BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of ALLSTAR MOVERS, LLC, For a Household Goods Carrier Permit.	DOCKET TV-071039 PETITION FOR REVIEW OF INITIAL ORDER ON BRIEF ADJUDICATION, ORDER SUSPENDING TEMPORARY PERMIT AND APPLICATION FOR PERMANENT PERMIT, ON CONDITION

Petitioner, ALLSTAR MOVERS and DELIVERY, LLC, seeks review before the Washington Utilities and Transportation Commission of the Order on Brief Adjudication, Order Suspending Temporary Permit, and Application for Permanent Permit, on Condition, entered in the above entitled cause on March 1, 2008.

FACTS

1. Petitioner, ALLSTAR MOVERS and DELIVERY, LLC, hereinafter ALLSTAR MOVERS, is a Washington business corporation in good standing, transacting business in Pierce County Washington as a household goods carrier.

2. Prior to September 1, 2007, ALL STAR MOVERS transacted business in Washington under the name All Star Movers, LLC.

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3. Before selecting the name All Star Movers, petitioner was informed by an employee of the State of Washington that All Star Movers was an acceptable name, as another moving company using that name had gone out of business.

4. On June 26, 2007, in Docket TV-071039, the Washington Utilities and Transportation Commission issued and order granting temporary authority to ALLSTAR MOVERS to provide household goods moving services on a provisional basis for at least six months. A true and correct copy of said order is attached hereto and incorporated herein by reference.

5. On March 18, 2008, the U.S. Patent and Trademark Office (USPTO) issued a notice of allowance for petitioner to use the service mark "ALLSTAR MOVERS".

6. On May 29, 1998, in Order M.V. 149931, Protestant Northwest All-Star Movers, Inc., d/b/a Laron Williams All-Star moving and Storage was a granted temporary permit to operate as a common carrier, subject to special terms and conditions under WAC 480-12-033 (5).

7. Protestant changed its name to All Star Transfer, and in Order M.V. 14951, protestant's name was changed to All Star Transfer, Laron Williams, Inc.

8. On August 21, 2001, in Order MV 10278, the Commission granted permanent authority to protestant.

9. On March 12, 2005, protestant's service mark obtained from the USTPO was cancelled.

10. On July 25, 2007, protestant filed a protest. Therein, protestant mistakenly asserted that there is still an All Star Moving in Spokane Washington. The records of the Washington State Secretary of State Corporations Division for April 14, 2008 do not contain a current listing for All Star Movers.

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11. On April 14, 2008, ALLSTAR MOVERS filed the declaration of James Lucas. Therein, Mr. Lucas testified that petitioner's use of some version of the name "All Star Movers" should not affect the protestant, as it had already been sharing the name with an another moving company. EX 5.

12. Mr. Lucas also testified as to ALLSTAR MOVERS' good faith efforts to negotiate with the protestant were thwarted by the protestant's steadfast refusal to consider any arrangement wherein any version of "All Star" was used in the name, unless petitioner made some payment arrangement to the protestant. EX 5.

13. Mr. Lucas also testified that after negotiations with the protestant failed, petitioner changed its name to ALLSTAR MOVERS AND DELIVERY, LLC., and applied for a Master Business Application in its new name, in an attempt to further distinguish its business from the of the protestant. Ex. 1-5.

14. Mr. Lucas also testified that ALL STAR MOVERS' business was in Pierce and South King County, whereas, the protestant's business is located in Edmonds, in Northern King and Snohomish Counties. EX 5.

14. Mr. Lucas further testified that because of the cost of fuel and traffic delays through Seattle, ALLSTAR MOVERS could not provide a competitive bid for services near the protestant's location, nor could the protestant provide a competitive bid for services in ALLSTAR MOVERS' territory. EX 5.

15. Mr. Lucas further testified that the protestant does not advertise in Pierce County, and that ALLSTAR MOVERS does not advertise in Snohomish County. EX 5.

16. Mr. Lucas also testified that he did not believe that allowing both names to exist would result in unfair or destructive competitive practices. EX 5.

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17. Mr. Lucas also testified that it is in the public interest to have both moving companies, to allow the consumer to obtain the least-expensive service, considering high fuel costs and traffic congestion. EX 5.

18. Mr. Lucas also testified that allowing both name to exist would not mislead the shipping public, as he had not yet had any customers express confusion over reaching the protestant's company, rather than ALLSTAR Movers. EX 5.

19. At the brief adjudicative hearing on April 21, 2008, over the hearsay objection of ALLSTAR MOVERS, the protestant offered two emails and a letter, Exhibits 39-41, purportedly from its customers, to supports its claim that ALLSTAR MOVERS' use of a similar name creates customer confusion and may result in unfair competition. The administrative law judge admitted and considered Exhibits 39-41, despite ALLSTAR MOVERS' hearsay objection. As a result of the administrative law judge's consideration of Ex. 39-41 Order 01 at p. 4 ¶ 19; p. 13 ¶¶ 38; 39, 40, 41; Finding of Fact 14, Conclusions of Law 8, 9, 10, 11, 12, 13; and Order ¶ 1, 2, 3, 4 should be reversed. ER 802; *Thomas v. French*, 99 Wn.2d 95, 101-104, 659 P.2d 1097 (1983); *Wagers v. Goodwin*, 92 Wn. App. 876, 882-83, 964 P.2d 1214 (1998); *Tire Towne, Inc. v. Owen*, 10 Wn. App. 184, 190, 518 P.2d 240 (1973). Alternatively, ALLSTAR MOVERS proposes that Finding of Fact 14 should provide as follows: "*Neither Allstar nor All Star Transfer have received misaddressed or misdirected mail or packages from the other company.*"

20. The administrative Law Judge cited WAC 480-07-495 in support of consideration of Exhibits 39-41. Order 01 at p. 6 n. 16. That section permits consideration of evidence, "*if the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness...*" Those standards provide the safeguards against untrustworthy hearsay evidence. *Chmela v. Department of Motor*

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Vehicles, 88 Wn. 2d 385, 392, 561 P. 2d 1085 (1977). Here, however, the Order fails to contain any discussion why those exhibits were necessary, available or trustworthy.

21. A number of factors apply in determining whether to admit hearsay evidence in an administrative proceeding. Note *J.A.M. Builders, Inc. v. Herman*, 233 F. 3d 1350, 1354 (11th Cir. 2000):

> ...We have identified several factors that demonstrate hearsay's probative value and reliability for purposes of its admissibility in an administrative proceeding: whether (1) the out-of-court declarant was not biased and had no interest in the result of the case; (2) the opposing party could have obtained the information contained in the hearsay before the hearing and could have subpoenaed the declarant; (3) the information was not inconsistent on its face; and (4) the information has been recognized by courts as inherently reliable.

22. Exhibits 39-41, having allegedly come from the protestant's customers, bear no indicia of trustworthiness. Instead, the patently self-serving character of those exhibits undermines their trustworthiness. Nor are the declarants in Exhibits 39-41 disinterested, as each declarant recites a history of doing business with the protestant.

