



Business Law Newsletter

SERVICE DISABLED VETERANS



By Raighne C. Delaney

An SDVOSB is a Service Disabled Veteran Owned Small Business. In October 2004, President Bush issued an executive order directing that all federal agencies set a goal of ensuring that SDVOSBs receive 3% of all federal contracts. Additionally, he authorized agency contracting officers to set aside certain contracts for SDVOSBs only. These set aside contracts are worth up to \$5 million for manufacturing contracts and \$3 million for all other types of contracts.

To qualify as a SDVOSB, a service disabled veteran must own at least 51% of the business and maintain day-to-day control of it. "Service Disabled" means the veteran must receive some disability rating from the Veterans Administration. There is no minimum disability rating.

Day to day control is tested on a case-by-case basis, however there are certain clear minimum standards. The veteran must have ultimate decision making authority and management responsibility.

Those considering starting an SDVOSB or converting an existing company into one, should begin by reviewing the website, www.vetbiz.org. This site, which is maintained by the Veterans Administration, contains information on starting, managing and marketing such businesses to the federal government. Additionally, the VA has partnered with a variety of organizations established to assist veterans in obtaining the capital necessary to pursue their small business, including the enterprise found at www.veteranscorp.org. Many federal agencies have already implemented the president's directive by establishing SDVOSB offices within their agency.

Inside This Issue:

Service Disabled Veterans

Page 1

Common Mistakes in Selecting a Business Name (Part 2)

Page 2

Corporate Shareholders

Page 3

GETTING IT DONE®

SERVICE DISABLED VETERANS

Continued from Page 1

Unlike other federal small business set aside programs, SDVOSBs are self-certified. This means the SDVOSB is certified because the owner declares he: 1) is a veteran; 2) is service disabled; 3) owns 51% of the business and; 4) has management responsibility and day to day control of the business. At least initially, no government agency verifies compliance by the SDVOSB, however a fraudulent application can expose the applicant to serious criminal and civil penalties. Anyone considering partnering with an SDVOSB, either as its subcontractor or general contractor, should carefully ensure that the SDVOSB meets the mandated standards.

As with many new, federally mandated programs, SDVOSBs present a business opportunity as federal agencies work to implement the President's directive.

Common Mistakes in Selecting a Business Name



By Richard C. Litman

PART 2

This article is continued from the May edition of this newsletter.

What to Consider

When searching various resources to determine the

availability of a proposed name, you must quickly determine whether there are "dead hits." Dead hits are identical names or marks used for the same or related products or services. A dead hit is a red flag suggesting the wisdom of choosing another name.

Assuming no dead hits, the business owner should consider and evaluate the possibility of alternate spellings, variant pronunciations or synonymous words or phrases. Any of these circumstances create potential challenges. Search results that reveal names or marks that sound the same yet are spelled differently include the artful substitution of the letters "ph" for the letter "f", such as in "phever" or "phish". Other common variants occur in marks that look the same in whole or part, but have a different meaning or sound. The word "cat" as part of a name could be used to describe a product for the common household pet, or it could be used in the context of computer wiring or even medical equipment or supplies. Synonyms include generally familiar foreign equivalents, such as "rouge" for "red."

Proponents sometimes attempt to overcome a conflict by reversing the word order or adding additional words or components. This may not solve the problem, particularly if the additional words are generic or descriptive terms, or are superlatives, such as "original" or "best." Likewise, common geographical names such as "American" or "Arlington" may not provide a significant enough difference to enable the prospective business owner to adopt the variant without business risk. Similarly, names that are similar to or the same as famous marks or business names can present a host of potential problems, even if the goods or services for which they are used are not the same. For example, the

The Common Mistakes in Selecting a Business Name

Continued from Page 2

name “McDonalds” used for almost any business even remotely related to food, or even for some sort of social welfare activity (similar to the Ronald McDonald House), could pose significant potential liability for a business owner.

In considering any name, it is important to be watchful of the possible implications of being considered affiliated, associated or sponsored by another entity. For example, by choosing a name that incorporates the name of a professional sports team such as “The Nationals,” the owner runs the risk that the professional team will consider the use as falsely suggesting a relationship with the team. Even a repair shop that incorporates the name of the product being repaired can run the risk of legal liability for trademark infringement, as well as unfair competition under a variety of federal and state causes of action.

It is also important to consider the way the name will be written in advertising, on a website, and on letterhead. For example, using the same or similar font as an existing competitor could give rise to an infringement claim. Likewise, using the name in conjunction with a logo or some other tag line that may be owned by another entity could raise a red flag. The best approach is to consider not just the name, but the entire context in which the name is used, including any stylized format or font, logo or other design element and tag line, as well as the goods and services for which a particular name will be associated with during the course of the day-to-day

business of the prospective business owner.

Conclusion

As is apparent, selecting a business name requires more than just calling the State Corporation Commission or doing an online search. It involves the evaluation of a host of legal issues that may create potential risk for the business owner. State Corporation Commission approval of a corporate or limited liability company name or even federal registration does not provide a shield against potential liability. After a business spends money promoting its name, developing secondary meaning in the marketplace, and selling products or services, an infringement claim by a pre-existing entity could be devastating. IP litigation can be extremely expensive and the dollars wasted on advertising or marketing can never be recouped. The wise business owner invests the extra time, effort and money to assure that a business name is a secure asset.

Corporate Shareholders



By James V. Irving

"Preemptive Rights" refer to the rights of a corporation's existing Shareholders to maintain their pro rata ownership interest by acquiring proportional amounts of a corporation's previously unissued shares at any time that those shares are offered for sale. This is an important consideration because the grant of preemptive rights prevents a controlling shareholder (or shareholders) from diluting the interest of a minority shareholder.

Contact Us

2300 Wilson Boulevard, 7th Floor
Arlington, Virginia 22201
703-525-4000 fax 703-525-2207
www.beankinney.com

Corporate Shareholders

Continued from Page 3

Whether or not a given corporation grants preemptive rights to its shareholders is generally governed by the Articles of Incorporation and so forms a major consideration upon negotiating the structure of a new corporation. Prior to December 31, 2005, it was presumed, absent contrary language in the Articles of Incorporation, that a shareholder in a Virginia corporation did have preemptive rights. Effective at the beginning of 2006, the presumption was reversed. Subject to certain limitations found in Code of Virginia §13.1-651, for corporations formed on or after that date, preemptive rights are denied unless granted in the Articles of Incorporation. In either case, the presumption is trumped by an express statement to the contrary included in the Articles.

This paper was prepared by Bean, Kinney & Korman, P.C. as a service to clients and friends of the firm. The purpose of this paper is to provide a general review of current issues. It is not intended as a source of specific legal advice. © Bean, Kinney & Korman, P.C. 2007.



2300 WILSON BOULEVARD, 7TH FLOOR
ARLINGTON, VA 22201

GETTING IT DONE[®]