

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

In re Application of) DOCKET TV-071039
)
ALLSTAR MOVERS, LLC,) ORDER 02
)
For a Household Goods Carrier Permit) FINAL ORDER DENYING
) PETITION FOR
) ADMINISTRATIVE REVIEW OF
) INITIAL ORDER; CLARIFYING
) INITIAL ORDER
.....)

1 **SYNOPSIS:** *The Commission denies Allstar Movers, LLC’s Petition for Administrative Review and affirms the requirements in the Commission’s Initial Order, including that Allstar Movers must remove the term “Allstar,” or any variation on the term (e.g., “All Star” or “All-Star”), from its name to prevent confusion by the shipping public and the likelihood of unfair or destructive competitive activity. The Commission suspends Allstar Movers temporary permit and postpones consideration of the carrier’s permanent authority for 90 days to allow Allstar Movers, LLC, to change its name, and to modify any equipment or materials that reference 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 90-day period, the Commission will cancel the carrier’s temporary permit and reject its application for permanent authority.*

SUMMARY

2 **PROCEEDINGS:** On May 24, 2007, Allstar Movers, LLC (Allstar Movers), filed an application with the Commission for a household goods carrier permit. The Commission entered an order on July 2, 2007, granting temporary authority to Allstar Movers, subject to conditions and pending a decision on permanent authority.

3 On July 23, 2007, an existing holder of a permanent household goods carrier permit, All Star Transfer, Laron Williams, Inc. (All Star Transfer), filed a letter with the

Commission protesting Allstar Movers' temporary permit, alleging the new company's use of a name similar to All Star Transfer, violates WAC 480-15-390.¹

4 The Commission's Executive Secretary sent a letter to Allstar Movers on August 21, 2007, notifying the company that it "may not operate under a name that is similar to that of another carrier" and 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 Movers that it would not proceed with reviewing the company's application for permanent authority unless the company changed its name or obtained permission from All Star Transfer to use a similar name.

5 On October 10, 2007, counsel for Allstar Movers sent a letter to a Commission staff member identified only as "Tina."² The letter states that Allstar Movers, LLC, had formally changed its name to Allstar Movers and Delivery, L.L.C. Commission Staff apparently considered this change inadequate to bring Allstar Movers into compliance with WAC 480-15-390 and, on February 22, 2008, the Commission issued to Allstar Movers a Notice of Intent to Cancel Temporary Authority and Reject Application for Permanent Authority; Providing Opportunity for Hearing. The Notice states: "The name 'Allstar Movers' used by the carrier holding temporary authority under permit No. THG-62885 is similar to the name 'All Star Moving & Storage' used by the carrier holding permanent authority under permit No. HG-11846." The Notice concludes with the statement:

If Allstar Movers does not request a hearing and does not change its name or procure permission to use its existing name from All Star

¹ All Star Transfer's protest states that the company originally did business in Washington and established its reputation in the early 1990's as "All Star Movers." It changed its name to All Star Transfer pursuant to an agreement with a moving company in Veradale, Washington, near Spokane, known by the similar name "All Star Moving, Inc." The Veradale company is no longer in business. Mr. Williams, the owner of All Star Transfer, testified at TR. 59:16-23 that his company presently does business under the trade names "All Star Movers" and "All Star Moving & Storage," though the Initial Order states that these names are not presently reflected in the Commission's records. Order 01 at 5, fn. 10.

² The letter was not filed with the Commission and did not become part of the agency's official records in this docket until submitted on March 14, 2008, as an attachment to Allstar Movers' request for a hearing in this matter. The letter was later admitted in this proceeding with the designation "Exhibit 1."

Moving by the hearing request deadline set out in the paragraph above, the Commission will enter an order cancelling the company's temporary permit and rejecting the application for permanent authority.

- 6 On March 14, 2008, Allstar Moving requested a hearing. The Commission served a Notice of Brief Adjudication in this proceeding on March 26, 2008, scheduling a hearing for April 21, 2008.
- 7 Following a Brief Adjudicative Proceeding (BAP) conducted in accordance with RCW 34.05.482-494 and WAC 480-07-610, the presiding Administrative Law Judge (ALJ) entered her Initial Order on May 1, 2008. The Initial Order concludes and requires that Allstar Movers must remove the term "Allstar," or any variation on the term (*e.g.*, "All Star" or "All-Star",) from its name to prevent confusion by the shipping public and the likelihood of unfair or destructive competitive activity. The Initial Order would by its terms suspend Allstar Movers temporary authority and postpone consideration of the company's application for permanent authority for 90 days to allow the company to change its name as directed, 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.
- 8 The Initial Order provides that if Allstar Movers complies with these requirements at any time during the 90-day suspension period, the Commission will lift the suspension order, reinstate the company's temporary permit and evaluate the company's application for permanent authority. On the other hand, if Allstar Movers, LLC, does not meet these conditions within the 90-day period, the Initial Order would have the Commission cancel the carrier's temporary permit and reject its application for permanent authority.
- 9 On May 21, 2008, Allstar Movers filed its Petition for Review of Initial Order on Brief Adjudication. All Star Transfer filed a letter opposing the petition on May 30, 2008. We have considered the full record and determine the matter in this Final Order.
- 10 **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).³