23. Nor does the record reveal that ALLSTAR MOVERS had any opportunity before the hearing to obtain the information in Exhibits 39-41. The absence of such an opportunity further undermines the admissibility of those exhibits. *See, e.g., Nisqually Delta Association v. City of Du Pont*, 107 Wn. 2d 720, 734, 696 P. 2d 1222 (1985) ("...*The information in the records was essential and far more accessible than were the experts themselves. ...Additionally, plaintiffs had every opportunity to review the reports and present expert testimony of their own to contradict the reports. In light of all this, the SHB did not abuse its discretion in admitting the records as the "best evidence reasonably obtainable".*).

24. Nor is there anything in Exhibits 39-41 to suggest that the information therein is inherently reliable. Exhibits 39-41 bear no resemblance to the studies and correspondence admitted in *Nisqually Delta Association v. City of DuPont*, 107 Wn. 2d 734. ("...*The*

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supervision of various agencies should be seen as affording some guaranty of trustworthiness to the reports....").

25. The administrative law judge erred at page 5 ¶ 16 of Order 01 by reciting that on August 1, 2001, the Commission granted permanent authority to "*all Staff*[sic] *Transfer....*" ALLSTAR MOVERS proposes that page 5 ¶ 16 of Order 01 should provide instead that on August 1, 2001, the Commission granted permanent authority to "*all Star Transfer....*"

26. The administrative law judge erred in Finding of Fact 12 of Order 01 by finding that the Commission issued a notice of cancellation of ALLSTAR MOVERS' temporary permit for its "*failure to comply with WAC 480-07-390*[sic]..." ALLSTAR MOVERS proposes that Finding of Fact 12 should provide instead that the Commission issued a notice of cancellation of ALLSTAR MOVERS' temporary permit for its "*failure to comply with WAC 480-15-390...*"

27. The administrative law judge erred at page 7 ¶ ¶ 24, 38, 39, and Conclusion of Law 10 of Order 01 that the geographic areas served by ALLSTAR MOVERS and the protestant are overlapping, resulting in the likelihood of confusion. The administrative law judge failed to address uncontroverted testimony of Mr. Lucas that the cost of fuel and traffic congestion in the Seattle area make it unlikely that there will be significant competition between ALLSTAR MOVERS and the protestant. ALL STAR MOVERS therefore proposes that Conclusion 10 provide as follows: "*The current high cost of fuel and traffic congestion in the Seattle area make it unlikely that there will be significant competition between ALLSTAR MOVERS and the protestant.*"

28. The administrative law judge erred in Conclusion of Law 11 of Order 01 that the change in name from Allstar Movers, LLC to Allstar Moving & Storage, LLC, does not sufficiently distinguish the two companies. As set forth in the affidavit of Mr. Lucas, ALLSTAR MOVERS changed its name to ALLSTAR MOVERS AND DELIVERY, LLC, not Allstar Moving & Storage. EX 5. Moreover, Conclusion 11 overlooks that in Order M.V. No.

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14951, the protestant was granted authority to change its name from All Star Movers to All Star Transfer, despite the fact that another company, All Star Moving, was then operating in the State of Washington. The administrative law judge failed to explain how the name All Star Transfer was sufficiently distinguished from All Star Moving in Order M.V. No. 14951, while ALLSTAR MOVERS AND DELIVERY, LLC, is not sufficiently distinguished from ALLSTAR MOVERS. Therefore ALLSTAR MOVERS proposes that Conclusion 11 provide as follows: "*The change in name from Allstar Movers, LLC to Allstar Moving & Storage sufficiently distinguishes the two companies.*"

29. The administrative law judge erred at page 7 ¶ 40 and Conclusion of Law 12 of Order 01 that to prevent confusion by the shipping public and the likelihood of unfair or destructive competitive activity, Allstar must remove the term Allstar from its name and may not use any variation of the term "Allstar." "All Star." or "All-Star" in connection with the terms "Moving," "Movers, "Transfer," "Storage" or "Delivery". As set forth in paragraphs 19-24, 27 there is no admissible evidence in the record of confusion, nor evidence of likelihood of unfair or destructive competitive activity. Conclusion of Law 12 of Order 01 should therefore be reversed.

30. The administrative law judge erred in Conclusion of Law 13 of Order 01 that the Commission should retain jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of the order. As set forth in paragraph 29, there are no grounds to order ALLSTAR MOVERS to change its name. It therefor follows that Conclusion 13 should provide as follows:"*There is no reason for the Commission to retain jurisdiction over the subject matter or the parties to this proceeding.*"

31. The administrative law judge erred in paragraphs 1, 2, 3, 4 of Order 01. As set forth above, there are no grounds to suspend ALLSTAR MOVERS' temporary permit or to postpone its application for permanent authority. The Commission should therefore vacate the

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suspension of ALLSTAR MOVERS' temporary permit and grant its application for permanent authority.

CONCLUSION

The Commission should reverse the administrative law judge's consideration of Ex. 39-41 Order 01 at p. 4 ¶ 19; p. 13 ¶¶ 38; 39, 40, 41; Findings of Fact 12, 14, Conclusions of Law 8, 9, 10, 11, 12, 13; and Order ¶ 1, 2, 3, 4 should be reversed. The Commission should vacate the suspension of ALLSTAR MOVERS' temporary permit and grant its application for permanent authority.

Respectfully submitted,

LUCE AND ASSOCIATES, PS

Kenyon E. Luce WSBA #3081
Of Attorneys for Petitioner ALLSTAR MOVERS and DELIVERY, LLC

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of ALLSTAR MOVERS, LLC For a Household Goods Carrier Permit	DOCKET TV-071039 CERTIFICATE OF SERVICE

I PETER D. HAROLDSON hereby certify under the penalty of perjury of the laws of the State of Washington that on May 20, 2008, I sent a copy of the Petition for Review of Initial Order on Brief Adjudication, Order Suspending Temporary Permit and Application for permanent Permit, on Condition to the following persons and in the following manner:

All Star Transfer, Laron Williams,
Inc., d/b/a All Star Moving & Storage
24111 Hwy 99
Edmonds, WA 98026 — Via U.S. Mail

WUTC
P.O. Box 47250
Olympia, WA 98504-7250 — Via U.S. Mail
Attn: Carole J. Washburn, Executive Secretary

Jennifer Cameron Rulkowski
Assistant Attorney General
P.O. Box 40128
Olympia, WA 98504-0128 — Via U.S. Mail

DATED: May 20, 2008

Peter D. Haroldson

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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re Application of	)	
	)	
	)	DOCKET TV-071039
ALLSTAR MOVERS, LLC	)	
	)	
for permanent authority to operate as a motor carrier of household goods	)	ORDER GRANTING TEMPORARY AUTHORITY SUBJECT TO CONDITIONS PENDING DECISION ON PERMANENT AUTHORITY
	)	
	)	
	)	
.....	)	

I. SYNOPSIS

1 The Washington Utilities and Transportation Commission (Commission) grants Allstar Movers, LLC, (Applicant), temporary authority to provide household goods moving services on a provisional basis for at least six months. During this time, the Commission will evaluate whether the Applicant has met the criteria in WAC 480-15-330 to obtain permanent authority. The temporary authority is granted subject to conditions outlined in this order.

