

N.D.A.G. Letter to Meier (Oct. 15, 1987)

October 15, 1987

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Secretary Meier:

Thank you for your letter of September 25, 1987, concerning a dispute which has occurred over the registration of the trade name known as "The Straight Shot Band."

According to your letter, a Statement of Change of Ownership of Trade Name Registration was filed by certain individuals in your office. In response to the filing of that document, you issued a trade name certificate to those individuals. The attorney for the original owner of the trade name now contends that there was no change in the ownership or interest of the person who engaged in business under the trade name in question. As such, the attorney contends the statement of change of ownership was inaccurate and should have never been filed with or accepted by your office.

The attorney suggests you change your trade name forms to require the signature of the person engaged in business under the registered trade name where an attempt is made to file a statement of change of ownership of the trade name. The attorney further suggests that you require some proof of sale or assignment of the business involved with the trade name. The attorney also contends you should seek the cancellation of the trade name certificate completed on September 8, 1987, on the basis of fraud in the registration process.

The statute involved in the registration of a trade name is N.D.C.C. § 47-25-02. This statute states that if the interest of any person engaged in business under a trade name shall change or cease to exist or should any other person become interested therein, such change shall be registered within 90 days after any change shall take place in the ownership of the business or any part thereof "in the same manner as an original registration."

The manner of original registration is also set forth by N.D.C.C. § 47-25-02. The statute requires a statement executed by each owner upon blanks furnished by the Secretary of State setting forth the three items:

- I. The trade name to be registered,
2. The name or names and addresses of each and every owner of the business, and

3. The nature of the business in detail.

Nowhere in N.D.C.C. § 47-25-02 or the other statutes within N.D.C.C. ch. 47-25 is there any requirement that the Secretary of State make further inquiry as to the accuracy or truthfulness of information provided to him in the process of registering a trade name or a change which has occurred as to the person engaged in business under a trade name. Furthermore, the statutes do not require the previous owner of a trade name to consent to or to approve any change of ownership of trade name registration which may be subsequently filed with the Secretary of State's Office. Finally, our search of the statutes has not located any authority provided to the Secretary of State to cancel a trade name certification on the basis of fraud in the registration process.

In reviewing the information supplied to your office in September of 1987 as to the Statement of Change in Ownership of Trade Name Registration, the information provided does satisfy the three requirements of the statute. The trade name to be registered is set forth as is the name and address of each and every owner of the business and the nature of the business in detail. Thus, it is my opinion that your Statement of Change in Ownership of Trade Name Registration Form is in compliance with the current statute and that you acted in compliance with law in accepting the statement on September 8, 1987, and filing the same resulting in a trade name certificate issued on September 8, 1987, to Richard Martell, Todd Martell, and Steve Choukalos. As the statute does not require any proof of sale or assignment of the business interest involved, you are not able to require such information as part of the change of trade name registration procedure.

Furthermore, as you are not in any position to verify the information provided to you by those seeking to change the ownership of a trade name registration, and as the statute provides no procedure whereby a registration or change of registration may be contested or revoked, I do not believe that you have any further statutory responsibilities with respect to the dispute involving the trade name "The Straight Shot Band." Instead, the parties involved must resort to their own legal remedies. Cases in other jurisdictions involving the allegation of improper registration of a trade name due to fraud or inaccurate information have usually resulted in a civil action contesting the registration by those allegedly harmed by such activities. Academy Award Products, Inc. v. Bulova Watch Co., 233 F.2d 449 (2d Cir. 1956); Landstrom v. Thorpe, 189 F.2d 46 (8th Cir. 1951). The Federal Trademark Act specifically states that those who obtain registration by false declaration or representation are liable in a civil action to any person injured thereby. 15 U.S.C.A. § 1120 (1982).

However, I believe the suggestion that you should require the signature of any person engaged in business under a registered trade name whose interests have been changed upon any form which may be submitted to your office seeking a change of ownership in the trade name registration may have some merit on policy grounds, although the statute does not require it. The statute does require the Secretary of State to provide the forms needed to change a trade name registration. Furthermore, the statute specifically requires a "statement executed by each owner." I believe this language is sufficiently broad to authorize the Secretary of State to include a signature line upon the change of

trade name registration form for the person or persons engaged in business under the original trade name registration. Such a provision would further one of the goals of trade name registration process; namely, the prevention of fraud and confusion.

However, as such a requirement is not specifically required by statute, it is a matter left to the Secretary of State's discretion as to whether such a provision should be included on forms to be completed by those seeking to change the ownership of a trade name registration. Because of the potential for fraud and abuse which may occur where persons are simply able to walk in and allege a change in ownership of a trade name registration when such is simply not the case, this is a matter which should be brought to the attention of the 1989 Legislative Assembly for their consideration and possible statutory change.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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cc: Tom Tuntland