

SERVICE DATE

JAN 31 1996

NOTE! An important notice to parties about administrative review appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CASCADE MOVING & STORAGE, INC.,)	
)	DOCKET NO. TV-941651
Complainant,)	
)	INITIAL ORDER GRANTING
v.)	COMPLAINT, ORDERING
)	RESPONDENT TO CEASE AND
CASCADE TRUCKING, INC. d/b/a)	DESIST
CASCADE MOVERS,)	
)	
Respondent.)	
)	
.....)	

A hearing was held upon this complaint on August 15, 1995, pursuant to due and proper notice to all interested persons, at Olympia, Washington before Marjorie R. Schaer, Administrative Law Judge. The following parties appeared:

Complainant: Eric L. Stephens
 Cascade Moving & Storage, Inc.
 430 S. Cloverdale Street
 P. O. Box 81252
 Seattle, WA 98109-1252

Representative: Jack R. Davis
 Attorney at Law
 1900 IBM Building
 1200 Fifth Avenue
 Seattle, WA 98101

Respondent: Kris O'Bannon
 Cascade Trucking, Inc.
 d/b/a Cascade Movers
 3210 Sleater-Kinney Road NE
 Olympia, WA 98516

284

Representative: Richard A. Finnigan
Attorney at Law
1900 First Interstate Plaza
1201 Pacific Avenue
P. O. Box 1315
Tacoma, WA 98402-1313

Commission: Steve McLellan
Secretary
P O Box 47250
Olympia, WA 98504-7250

Representative: Robert D. Cedarbaum
Assistant Attorney General
P O Box 40128
Olympia, WA 98504-0128

MEMORANDUM

This is a complaint by Cascade Moving & Storage, Inc., against Cascade Trucking, Inc./d/b/a Cascade Movers. The complaint alleges that the name Cascade Movers is deceptively similar to the name Cascade Moving & Storage, Inc. The matter was originally set for a brief adjudication. A Notice of Brief Adjudication served on April 26, 1995, set a schedule for submission of written explanations, and established a time for oral comments by telephone at 1:30 p.m. on May 16, 1995. On May 18, 1995, John Prusia, Hearings Examiner, entered a Notice of Conversion of Proceeding from a Brief Adjudication to a Full Adjudication.

On May 18, 1995, the complainant moved to amend its complaint to allege that the name Cascade Movers of Washington, Inc., is also deceptively similar to the name Cascade Moving & Storage, Inc.

The Complaint argues that Cascade Movers of Washington, Inc., is using a corporate, trade, or assumed name that is the same or deceptively similar to the Complainant, in violation of WAC 480-12-220(2). WAC 480-12-220(2) states in part:

No common or contract carrier shall adopt or conduct its operations under any corporate, trade or assumed name that is the same or deceptively similar to the name of any common or contract carrier already authorized to do business within the State of Washington.... .

Since the names are not identical, the evidence in this record gives rise to one principal issue: Are the names "Cascade Movers" and/or "Cascade Movers of Washington, Inc.", deceptively similar to "Cascade Moving & Storage, Inc."

HISTORY OF NAMES AND OPERATIONS

Complainant Cascade Moving & Storage, Inc., is a Washington corporation formed in January 1978. The first step the complainant took when setting up the company was instructing its attorney to do a name search to determine that there were no similar names for moving companies in the State of Washington. The complainant obtained authority from the Washington Utilities and Transportation Commission ("Commission") in the name of Cascade Moving & Storage, Inc., in May 1978, and has continuously conducted operations under the name Cascade Moving & Storage, Inc. It advertises in the US West telephone directories in Bellevue, Seattle, and several outlying communities, such as Burien, Highline, and Midway. The company holds operating authority to serve the entire State of Washington in the transportation of household goods, and is known on a statewide basis through customer contact. It presently does regular business with firms in the Olympia area, as well as doing business throughout the entire State of Washington. The sole business of the company is moving household goods and providing storage. The word "Cascade" identifies the company name and image.