II. BACKGROUND

2 On May 24, 2007, the Applicant filed with the Commission requesting permanent authority to transport household goods in the state of Washington under the provisions of RCW 81.80 and WAC 480-15.

3 WAC 480-15-280 requires applicants for permanent authority to operate under temporary authority on a provisional basis for at least six months. During this time, the Commission will evaluate whether the Applicant has met the criteria in WAC 480-15-330 for obtaining permanent authority.

4 The Commission is fully advised of the need for service and the qualifications of the Applicant to provide such service and makes the following findings of fact, conclusions of law, and order.

III. FINDINGS OF FACT

6 The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with the authority to regulate common carriers that transport household goods in the state of Washington.

7 Allstar Movers, LLC, seeks permanent authority to transport household goods in the state of Washington.

8 Commission staff supports a temporary grant of authority for at least six months. During this time the Commission will evaluate whether the Applicant has met the criteria in WAC 480-15-330 for obtaining permanent authority.

9 The Commission deems the Applicant fit, willing, and able to provide the service it proposes under temporary authority and on a provisional basis subject to the following conditions:

(2) The Applicant must provide a copy of the customer survey questionnaire, with proper postage applied, to each customer for whom it provides household goods transportation services under the authority granted in this order.

(3) The Commission may require, and the Applicant must agree to allow periodic inspections by Commission staff and submit any records or documents the Commission requests.

10 The Commission finds that granting temporary authority to provide service on a provisional basis meets a public need for service, increases consumer choice, and allows the Commission to evaluate whether the Applicant has met the criteria in WAC 480-15-330 to obtain permanent authority.

IV. CONCLUSIONS OF LAW

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

12 It is consistent with the public interest to grant temporary authority and issue a permit to Allstar Movers, LLC, authorizing the transportation of household goods in the state of Washington for a period of six months. During this time the Commission will evaluate whether Allstar Movers, LLC, has met the criteria in WAC 480-15-330 to obtain permanent authority.

V. ORDER

13 The Commission grants the authority requested in Application TV-071039, to Allstar Movers, LLC, to operate as a motor carrier of household goods in the state of Washington, on a temporary basis, subject to the conditions in this Order.

14 The grant of authority is to allow the Applicant an opportunity to provide service as a household goods carrier on a provisional basis for at least six months. During this time the Commission will evaluate whether the Applicant has met the criteria for obtaining permanent authority.

15 The grant of authority is only effective while the Applicant complies with all the terms and conditions of this Order.

16 By granting this authority, the Commission does not prejudge in any way the action it may take on the Applicant's request for permanent authority, nor the standards or interpretations the Commission will apply in its consideration of such application.

17 The Commission may cancel the authority granted by this Order any time after the date the Commission issues a permit if it finds that any of the following conditions exist:

(1) The temporary authority was not issued in the public interest.

(2) The grant of authority was based on fraud, misrepresentation, or erroneous information from the Applicant.

(3) The Applicant violates applicable laws or rules affecting the public health, safety, or welfare.

(4) The Applicant repeatedly fails or refuses to comply with applicable laws or rules pertaining to operations of household goods carriers.

(5) The Applicant fails to supply requested information to the Commission for the performance of its regulatory functions.

(6) The Commission discovers the Applicant submitted false, inaccurate or misleading information to the Commission or its staff.

(7) The Applicant allows others to transport household goods under the authority granted in this Order.

(8) The Applicant fails to comply with the conditions in this Order or with the terms of the permit.

18 The authority granted in this order is effective until the Commission, by further order, grants, denies, or dismisses the application for permanent authority or otherwise cancels the authority granted.

Dated at Olympia, Washington and effective June 26, 2007.

CAROLE J. WASHBURN
Executive Secretary

(5)

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In re Application of: ALLSTAR MOVERS, LLC., (THG-62885)	DOCKET TV-071039 AFFIDAVIT OF JAMES LUCAS

STATE OF WASHINGTON)
: ss
County of Pierce)

1. My name is James Lucas, I am a co-owner of Allstar Movers, LLC (now changed to Allstar Movers and Delivery, LLC). I make this affidavit in support of our application for Permanent Authority with the WUTC as a household goods mover.

2. Our application is being protested by Laron Williams, who operates All Star Transfer. His protest states that he was unable to use All Star Movers because another company already was using that name and protested his application.

3. However, Mr. Williams was still allowed to use the term "All Star" simply by adding "Transfer" to the end of the name. Therefore, when Mr. Williams received permission to use "All Star Transfer", there was already an "All Star Movers" in existence. Both of those companies co-existed for many years, until "All Star Movers" went out of business. They are no longer listed on the WUTC carrier list.

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4. In his protest, Mr. Williams mistakenly believes that there is still an "All Star Movers" in Spokane, Washington. His protest states that it is not confusing to consumers to have both "All Star Transfer" and "All Star Movers" existing together, but confusion will only exist if there is a third "All Star Movers". I believe that both of us can co-exist.

5. I did not try to "steal" the name from anyone, or act in bad faith. When I applied for my business license with the State of Washington, in Olympia, we chose "Allstar Movers" as our name. The Washington State employee who took our license application did a search and told me that using Allstar Movers was acceptable because there was another moving company who had been using the name already, but that they had gone out of business.

6. Therefore, to have our company using some version of the name "Allstar Movers" should not affect Mr. Williams at all, because he was already sharing the name with an existing moving company and will continue to do so now.

7. Despite this, we tried both on our own and through our attorney, in good faith, to negotiate with Mr. Williams to approve our companies co-existing without having to have a hearing before the WUTC. However, Mr. Williams steadfastly refused to consider any arrangement where any version of "All Star" was used in the name, without making some payment arrangement directly to him.

8. After negotiations failed with Mr. Williams, we had our LLC's name changed to "Allstar Movers and Delivery, LLC" in an attempt to further distinguish us from Mr. Williams' business. However, he did not accept this concession either.

9. I believe that both of our companies can work independently because of the geographic distance between us. Most of our company's business is now in Pierce and south King County. Mr. Williams' business location is Edmonds, in far north King County and Snohomish County. Because of the cost of fuel and hours sitting in

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traffic through Seattle, our company couldn't provide a competitive bid for services near Mr. Williams' location, nor could he provide a competitive bid for services in our location. Mr. Williams does not advertise in Pierce County, and our company does not advertise in Snohomish County. For this reason, I do not believe that allowing both names to exist would result in unfair or destructive competitive practices,

10. Therefore, it is truly in the public interest to have both moving companies, to allow the consumer to obtain the least-expensive service considering fuel cost of over $4.00 per gallon and difficulty with traffic congestion.

11. I also believe that allowing both names to exist would not mislead the shipping public, as I have yet to have any of my customers express confusion about reaching Mr. Williams' company rather than ours. Mr. Williams has not presented to the Commission any evidence of consumer confusion.

