



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 2011-8
)	[CONSOLIDATED CASES]
Trade Name)	
)	HEARINGS OFFICER'S FINDINGS
"HAWAII HIKERS CLUB")	OF FACT, CONCLUSIONS OF
)	LAW AND RECOMMENDED
)	ORDER
_____)	
In the Matter of the)	TN 2011-9
)	
Trade Name)	
)	
"HAWAII SAN AK HOE")	
)	
_____)	

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

I. INTRODUCTION

On September 19, 2011, Yun Oh Jung, Public Relations Officer of the Hawaii Hikers Club ("Petitioner") filed petitions requesting that the certificates of registration for the trade names "Hawaii Hikers Club" and "Hawaii San Ak Hoe" issued by the Department of Commerce and Consumer Affairs as certificates of registration no. 4097981 and 4097982 to Suk Sik Lee ("Respondent") be revoked. The matters were consolidated and set for hearing and the Notice of Hearing and Pre-Hearing Conference was transmitted to the parties.

On December 7, 2011, a hearing was conducted by the undersigned Hearings Officer. Mr. Jung appeared on behalf of Petitioner. Respondent was present and was assisted by Mr. Jay Choi.

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 23, 2011, the Department of Commerce and Consumer Affairs issued Certificate of Registration No. 4097981 to Respondent for the trade name “Hawaii Hikers Club”. The purpose stated is “Hiking club for maintaining sound spirit and friendship”. The registration expires on August 22, 2016. (TN 2011-8)

2. On August 23, 2011, the Department of Commerce and Consumer Affairs issued Certificate of Registration No. 4097982 to Respondent for the trade name “Hawaii San Ak Hoe”. The stated purpose is “Hiking club for maintaining sound spirit and friendship”. The registration expires on August 22, 2016. (TN 2011-9)

3. The Hawaii Hikers Club is a social hiking club that was formed on December 20, 2000. Respondent was the founder of the club.

4. The Hawaii Hikers Club has existed continuously since 2000. “Hawaii San Ak Hoe” is the Korean translation of “Hawaii Hikers Club”. As of December 4, 2011, the Hawaii Hikers Club has 29 regular members with voting rights and 8 new members who do not yet have voting rights.

5. Since February 2003, the Hawaii Hikers Club has owned motor vehicles with motor vehicle insurance policies for those vehicles issued to the Hawaii Hikers Club.

6. The Hawaii Hikers Club has an account with The Korea Times Hawaii and has made purchases of flowers and clothing.

7. The Hawaii Hikers Club was a contributor to the building of the Hawaii Korean Cultural Center.

8. The Hawaii Hikers Club is the registrant for the domain name “kafhawaii.org”.

9. Articles referring to the Hawaii Hikers Club have been published in Korean newspapers and Korean news websites, which refer to the Hawaii Hikers Club as “Hawaii San Ak Hoe”.

10. As of September 2011, Respondent was banned from the Hawaii Hikers Club for being the primary cause of the recent splitting up of the Club.

11. In a written response to the Petition dated November 28, 2011, Respondent stated:

Respondent, Suk Sik Lee, strongly believes that the real ownership of the trade name, Hawaii Hikers Club as well as Hawaii San Ak Hoe, shall belong to all members in good faith of Hawaii Hikers Club, not Hawaii Hikers Club itself. The Respondent, as registrant and a key personnel of an initial promoting members who founded the Hawaii Hikers Club nearly 11 years ago and a regular member who has maintained the membership status all the way since inception, shall be regarded as an individual who is well suited to represent regular members of Hawaii Hikers Club in good faith presently and future.

III. CONCLUSIONS OF LAW

Petitioner seeks revocation of the trade names “Hawaii Hikers Club” and “Hawaii San Ak Hoe” on the grounds of prior ownership under Hawai'i Revised Statutes (“HRS”) § 482-8 which states in part:

§ 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.

Respondent argued that Petitioner is not an entity registered or authorized to transact business under the laws of Hawai'i and therefore, cannot file a petition for revocation under HRS § 482-8. The Hearings Officer finds that Petitioner meets the definition of a “nonprofit

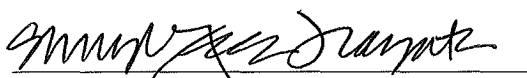
association”¹ so Petitioner “may institute, defend, intervene or participate in a judicial, administrative or other governmental proceeding[.]” *See*, HRS § 429-7. Respondent also argued that Petitioner did not have common law rights of ownership of the trade names at issue because the Hawaii Hikers Club is not a commercial entity. The Hearings Officer finds that an entity does not have to be a commercial entity to assert rights of ownership to a trade name.

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, since its formation in 2000, has continuously and actively used “Hawaii Hikers Club” and its Korean equivalent “Hawaii San Ak Hoe”. Accordingly, the Hearings Officer finds that Petitioner has established by a preponderance of the evidence that it is the owner of “Hawaii Hikers Club” and “Hawaii San Ak Hoe”.

IV. RECOMMENDED ORDER

For the reasons set forth above, the Hearings Officer recommends that the Director order that Certificates of Registration Nos. 4097981 and 4097982 issued to Respondent on August 23, 2011, be revoked on the basis of prior ownership pursuant to HRS § 482-8.

DATED: Honolulu, Hawaii, FEB 22 2012.



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

¹ “Nonprofit association” means an unincorporated organization other than one created by a trust, consisting of two or more members joined by mutual consent for a common, nonprofit purpose[.] *See*, HRS § 429-1.