In the latter part of 1994, the complainant heard of Cascade Trucking d/b/a Cascade Movers. Mr. Eric Stephens, president, immediately contacted his attorney and asked him to attempt to persuade the other company to change its name. Prior to the latter part of 1994, there were no companies in the state other than the complainant using the name Cascade in conjunction with household goods moving. The complainant's attorney contacted Mr. Kris O'Bannon, vice-president and manager of the respondent, in late-August 1994 to discuss possible change of the respondent's name.

The respondent's use of trade names is somewhat confused in this record. The name Cascade Movers of Washington was listed in the yellow pages of the telephone directory in Olympia and the surrounding areas in approximately September 1994. It was listed in the regional telephone directories some time after January 1995. The company originally incorporated in July 1994. The original name of the corporation was Cascade Trucking, Inc. d/b/a Cascade Movers. The respondent filed for authority with the Commission to change the name of a permit held by Harold Schmit to Cascade Trucking d/b/a Cascade Movers.

Subsequently, in February 1995, the respondent changed the name on its permit to Cascade Movers of Washington, Inc. The company's primary business is conducted from Olympia, advertising in Shelton, but serving the entire State of Washington. The transfer of the Schmit permit to the new corporation was done to develop a household goods transportation company. When the respondent was formed, it did not look at any list of companies which were members of the Washington Movers Conference, and did not ask the Secretary of State if there were

any existing moving companies with the name Cascade. When it applied to become a member of the Washington Movers Conference on approximately August 18, 1994, the respondent learned that Cascade Moving & Storage objected to its use of the name Cascade.

Mr. O'Bannon took out yellow pages advertising using the name Cascade Movers of Washington as soon as he decided to develop the moving business, and placed advertisements in the Olympia newspapers in the name of Cascade Movers of Washington before August of 1994. The name of the corporation at such time was Cascade Trucking d/b/a Cascade Movers, and Mr. O'Bannon could not answer why he advertised in a name different than that of his corporation. Mr. O'Bannon does not propose to limit the respondent's business operations or facilities to the Olympia area. He intends to hold the respondent out to provide service in the entire State of Washington. He proposes to establish an office in the Seattle area at any time that he desires to do so. He used the name Cascade Movers of Washington, Inc., prior to giving any notice to the Commission of the use of that name, or requesting any name change on his permit.

The respondent's trucks are similar in appearance to Cascade Moving & Storage trucks, although there are differences in the color and script of the logo painted on them. The complainant, Cascade Moving & Storage, Inc., uses "Cascade" written in script form in its directory advertisements with a logo showing a house nestled in a pillow. Cascade Movers of Washington uses a blocked letter spelling of Cascade with a logo that shows the word "Cascade" over a mountain scene with the term "Movers of Washington" underneath.

The business card of Cascade Moving & Storage, Inc., has a blocked letter spelling of Cascade in black with a two-color green arrow underneath. On its trucks, complainant Cascade Moving & Storage, uses blocked lettering in gray on a white background with dark purple metallic stripes. It uses uniforms that are dark maroon with gray lettering. On the other hand, Cascade Movers of Washington, in addition to using the block lettered spelling of Cascade in a semi-circle over a mountain scene on all of its advertising, uses the color blue consistently in its name on business cards and letterhead. The uniforms used are blue with white lettering. The trucks are white with logos on the door, but not on the van portion of the truck.

THE NAMES ARE DECEPTIVELY SIMILAR

The Complainant argues that WAC 480-12-220(2) should be interpreted using Washington common law regarding the right to use a particular name as a trade name. The undersigned administrative law judge agrees that this is the correct standard to apply in a complaint brought by one regulated household goods moving company against another.

The laws of the State of Washington regarding the right to use a particular name as a trade name are summarized in Seattle Etc. Assn. v. Amalgamated Assn. Etc., 3 Wn.2d 521, 101 P. 2d 338 (1940), where the court holds at pages 531 to 532:

(1) The right to use a particular name as a trade name belongs to the one who first appropriates and uses it in connection with a particular business. This rule is basic and is supported by all the cases hereinafter cited.