Dated this 14th day of April, 2008 at Tacoma, Washington

James Lucas, co-owner of Allstar Movers, LLC

SUBSCRIBED AND SWORN to before me this 14th day of April, 2008.

PETER D. HAROLDSON NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 10-02-10

Printed name: Peter D. Haroldson
NOTARY PUBLIC in and for the State of Washington
Residing at Renton, WA
My commission expires: 10-02-10

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yq (19)

Darleen

From: "Laron and Katie Williams" <LaronandKatieWilliams@msn.com>
To: "Allstar Trasnfer" <customerservice@allstartransfer.com>
Sent: Friday, April 11, 2008 7:46 AM
Subject: Darlene print this for Laron this am

----- Original Message -----
From: ggcausey@net-venture.com
To: LaronandKatieWilliams@msn.com
Sent: Tuesday, February 19, 2008 6:18 PM
Subject: RE: thank you

Just an FYI, there may be a company doing business as All Star Movers down in the South Sound area trading on your good reputation. They had an ad in the "resident" advertising mail delivered to our UP house. The telephone number shown was 253-255-1216.

~George

Not corrected!

>------- Original Message -------
>From : Laron and Katie Williams[mailto:LaronandKatieWilliams@msn.com]
>Sent : 2/19/2008 2:16:34 PM
>To : ggcausey@net-venture.com
>Cc :
>Subject : RE: thank you
>
>Thank you for your inventory list Mr. Causey. I will attach to your paperwork for Thursdays move and let Laron know it came in.
Have a great day.
Katie
www.allstartransfer.com< http://www.allstartransfer.com/>
800-996-6838

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.519 / Virus Database: 269.22.11/1371 - Release Date: 4/10/2008 12:23 PM

40 20

Darleen

From: "Laron and Katie Williams" <LaronandKatieWilliams@msn.com>
To: "Allstar Trasnfer" <customerservice@allstartransfer.com>
Sent: Friday, April 11, 2008 10:36 AM
Subject: Fw: All Star Movers

---- Original Message ----
From: khrancich@comcast.net
To: laronandkatiewilliams@msn.com
Sent: Friday, April 11, 2008 10:26 AM
Subject: All Star ~~Movers~~

Good Morning!

This morning I called the following phone #: (866) 394-8795. After a couple of rings, a message was given for an All Star Movers. I didn't leave a message, however, a few minutes later I received a phone call from someone who introduced herself as Julie from All Star Movers. I assume she received my number from her caller ID.

I told her my name was Kristine and I was wondering if her company was the same company that had helped me move several years ago. Her response was that her company had not been in business for more than a couple of years so her company couldn't have been the one who serviced my move several years ago.

I then asked her if she knew of any other company besides hers that was named 'All Star Movers'. She responded by telling me that she did not know of any other business with the name 'All Star Movers'.

I didn't ask any further questions. However, she ended our conversation by giving me a (253) 255-1216 phone # and letting me know that she'd be interested in giving me a quote for moving services should I need them.

Regards,
Kristine Rancich

---

41 21

April 11, 2008

Laron Williams
All Star Movers
24111 Hwy 99
Edmonds, WA 98026

Dear Laron:

As you know, I've been a loyal customer of you and All Star Movers for over 15 years. You have conducted both business and residential moves for me and the Medic One Foundation on many occasions. Because of All Star's excellent customer service and timely deliveries, I have promoted you to my business associates, clients, family and friends.

I wanted to make you aware that recently, while in south King County, I passed a moving truck with All Star Movers on the side. At first, I thought you had changed the designs of your trucks, but after closer examination I noticed the phone number was not the same. The number listed on the truck was 253-255-1216. I wanted to bring this to your attention because I'm concerned others might make the same mistake and assume that they are the same company. I would hate for a business associate, client of friend be mislead into believing they are receiving services from you when they are not. I wish you the best of luck in resolving this issue.

Sincerely,

Kim Duncan Martin

Director of Finance
Medic One Foundation

325 Ninth Ave. | MS 359747 | Seattle, WA 98104-2420 | tel: 206.744.9425 | fax: 206.744.9977

SERVICE DATE
MAY - 1 2008

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of ALLSTAR MOVERS, LLC, For a Household Goods Carrier Permit.	DOCKET TV-071039 ORDER 01 INITIAL ORDER ON BRIEF ADJUDICATION; ORDER SUSPENDING TEMPORARY PERMIT AND APPLICATION FOR PERMANENT PERMIT, ON CONDITION

. . . . . .

1 ***SYNOPSIS:*** *This is an Administrative Law Judge's Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. The Initial Order finds that the Applicant Allstar Movers, LLC's use of a name similar to that of an established carrier, All Star Transfer, Laron Williams, Inc, would likely result in customer confusion and destructive competitive practices. The Order suspends Allstar Movers, LLC's temporary permit and consideration of the carrier's permanent authority for 90 days to allow Allstar Movers, LLC, to change its name, as well as equipment and materials referencing the company name, including advertising, business documents, phone directories, Internet web sites and labeling on its trucks and equipment. If Allstar Movers, LLC, does not meet these conditions within the ninety day period, the Commission will cancel the carrier's temporary permit and reject its application for permanent authority.*

PROCEDURAL SUMMARY

2 **PROCEEDINGS:** Docket TV-071039 involves an application by Allstar Movers, LLC, (Allstar) for a permit to operate as a household goods carrier in the State of Washington. An existing carrier, All Star Transfer, Laron Williams, Inc. (All Star Transfer), protested Allstar's application, asserting the company is in violation of a Washington Utilities and Transportation Commission (Commission) rule, WAC 480-15-390, which prohibits operation under a name similar to another carrier without approval by the carrier or the Commission.

3 **APPEARANCES.** Peter D. Haroldson, Luce & Associates, P.S., Tacoma, Washington, represents the applicant, Allstar Movers, LLC. Laron Williams, owner, All Star Transfer, appeared on behalf of the protestant. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).[1]

4 **PROCEDURAL HISTORY.** On May 24, 2007, Allstar Movers, LLC, filed an application with the Commission for a household good carrier permit. On June 27, 2007, the Commission published notice of Allstar's application and the granting of temporary authority. The Commission entered an order on July 2, 2007, granting temporary authority to Allstar subject to conditions and pending a decision on permanent authority.

5 On July 23, 2007, All Star Transfer filed a letter with the Commission protesting the temporary permit granted to Allstar alleging the company is using a name similar to All Star Transfer. On August 21, 2007, the Commission sent a letter to Allstar notifying the company that the Commission "will not authorize use of a similar name if it will mislead the public or result in unfair or destructive company practices." The Commission also notified Allstar that it would not proceed with reviewing the company's application for permanent authority unless there is a change of the company name or Allstar obtains permission from All Star Transfer to use a name similar to All Star Transfer.

6 On October 10, 2007, counsel for Allstar filed a letter notifying the Commission that the company had formally changed its name to Allstar Movers and Delivery, L.L.C., and attached documents verifying the name change.

