA find, conclude, and order that Certificate of Registration No. 4060160 issued to Respondent Bob Choi be revoked on the basis of prior ownership pursuant to HRS §482-8.

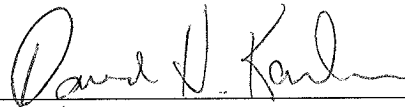
In addition, for the reasons set forth above, the Hearings Officer recommends that the Director find and conclude that Petitioners have common law rights of ownership to the trade name "Asiana Airlines" and that the use by Respondent Asiana Airlines, Inc., a Hawaii corporation, of "Asiana Airlines, Inc." is confusing similar to Petitioners' trade name and constitutes an infringement of Petitioners' trade name.

Accordingly, the Hearings Officer recommends that the Director issue an Order of Abatement requiring that within 60 days of its issuance, Respondent Asiana Airlines, Inc., a Hawaii corporation, 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 Asiana Airlines, Inc., a Hawaii corporation, or cancel or revoke said Respondent's registration or certificate of authority upon the filing of an affidavit from Petitioners attesting: (1) to said Respondent's noncompliance with the Director's Order of Abatement; (2) that the time for appeal has lapsed; and (3) that no appeal has been timely filed by said Respondent. In that event, notice of the involuntary dissolution, termination, or cancellation shall be mailed to said Respondent at its last known mailing address, and said Respondent shall wind up its affairs in accordance with HRS chapters 482, 414, 414D, 415A, 425, 425E, or 428, as applicable.

FEB 29 2012

DATED: Honolulu, Hawaii, _____.



DAVID H. KARLEN
Senior Hearings Officer
Department of Commerce and Consumer Affairs