- 11 **COMMISSION DETERMINATION.** The Commission denies Allstar Movers' Petition. There is no evidence in the record upon which the Commission could determine that Allstar Movers' use of a name similar to All Star Transfer, in an overlapping market, "will not mislead the shipping public or result in unfair or destructive competitive practices." Indeed, there is evidence to the contrary. Thus, absent agreement by All Star Transfer, there is no basis under WAC 480-15-390 upon which the Commission can authorize Allstar Movers' use of a similar name to that of All Star Transfer.⁴

MEMORANDUM

- 12 We begin with the observation that the two carriers' trade names are facially similar. Indeed, the only distinctive term in the two names—Allstar and All Star—is essentially identical.⁵ It is undoubtedly for this reason that Commission Staff determined in the first place that to satisfy the requirements of WAC 480-15-390(2) Allstar Movers would be required to change its name if it could not secure All Star Transfer's agreement to share the distinctive term.

³ 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*.

⁴ WAC 480-15-390(2) provides:

- (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.
 - (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.

⁵ Cases concerning trademarks distinguish between "distinctive" terms and "descriptive" terms in trade names. The key focus for purposes of considering infringement is on the distinctive terms. The descriptive terms (*e.g.*, "movers," "moving," "transfer") simply describe what the company does and, in that sense, are less likely to distinguish one company from another in the public eye.

- 13 The obvious similarity of the two company's names that led to Staff's determination, considering the rule language, effectively established a rebuttable presumption. Allstar Movers exercised its right to challenge this presumption at a hearing which gave it an opportunity to present evidence to show that its use of a name similar to that of an existing carrier "will not mislead the shipping public or result in unfair or destructive competitive practices."⁶
- 14 Allstar Moving's principal arguments are that the two companies serve different markets and that the evidence All Star Transfer presented to show the likelihood of customer confusion is improperly admitted hearsay. On these bases, Allstar Moving argues that the Initial Order errs in Conclusion of Law 10, which states: "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."
- 15 The only evidence Allstar Movers cites in support of its contention that the two companies operate in different markets is the affidavit of its owner, Mr. James Lucas. According to Allstar Movers' petition, Mr. Lucas's affidavit shows that: "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 [All Star Transport]."⁷ Mr. Lucas's opinion lacks probative value, however, because it is speculative and tentative. More important, it ignores the statewide applicability of household goods mover certificates granted by the Commission, and is contrary to other evidence in the record.

Putting to one side whether competition between these companies is "likely" or "significant," it is clear from the record that these two companies are geographically proximate, offer their services through advertising in the same markets and provide services in the same markets. All Star Transfer is located in Snohomish County, which borders King County on the north. Allstar Movers is located in Pierce County, which borders King County on the south. Both companies have statewide permits. Both offer services in King County. All Star Transfer, at least, operates "in Tacoma

⁶ WAC 480-15-390(2)(b).

⁷Petition for Review ¶ 27; TR. 28:3-29:5; Exhibit 5 (Lucas Affidavit at ¶9).

and the entire Puget Sound area.”⁸ All Star Transfer maintains a telephone number in Tacoma, located in Pierce County.⁹ One of Allstar Movers principal markets is Pierce County.¹⁰ In sum, the evidence shows these two companies operate in overlapping markets. Potential customers in their common areas of operation may be confused by their similar names.¹¹ In addition, All Star Movers may gain an unfair competitive advantage if potential shippers confuse it with All Star Transfer, a long-established business that has a track record of satisfactory performance according to its owner’s testimony.¹² Finally, one company or the other may unfairly suffer if unsatisfactory performance by its competitor is wrongly attributed to it.