7 On February 22, 2008, the Commission issued to Allstar a Notice of Intent to Cancel Temporary Authority and Reject Application for Permanent Authority, providing an opportunity for hearing. The notice stated that Allstar's name was similar to the d/b/a

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[1] In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455.*

used by All Star Transfer – All Star Moving & Storage, and that Allstar had failed to change its company name or procure permission from All Star Transfer to use a similar name.

8 On March 14, 2008, counsel for Allstar filed a letter with the Commission requesting a hearing in this matter.

9 On March 26, 2008, the Commission served a Notice of Brief Adjudication in this proceeding on all parties, scheduling a hearing for April 21, 2008.

10 The Commission convened an evidentiary hearing in this matter on April 21, 2008, in Olympia, Washington, before Administrative Law Judge Ann E. Rendahl. The parties were given an opportunity to present oral statements, present witnesses and offer evidence into the record.

MEMORANDUM

11 The question before the Commission in this case is whether Allstar's temporary authority should be cancelled and the company's application for permanent authority should be rejected for failure to comply with the Commission's rule governing permit or trade names, WAC 480-15-390. The rule provides:

> (1) A carrier must conduct operations under the exact name shown on its household goods permit. If a carrier does business under a trade or assumed name, that name must also appear on the permit.
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> (2) A carrier may not operate under a name that is similar to another carrier unless one of the following conditions applies:
>
> (a) The carrier whose name is similar has given written permission to use the name.
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> (b) The commission authorizes use of the similar name. Before authorizing use of a similar name, the commission must first determine that the use of the similar name will not mislead the shipping public or result in unfair or destructive competitive practices.

12 The Commission may cancel temporary permits at any time if a carrier fails or refuses to comply with applicable Commission rules or if other circumstances exist that cause

the Commission to believe that canceling the permit is in the public interest.[2] Further, the Commission may reject or deny an application for permanent authority if the Commission believes the applicant is unfit or that issuing the permit is not in the public interest.[3] In its order granting Allstar temporary authority, the Commission stated that it may cancel the temporary authority granted in the order at any time if, among other conditions, "the Applicant repeatedly fails or refuses to comply with applicable laws or rules pertaining to operations of household goods carriers."[4]

13 In determining whether Allstar has repeatedly failed or refused to comply with WAC 480-15-390, we must consider the facts in the record, whether the company's name is similar to that used by All Star Transfer, and if so, given that All Star Transfer has not given permission to use the name Allstar Movers,[5] whether "use of the similar name will not mislead the shipping public or result in unfair or destructive competitive practices," such that the Commission should approve the use of a similar name. In reaching a decision, we consider prior Commission decisions and state court decisions governing trademark disputes.

A. Relevant Facts and Background.

14 We begin with a history of authority granted to All Staff Transfer and the company's historical use of trade names. Recounting this history will assist in resolving the dispute in this proceeding.

15 All Star Transfer has operated as a household goods carrier under temporary and permanent authority granted by the Commission for ten years. All Star Transfer originally applied for temporary authority on August 12, 1997, under the name Northwest All-Star Movers, Inc., d/b/a Laron Williams All-Star Moving and Storage.[6] On May 29, 1998, the Commission granted the temporary authority in Order M.V. No. 149391, Order Granting Application to Operate as a Temporary Common Carrier,

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[2] *See* WAC 480-15-320(5)(c), 6).
[3] WAC 480-15-330(4)(g), (5).
[4] July 2, 2007, Order Granting Temporary Authority Subject to Conditions Pending Decision on Permanent Authority, ¶ 17(4).
[5] See Exh. 5, Affidavit of James Lucas, ¶ 7.
[6] Exh. 45. All Star Transfer submitted only the first page of the order in evidence. The Commission takes official notice of its prior orders, and considers the full order a matter of record. *See also* Exh. 44.

and Setting Forth Conditions Relating to that Grant.[7] One of the conditions the Commission imposed required All Star Transfer to "provide documentation that all issues raised by All Star Moving, Inc., of Veradale, Washington, relating to use of a name similar to that of All Star Moving, Inc., have been resolved."[8] A letter from one of the owners of Northwest All Star Movers to the Commission in October 1996, discusses the dispute between All Star Moving and Northwest All Star Movers over the use of similar names.[9]

16 The Commission issued a subsequent order, Order M.V. No. 149451, correcting errors in Order M.V. No.149391, stating, in particular, that the prior order failed to reflect a name change the applicant filed during the period the application was under consideration. The Order states that "[o]n November 24, 1997, the applicant requested that the name of the applicant be changed to read All Star Transfer, Laron Williams, Inc." On August 1, 2001, the Commission granted permanent authority to All Staff Transfer, Laron Williams, Inc., in Order M.V. No. 150278. The Commission has no record that All Star Transfer has filed a request to operate under a trade name or DBA other than All Star Transfer, Laron Williams, Inc.[10]

17 Mr. Williams obtained a service mark on June 9, 1998, from the United States Patent and Trademark Office (USPTO) for the name "Laron Williams' All Star Movers."[11] The service mark was cancelled on March 12, 2005.[12]

18 Advertising and phone bills submitted by All Star Transfer indicate that consistent with the condition in the Commission's May 1998 order granting temporary authority, and the November 1998 correcting order, the company was using the name "Northwest All Star Movers" until at least April 1997.[13] Beginning in October 1997, the following company names appeared in advertising, phone bills, letters, and on sales receipts: All Star Moving & Storage; Laron William's All Star Movers; All Star

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[7] *Id.*
[8] *Id.*
[9] Exh. 43.
[10] Although the Notice of Brief Adjudication refers to All Star Transfer as "All Star Transfer, Laron Williams, Inc., d/b/a All Star Moving & Storage," his was apparently an error, as the Commission has no record of the company filing such a DBA with the Commission.
[11] Exh. 21.
[12] Exh. 8.
[13] *See* Exhs. 22-23, 25-27, 30-33.

Movers; All Star Movers Eastside; and All Star Piano Moving & Storage.[14] The Commission has no record that any of these DBAs were filed with the Commission. The company's Internet address, Allstartransfer.com, uses the company name on file with the Commission.[15]

19 All Star Transfer offered two e-mails and a letter as evidence that Allstar's use of a similar name creates customer confusion and may result in unfair competition.[16]

20 Allstar filed an application for a household goods carrier permit on May 24, 2007. On July 7, 2007, Allstar filed an application with the USPTO for a trademark for the name Allstar Movers.[17] The USPTO granted a Notice of Allowance to use the mark on March 18, 2008.[18]

21 The principals of Allstar assert that they chose the name Allstar Movers without intending to "steal" the name or act in bad faith. When applying for a business license with the state, a state employee allegedly did a search and told them that another moving company using the name had recently gone out of business.[19]

22 The company has tried to negotiate with All Star Transfer about the use of the name Allstar, without success.[20] After negotiations failed, and the Commission notified Allstar of the need to obtain approval from All Star Transfer for the use of a similar trade name, or to change the name, Allstar notified the Commission in October 2007 that it had changed its name to Allstar Movers and Delivery, L.L.C., and had filed the name change with the Secretary of State's Office and applied for a Master Business Application in the new name.[21]

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[14] *See* Exhs. 24, 28-29, 34-38, 41.
[15] *See* Exhs. 39, 40.
[16] Exhs. 39-41. The Administrative Law Judge admitted this records into evidence over the hearsay objection of counsel for Allstar. The Commission may consider evidence that might now be admissible under the rules of evidence governing civil court proceedings "if the presiding officer believes it is the best evidence obtainable, considering its necessity, availability and trustworthiness." See WAC 480-07-495.
[17] Exhs. 6-7.
[18] *Id.*
[19] Exh. 5, Affidavit of James Lucas, ¶ 5.
[20] *Id.*, ¶ 7.
[21] Exhs. 1-4.