(2) A person, whether individual or corporate, may not use any name, not even his own or its own, which is the distinctive feature of a trade name already in use by another if such use by the one person tends to confuse, in the public mind, the business of such person with that of the other. (Citations omitted)

(3) The prior user may be entitled to relief regardless of actual fraud or intent to deceive on the part of a subsequent appropriator. (Citations omitted)

(4) To acquire the right to use a particular name, it is not necessary that the name be used for any considerable length of time. It is enough to show that one was in the actual use of it before it was begun to be used by another. (Citations omitted)

(5) A trade name may be abandoned or given up by the original appropriator, and when it is so abandoned or given up, any other person has the right to seize upon it immediately, and make use of it, and thus acquire a right to it superior not only to the right of the original user; but all of the world. (Citations omitted)

(6) A trade name, in order to be an infringement upon another, need not be exactly like it in form and sound. It is enough if the one so resembles another as to deceive or mislead persons of ordinary caution into the belief that they are dealing with the one concern when in fact they are dealing with the other. (Citations omitted)

(7) The rule is no different when the name, or some part thereof, is a geographical name, or contains descriptive

words which have acquired a secondary meaning.
(Citations omitted)

(8) Prior right to use of a name will be protected by injunction against others using it unfairly. (Citations omitted)

In a case very similar to this complaint, Foss v. Culbertson, 17 Wn.2d 610, 136 P.2d 711 (1943), W. V. Foss d/b/a University Transfer Company, University Transfer & Storage Company, and University Moving & Storage Company, sought an injunction against R. G. Culbertson and Seattle Terminals Company, Inc., from using the word "University" in connection with their transfer, moving and storage, or warehouse business. The evidence showed that from 1937 on plaintiff had used the name University Transfer on his trucks and University Transfer Company in the window and office and in the telephone directory up to the time that the defendant started its business. Defendant used the names University Moving & Storage Co., University Warehouse, and University Transit Co. The color of defendant's trucks and the lettering on the trucks was entirely different from the coloring and lettering on plaintiff's trucks. The court held that the statute providing for the filing of trade names has nothing to do with the acquiring of assumed names. The filing of assumed names only affects the rights of a party doing business under such name to sue in the courts of the state. The court went on to hold:

In view of the facts as established in this case, we are of the opinion that to permit defendant to use the word university on its vans and trucks and in the telephone directory as it has in the past, so far as that word is used in connection with the words storage and warehouse, would be an infringement on plaintiff's trade name of University Transfer Company, and would be misleading to the public. While the warehouse business and the transfer business may be separate and distinct, yet when the public sees as it has in the past the word University on the vans of defendant, even though used in connection with the words warehouse or storage, we are satisfied that the ordinary prudent person would not distinguish between the name University Transfer Company and the names University Warehouse Company or University Storage Company. In fact the conflict which has existed must have been caused to a great extent by the use of those very words as defendant has never used the word transfer in connection with the word university in its business.

We are therefore of the opinion that the Trial Court should, in addition to the injunction relief granted to plaintiff, also have enjoined defendant from using the word university in connection with the words storage and warehouse in the manner in which they have been used, at least so long as defendant operates a moving and transfer business, as well as a storage and warehouse business. (pp. 629-630)

See, also, Homes v. Border Etc. Co., 51 Wn.2d 746, 321 P.2d 898 (1958).