- 16 The likelihood of the shipping public being misled or confused by the similar name of these two companies is corroborated by correspondence from three of All Star Transfer’s customers, admitted as Exhibits 39, 40 and 41. AllStar Movers argues that the presiding ALJ improperly admitted and considered this hearsay evidence. Hearsay evidence, however, is admissible in proceedings conducted under the Administrative Procedure Act “if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.”¹³ We have no reason to question the presiding ALJ’s judgment that correspondence from customers to a business owner meets this standard. Nor do we question her determination that this evidence “is the best evidence reasonably obtainable, considering its necessity, availability and trustworthiness.”¹⁴
- 17 Allstar Movers also challenges Conclusion of Law 11 of Order 01 that the change in name from Allstar Movers, LLC to Allstar Moving and Storage, LLC, does not sufficiently distinguish the two companies. Allstar Movers complains that the

⁸ TR. 45:25-26.

⁹ TR. 46:3-5

¹⁰ TR. 36:3-4.

¹¹ Exhibits 39, 40 and 41 (correspondence from All Star Transfer customers).

¹² TR. 44:23-45:20;55:1-6; 75:14-21

¹³ RCW 34.05.452(1).

¹⁴ Order 01 at 6, fn. 16 (citing WAC 480-07-495). In considering Allstar Movers’ arguments concerning this correspondence from All Star Transfer’s customers, we note, too, the less formal nature of Brief Adjudicative Proceedings, which allow the record to include “any documents regarding the matter that were considered or prepared by the presiding officer” and which provide that “the agency record need not constitute the exclusive basis for agency action . . . or judicial review.” RCW 34.05.494.

“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[sic], while ALLSTAR MOVERS AND DELIVERY, LLC [sic], is not sufficiently distinguished from ALLSTAR MOVERS [sic].” We believe Allstar Movers meant to refer us to Order M.V. No. 149451, which reflected All Star Transfer’s name change following a challenge to its original application as Northwest All-Star Movers by All Star Moving, Inc. of Veradale, Washington.¹⁵ If so, this argument misses the target in two ways. It ignores the point that All Star Transfer’s name change in the earlier case was approved, in part, because the Veradale company agreed to it, thus satisfying WAC 480-12-220(2)(a), the substantively similar predecessor rule to WAC 480-15-390(2)(a). In addition, Allstar Movers’ argument ignores that All Star Transfer and the Veradale company operated in separate markets geographically remote from each other. Though both had statewide authority, there was far less, if any, likelihood that potential customers of the respective companies would confuse them.

18 Allstar Moving also misses the point that the requirement under WAC 480-15-390 is not that it adopt a new name (*i.e.*, Allstar Movers and Delivery, L.L.C.) that distinguishes it from its original name (*i.e.*, Allstar Movers, LLC). Rather, the requirement is that it change its name so as to distinguish itself from another company with a similar name (*i.e.*, All Star Transfer, a/k/a All Star Movers and All Star Moving & Storage) because there is a likelihood of confusion by the shipping public and the existing company does not agree to the new company’s use of a similar name.

19 Allstar Mover’s remaining assertions of error either depend on the points discussed above, or simply direct our attention to what are no more than oversights in proof-reading the Initial Order. While we clarify these scrivener’s errors for posterity’s sake in our ordering paragraphs below, none of these considered individually, nor all of them considered collectively, constitute error warranting administrative review.

20 Allstar Movers has failed to show error in Order 01, the Initial Order in this proceeding. We conclude Allstar Mover’s Petition for Review should be denied. We affirm and restate in our ordering paragraphs below the remedies set forth in Order 01.

¹⁵ See, *supra*, fn. 1.

ORDER

THE COMMISSION ORDERS:

- 21 (1) Allstar Movers, LLC's Petition for Review of Initial Order on Brief Adjudication, Order Suspending Temporary Permit and Application for Permanent Permit, On Condition, is denied.
- 22 (2) 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.
- 23 (3) 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.
- 24 (4) 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.
- 25 (5) The Initial Order in this matter, Order 01, is clarified as follows:
- a. At page 5, ¶16 and page 13, ¶40, the phrase "all Staff Transfer" should be read as "All Star Transfer."
 - b. At page 7, footnote 24, the reference to WAC 480-25-390(2) should be read as a reference to WAC 480-15-390(2).
 - c. At page 15, ¶54 (Finding of Fact 12), the reference to "WAC 480-07-390" should be read as a reference to "WAC 480-15-390."
 - d. At page 13, ¶40 and page 18, ¶69 (Conclusion of Law 11), the name "Allstar Moving & Storage, LLC" should be read as "Allstar Moving and Delivery, L.L.C."

26 (6) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington and effective June 5, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.