23 Allstar offered evidence during the hearing of the common use of the words "All Star", "Allstar", and "All-star" in company trade names, including searches for such names with the USPTO, the Washington Secretary of State, Superpages.com, and Google.[22] Within Washington State, four companies with the name "All Star" provide transportation services: All Star Relocations, Inc., All Star Transfer, Laron Williams, Inc., Allstar Movers and Delivery, L.L.C., and Allstar Transportation Services, Inc.[23] Of these four, the applicant and protestant are in the household goods moving industry.

24 Both All Star Transfer and Allstar operate under state-wide authority to transport household goods. While All Star Transfer's office is located in Edmonds, in Snohomish County, the company has served the entire state. All Star Transfer has maintained a Tacoma telephone number for several years. Allstar's office is located in Sumner, in Pierce County, and its primary service area is in Pierce, Thurston and South King Counties, although the company does serve areas north, west and east of Pierce County when it receives a request.

B. Legal Standard.

25 The Commission has long held that carriers may not conduct operations under a corporate or trade name similar to that of another carrier.[24] A decade ago in *Cascade*

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[22] *See* Exhs. 9-16.

[23] Exhs. 11-12.

[24] *See* WAC 480-12-220(2). That rule, which is consistent with the current rule, WAC 480-25-390(2), addressed all common and contract carriers in the state, including household goods carriers, provided:

"(2) 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 unless:

(a) Said carrier received written consent of such other common or contract carrier prior to the adoption of its name or deceptively similar name; and

(b) Said carrier, in addition, receives the written consent of the Washington utilities and transportation commission for the adoption of such name or deceptively similar name, and the commission shall, prior to giving such consent, first find that the use of said name will not mislead the public as to the carrier or carriers with whom they are doing business, nor result in any unfair or destructive competitive practices in the business of the transportation of persons and property for fire by motor carrier."

This rule was filed with the Office of the Code Reviser on June 6, 1969, and became effective on October 9, 1969. When a new rule chapter, WAC 480-15, addressing household goods carriers became effective on January 15, 1999, the prior rule was repealed, but a rule with the same effect

Movers,[25] the Commission decided a comparable dispute between an existing household goods mover and a new applicant over the use of the name "Cascade" in the carriers' trade names. In that decision, the Commission denied an application by "Cascade Movers of Washington, Inc.," following the protest of an existing firm "Cascade Moving & Storage, Inc." The Commission determined that the rule prohibiting use of similar names is intended to prevent members of the public from confusion about the identity of businesses using a similar name. The Commission found that "the law protects all sorts of business names, and that under existing Washington law, persons may not use geographical references, common names, and even their own names, if doing so could interfere with the identification of an established business."[26]

26 The cases the Commission cited in *Cascade Movers* address whether the use of similar company or trade names results in unfair competition such that the public may be misled, deceived, or confused.[27] The cases identify that whether there is unfair competition is question of fact.[28] These cases, dating from 1940, establish eight rules for addressing unfair competition in the use of a trade name:

> (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. ...
>
> (2) A person, whether individual or corporate, may not use any name, not even his 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

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was adopted in WAC 480-15-390. The Commission recently amended the language in the rule, but the controlling language remains the same.

[25] *In re Application of Cascade Movers of Washington, Inc.*, Order M.V. No. 149038, Docket No. P-78560, Commission Decision and Order Affirming Initial Order Denying Application for Authority to Change Corporate Name (Oct. 17, 1996).

[26] *Id.*, at 4, citing *Seattle Street Railway & Municipal Employees Relief Ass'n v. Amalgamated Ass'n of Street, Electric Railway and Motor Coach Employees of America*, 3 Wn.2d 520, 101 P.2d 338 (1940); *Evergreen State Amusement Co. v. S.F. Burns & Co.*, 2 Wn. App. 416, 468 P.2d 460 (1970); *Foss v. Culbertson*, 17 Wn. 2d 610, 136 P.2d 711 (1943); *Olympia Brewing Co. v. Northwest Brewing Co.*, 178 Wash. 533, 35 P.2d 104 (1934).

[27] *Olympia Brewing*, 178 Wash. at 538; *Seattle Street Railway*, 3 Wn.2d at 531-34; *Foss*, 17 Wn. at 623; *Evergreen State*, 2 Wn. App. at 419.

[28] *Olympia Brewing*, 178 Wash. at 538; *Seattle Street Railway*, 3 Wn.2d at 523; *Foss*, 17 Wn. at 623.

to confuse, in the public mind, the business of such person with that of the other. [Citations.]

(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.].

(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.]

(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 of all the world. [Citation.]

(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.]

(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.]

(8) Prior right to the use of a name will be protected by injunction against others using it unfairly. [Citations.][29]

27 During the hearing, counsel for Staff identified several more recent cases that rely on and apply these eight rules concerning what constitutes unfair competition.[30] These cases address the scope of injunctive relief for infringement, identifying the following considerations:

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[29] *See Seattle Street Railway*, 3 Wn.2d at 531; cited in *Foss*, 17 Wn.2d at 623-25; *Evergreen State Amusement*, 17 Wn.App. at 419.

[30] *See Holmes v. Border Brokerage Company, Inc..*, 51 Wn.2d 746, 750-51, 321 P.2d 898 (1958); *Tradewell Stores v. T. B. & M, Inc.*, 7, Wn. App. 424, n.2, 500 P.2d 1290 (1972); *Puget Sound Rendering, Inc. v. Puget Sound By-Products*, 26 Wn.App. 724, 615 P.2d 504 (1980); *Bishop v. Hanenburg*, 39 Wn.App. 734, 736, 695 P.2d 607 (1985); *Seattle Endeavors, Inc. v. Mastro*, 123 Wn.2d 339, 346, 868 P.2d 120 (1994).

> (1) Whether the trade name was vaguely descriptive or clearly nondescriptive, i.e., the 'appropriability' of the name; (2) the originality of the name; (3) whether or not the defendant acted in good faith; and (4) the extent of competition between plaintiff's and defendant's businesses.[31]

28 Thus, the remedy for infringement for using a similar name is based on whether the name is distinctive, whether the name is commonly used, the infringer's good faith, the geographic proximity and extent of competition between the companies, and the extent of customer confusion.

29 In one case, where two apartment buildings were located within three blocks in Seattle, the court determined that, even though the owner of the earlier building had some protection to the name, modifying the newer building's name to Willow Court would dispel public confusion, as there were a large number of apartments in Seattle with the term "Willows" in their name.[32] Evidence of public confusion included deliveries and mail intended for the other business that were misaddressed or misdelivered.