Application of the legal standards to the case at hand shows the following:

- (1) Complainant appropriated the use of the name Cascade Moving & Storage in respect to the movement and storage of household goods in 1978.
- (2) Use of the name Cascade Trucking, Inc. d/b/a Cascade Movers, and/or Cascade Movers of Washington, Inc., has confused the public.
- (3) The fact that respondents use of the name Cascade Trucking d/b/a Cascade Movers and/or Cascade Movers of Washington, Inc., may not have been with fraudulent intent does not affect complainant's right to relief.
- (4) Complainant was using the name before respondent began to use it.
- (5) Complainant has never abandoned the use of the name Cascade Moving & Storage, Inc.
- (6) The manner in which respondent uses the name, even though there are different colors and print, so resembles complainant's name that persons of ordinary caution will be led to believe that respondent's business is the same as complainant's business.
- (7) The name "Cascade" or "Cascade Movers" has little geographical significance in relation to respondent's use. The name "Cascade" has acquired a secondary meaning identified with the moving and storage business of complainant.
- (8) Complainant's prior right to use of the name Cascade in conjunction with the moving and storage business should be protected.

In Evergreen State Amusement v. Burns & Co., 2 Wn.App. 416, 468 P.2d 460 (1970), the court held specifically that common use of a name such as

"Evergreen" did not remove it from protection as an exclusive trade name stating that even the right to use the exclusive use of the name of the capital city of this state, Olympia, has been judicially approved. Olympia Brewing Co. v. Northwest Brewing Co., 178 Wash. 533, 35 P.2d 104 (1934).

In Seattle Endeavors v. Mastro, 123 Wn.2d 339, 868 P.2d 120 (1994) the court held that the commonality of the use of an identifying name in a particular business determines the strength of the trademark interest in a given word. The more common the name in use in the particular business, the weaker the trademark protection. In other words, if the name Cascade was in use all over the state in conjunction with different moving and storage businesses, it would be a weak trade name, whereas where there has been only one company using that name in conjunction with the moving and storage business, it is a strong trade name.

CONCLUSION

Based upon the evidence presented in this proceeding and the applicable law set forth above, the relief sought should be granted and respondent should be required to cease the use of the name "Cascade" in conjunction with the name "Movers" or "Moving & Storage" and advised not to use such name in any context denoting the household goods moving and storage business in a manner that would confuse the public.

FINDINGS OF FACT

1. Complainant Cascade Moving & Storage, Inc., first appropriated the use of its trade name in the State of Washington in January 1978 and first obtained authority to operate as a moving and storage company under that name in May 1978.
2. Since 1978, the complainant has continuously conducted operations under the name Cascade Moving & Storage without any periods of disuse or abandonment of that name.
3. The use of the names Cascade Trucking d/b/a Cascade Moving and/or Cascade Movers of Washington, Inc., have resulted in confusion to the public regarding the identity of the two companies. The complainant started using the name Cascade Movers of Washington, Inc., months before it formally changed its name with the Secretary of State or with the Commission. The confusion resulted from its use of the name Cascade in conjunction with the word Movers.

4. Prior to the respondent's name change on its operating authority, first to Cascade Trucking d/b/a Cascade Movers, then to Cascade Movers of Washington, Inc., the complainant was the only company in the State of Washington using the name "Cascade" in the household goods moving and storage business.

5. The manner in which the respondent uses the name "Cascade" so resembles Cascade Movers of Washington, Inc., that persons of ordinary caution have been, and will be, led to believe that they are the same or related companies.

6. The respondent has not received the written or oral consent of the complainant to adopt or use of the name "Cascade" in conjunction with any identification of a moving and storage business in the State of Washington.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. Complainant Cascade Movers of Washington, Inc., appropriated the name "Cascade" in conjunction with its identification as a moving and storage business in the State of Washington prior to the respondent's use of such name and the right to use a particular name as a trade name belongs to the one who first appropriates and uses it in connection with a particular business.

3. The respondent's use of the name Cascade Trucking, Inc. d/b/a Cascade Movers and/or Cascade Movers of Washington, Inc., is and will be deceptively similar to the trade name of the complainant.

ORDER

THE COMMISSION ORDERS That the respondent cease and desist from use of the name "Cascade" in conjunction with the name "Movers", "Moving", or "Transfer".

DATED at Olympia, Washington, and effective this 30th day of January 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Marjorie R. Schaer

MARJORIE R. SCHAER
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record, with proof of service as required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., PO BOX 47250, OLYMPIA, WA 98504-7250. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.