30 In another case, a dispute arose about the similarity between the names of two discount foot stores, the earlier "Family Market" in Shelton, and the later "Family Mark-It" in Bremerton.[33] The court determined that the earlier trade name was only marginally appropriable, as it was not truly descriptive of the services provided, that the name was not unique, that the defendant had used the name "Family Mark-It" in good faith, and that there was little competition between the two stores, as Shelton and Bremerton were distinct markets.[34] The court upheld a decision that the second store should add a personal or geographic term to the name, such as Al's Family Mark-It, to distinguish the stores and avoid customer confusion.[35]

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[31] *Seattle Endeavors*, 123 Wn. 2d at 348, quoting *Puget Sound Rendering*, 26 Wn.App. 724 at 729; citing Tradewell, 7, Wn. App. 424.
[32] *Seattle Endeavors*, 123 Wn.2d at 348-49.
[33] *Tradewell*, 7 Wn. App. at 425.
[34] *Id.* at 428-30.
[35] *Id.* at 430.

31 In a third case involving two rendering companies located in Pierce County, both using the words 'Puget Sound" in their trade names, the court held that a total prohibition of the words "Puget Sound" in the trade name of the infringing company was not warranted and limited the injunction to requiring the company to modify its name by including additional words, as in *Tradewell*.[36] The court found that the plaintiff company had established confusion by the public through misdirected and misaddressed phone calls, mail and supplies.[37]

C. Discussion and Decision

32 As the Commission stated in *Cascade Movers*, "[t]his has become an unfortunate situation for all concerned."[38] There is no winner in this dispute: If the Commission allows the use of the name "Allstar Movers," or some variation, All Star Transfer, the existing firm, may be harmed by the possible confusion of the public and loss of the goodwill it has established in its trade names using the term All Star, particular its Commission approved name All Star Transfer. If the Commission denies Allstar the use of the term "Allstar" in its trade name, the company will have to forgo the investment in that name, including the familiarity of its customers in the name. Given that the parties have been unable to resolve this matter themselves, the Commission must decide the issue by applying its rules, prior decision and related case law to the specific facts in the record.

33 Similar to the Commission's analysis in *Cascade*, it is reasonable to find that the term "Allstar" in Allstar Movers is substantially similar to the words "All Star" as used by All Star Transfer, whether or not the term is used in one word, two, or with a hyphen.

34 Because the names are similar, we must consider the conditions in WAC 480-15-390(2). As the owner of All Star Transfer has refused to give his permission to allow Allstar to use any form of Allstar in its trade name, we must determine whether to authorize use of the similar name.

35 The Commission's primary concern in determining whether to approve use of the similar name is whether it will result in customer confusion or unfair or destructive

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[36] *Puget Sound Rendering*, 26 Wn. App. at 729.
[37] *Id.* at 728-29.
[38] Order M.V. No. 149038, Docket No. P-78560, at 3.

competition. This is a serious concern in the business of transporting household goods. When the contents of a consumer's house – sometimes all their worldly belongings – are placed in the hands of a moving company, many things can and do go wrong, including damage, loss, under or overestimates, and improper verbal estimates that undermine the consumer's trust in moving companies. If a customer confuses one firm with another with good or ill will, this will have an impact on the businesses. The Commission's rule is intended to protect the public interest and avoid such confusion and destructive competition.

36 Under the eight rules for determining unfair competition, All Star Transfer appropriated the use of the name All Star in connection with household goods moving services ten years prior to Allstar Movers. Although not properly registered with the Commission, All Star Transfer has consistently used variations of the term "All Star" in his business based in King and Snohomish Counties.[39] While Laron Williams may have abandoned its U.S. Trademark in the name Laron Williams' All Star Movers, he has not abandoned the use of the names All Star Transfer, All Star Moving & Storage, All Star Piano Moving& Storage, and All Star Movers Eastside. As a prior user, All Star Transfer is entitled to relief regardless of whether Allstar intended to deceive or infringe on the use of the "All Star" name. Under this analysis, All Star Movers is entitled to some form of injunctive relief.

37 Use of the term All Star related to household goods moving is not a descriptive name, as it does not describe moving services. Instead, the term is more appropriately a nondescriptive term, which tends to give it weaker protection. In addition, the term is not original: Allstar demonstrates that the term "All star," whether in one word, two words or with a hyphen, is a common business name in Washington and elsewhere.[40] While it is clear that there are only two moving companies with the term in Washington, the applicant and the protestant are both based in close proximity in Western Washington. The prior All Star Movers was located in Eastern Washington and did not pose a threat of public confusion or destructive competition. Despite All Star Transfer's inconsistent and varied use of trade names since 1996, some

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[39] All Star Transfer's use of names not properly filed with the Commission is not at issue in this proceeding, and only serves to establish under the tests for unfair competition, that the company used the terms in business. The Commission may address All Star Transfer's use of non-registered trade names in a different proceeding.

[40] *See* Exhs. 9-16.

sanctioned by the Commission, and others not, in all fairness Allstar ought not be able to rely on the goodwill All Star Transfer has built with the use of the term "All Star" whether used in one word or two.

38 Based on testimony and evidence in the record, the companies operate in overlapping geographic areas, may have competed for the same customers, and some customers may have already been confused by the similar name. The two e-mails and the letter All Star Transfer offered in evidence are acceptable evidence of customer confusion. Although the authors of the documents were not present at the hearing, the hearing notice did not specify that witnesses would be presented, such that the documents are reasonable evidence in support of All Star's claims of customer confusion.[41] In response to questions by counsel for Staff, however, representatives of both companies denied receiving mail or deliveries for the other company. In an already competitive market for household goods carriers, the potential for ill will and anticompetitive practices between the two companies can only harm consumers and turn them away from both businesses.

39 Without modification, it is reasonable to find that consumers will be confused by the use of two similarly named household goods moving companies.

40 After considering the facts and cases discussed above, we find that Allstar must modify its name to distinguish itself from All Staff Transfer. The change in name from Allstar Movers, LLC, to Allstar Moving & Storage, LLC, does not sufficiently distinguish the two companies. To ensure there is no public confusion or unfair or destructive competitive practices, Allstar must remove the term Allstar from its name and may not use any variation of the term "Allstar," "All Star," or "All-Star" in connection with the terms "Moving," "Movers," "Transfer" "Storage," or "Delivery."

41 Instead of cancelling Allstar's temporary permit until the issue is corrected, this Order, unless altered on review, would suspend the company's temporary permit and postpone consideration of the company's application for permanent authority for 90 days. During that period, Allstar must adopt a new name and change all references to Allstar on materials and equipment, including advertising, truck markings, letterhead, business cards, phone directory listings and Internet web site. If, at any time prior to

[41] WAC 480-07-495.

ninety days, Allstar complies with this condition, the Commission will lift the suspension order, reinstate the temporary permit and evaluate the company's application for permanent authority. If the company does not meet the condition, the Commission will cancel the company's temporary permit and reject the application for permanent authority.

FINDINGS OF FACT

42 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

43 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate the rates, rules, regulations, practices, and accounts of public service companies, including household goods carriers.

44 (2) Allstar Moving, LLC, is a "public service company," a "common carrier" and a "household goods carrier," as those terms are defined in RCW 81.04.010 and RCW 81.80.010 and used in Title 81 RCW. Allstar is engaged in the business of transporting household goods for compensation over the public highways of the State of Washington pursuant to a temporary permit granted by the Commission.

45 (3) All Star Transfer, Laron Williams, Inc., is a "public service company," a "common carrier" and a "household goods carrier" as those terms are defined in RCW 81.04.010 and RCW 81.80.010 and used in Title 81 RCW. All Star Transfer is engaged in the business of transporting household goods for compensation over the public highways of the State of Washington pursuant to permanent authority granted by the Commission.

46 (4) When All Star Transfer applied for temporary authority in 1997 under the name Northwest All-Star Movers, Inc., d/b/a/ Laron Williams All-Star Moving

and Storage, an existing company using the name All Star Moving, Inc., protested the application. Following negotiations, the companies agreed that the applicant should change its name to All Star Transfer, Laron Williams, Inc.

47 (5) All Star Transfer has operated as a household goods carrier under temporary and permanent authority in this state for ten years, serving the entire state with an office in Edmonds, in Snohomish County.

48 (6) Mr. Williams obtained a trademark on June 9, 1998, from the USPTO for the name "Laron Williams' All Star Movers." This mark was cancelled on March 12, 2005.

49 (7) Allstar applied for and the Commission granted temporary authority in 2007.

50 (8) Allstar applied for and the USPTO granted use of the name "Allstar Movers" on March 18, 2008.

51 (9) All Star Transfer protested the grant of temporary authority and application for permanent authority claiming Allstar's use of a similar trade name violated WAC 480-15-390.

52 (10) The Commission issued a letter to Allstar advising them to negotiate an agreement with All Star Movers or modify its name to avoid violating Commission rules prohibiting similar trade names.

53 (11) When negotiations with All Star Transfer failed, Allstar officially changed its name to Allstar Movers and Delivery, LLC, and notified the Commission of the change.

54 (12) The Commission issued a notice of cancellation of Allstar's temporary permit and rejection of its application for permanent authority asserting the company's failure to comply with WAC 480-07-390, and providing an opportunity for hearing.

55 (13) After Allstar requested a hearing, the Commission held a brief adjudicative proceeding on April 21, 2008.

56 (14) Neither Allstar nor All Star Transfer have received misaddressed or misdirected mail or packages for the other company, but three All Star Transfer customers have notified All Star Transfer about the similarity between the names of the two companies.

57 (15) The use of the term "All Star," whether in one word, two words or with a hyphen, is a commonly used term in trade names in Washington State and elsewhere, however, there are only two household goods carriers in the state – the applicant and the protestant – using the term "All Star" in a trade name.

CONCLUSIONS OF LAW

58 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

59 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.

60 (2) Commission rules governing household goods carriers prohibit carriers from operating under a name that is similar to another carrier unless the carrier who name is similar has given written permission to use the name, or the Commission authorizes use of the similar name after determining that its use will not mislead the shipping public or result in unfair or destructive competitive practices. *WAC 480-15-390(2).*

61 (3) The Commission may cancel temporary permits at any time if a carrier fails or refuses to comply with applicable Commission rules or other circumstances exist that cause the Commission to believe that cancelling the permit is in the public interest. *WAC 480-15-320(5(c), (6).*

62 (4) The Commission may reject or deny an application for permanent authority if the Commission believes the applicant is unfit or that issuing the permit is not in the public interest. *WAC 480-15-330(4)(g), (5).*

63 (5) Washington courts have held that cases of unfair competition concerning the use of similar trade names are questions of fact. The courts have applied specific rules to these cases to determine if unfair competition exists, including:

> (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. ...
>
> (2) A person, whether individual or corporate, may not use any name, not even his 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.]
>
> (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.].
>
> (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.]
>
> (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 of all the world. [Citation.]
>
> (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.]
>
> (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.]

(8) Prior right to the use of a name will be protected by injunction against others using it unfairly. [Citations.][42]

64 (6) The remedy for infringement for using a similar name is based on whether the name is distinctive, whether the name is commonly used, the infringer's good faith, the geographic proximity and extent of competition between the companies, and the extent of customer confusion.[43]

65 (7) The Commission's rule prohibiting use of similar names is intended to protect the public interest and avoid such confusion and destructive competition, as such matters are a serious concern in the business of transporting household goods, an industry the Commission regulates in the public interest.

66 (8) Allstar Movers, LLC's trade name is similar to that of All Star Transfer, Laron Williams, Inc.

67 (9) Although the term All Star is a commonly used term in trade names in Washington and elsewhere, the applicant and the protestant are the only two household good moving companies in the state using the term.

68 (10) The geographic areas served by the applicant and the protestant are overlapping, resulting in the likelihood of confusion by the shipping public and unfair or destructive competitive practices between the two companies.

69 (11) The change in name from Allstar Movers, LLC, to Allstar Moving & Storage, LLC, does not sufficiently distinguish the two companies.

70 (12) To prevent confusion by the shipping public and the likelihood of unfair or destructive competitive activity, Allstar must remove the term Allstar from its name and may not use any variation of the term "Allstar," "All Star," or "All-Star" in connection with the terms "Moving," "Movers," "Transfer" "Storage," or "Delivery."

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[42] *See Seattle Street Railway*, 3 Wn.2d at 531; cited in *Foss*, 17 Wn.2d at 623-25; *Evergreen State Amusement*, 17 Wn.App. at 419.
[43] *Seattle Endeavors*, 123 Wn. 2d at 348, quoting *Puget Sound Rendering*, 26 Wn.App. 724 at 729; citing Tradewell, 7, Wn. App. 424.

71 (13) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order. *RCW Title 81.*

ORDER

THE COMMISSION ORDERS:

72 (1) Allstar Movers, LLC's temporary permit is suspended and the Commission's consideration of Allstar Movers, LLC's application for permanent authority is postponed for 90 days to allow the company to change its name as directed in this Order, and to remove all references to its name on materials and equipment, including advertising, truck markings, letterhead, business cards, phone directory listings and Internet web site.

73 (2) If Allstar Movers, LLC, complies with the condition in this Order at any time prior to 90 days, the Commission will lift the suspension order, reinstate the company's temporary permit and evaluate the company's application for permanent authority.

74 (3) If Allstar Movers, LLC, does not meet the condition, the Commission will cancel the company's temporary permit and reject the application for permanent authority.

75 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington and effective May 1, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

NOTICE TO PARTIES:

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after service of this Initial Order to file a *Petition for Review*. What must be include in any *Petition* and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a *Petition for Review* within seven (7) days after service of the *Petition*.

RCW 80.01.060(3) and WAC 480-07-610(9) provide that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any *Petition* or *Response* filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and five (5) copies of any *Petition* or *Response* must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250