



State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF BANKS**

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**ISGC – 2005 – 005 - DOB**

April 29, 2005

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: Use of “Bank” in “DomainBank.com”

Dear Mr. Puri:

Thank you for your email communication (hereinafter, “Inquiry”), in which you have requested of the Washington State Department of Financial Institutions (hereinafter, “DFI”) its determination as to the propriety of using “Bank” in “DomainBank.com.” This matter has been referred to me for interpretation in my capacity as general legal counsel for the DFI and on behalf of the Division of Banks.

1.0 Representations

You have represented that your company, [REDACTED] a Delaware corporation doing business in Washington State (hereinafter, “Company”), owns a Delaware subsidiary (hereinafter, “Subsidiary”) organized as a limited liability company (hereinafter, “LLC”). You have further represented that your Subsidiary is considering buying the assets of a certain Pennsylvania corporation. According to you, one of those assets under your review is the Internet domain name: “DomainBank.com.”

As represented on your Company’s Web site, [REDACTED] (hereinafter, “Web Site”), your Company holds itself out as a vendor of domain registrations and as a purveyor of affiliated email accounts, Web hosting services, and associated Web design services. Neither

your Company nor your Subsidiary<sup>1</sup> is a bank or trust company, or engaged in banking or trust business in Washington State or any other state or foreign country.

## 2.0 Question

You have expressly asked whether your Company and its Subsidiary may use the term “DomainBank” as a trade name and/or Internet domain.

## 3.0 Summary Answer

Because of the importance of the Internet today, this matter is of heightened significance to the Division of Banks and the general public. Based on your representations in Section 1.0 above, we have concluded from your question [Section 2.0 above] that Washington State law clearly prohibits the use of the term “Bank” by your Company or Subsidiary [See Section 4.0 below] unless authorized by the Director of the DFI or his designee, the Director of the Division of Banks.

Based upon the nature of your business (as represented in Section 1.0 above) and our concern for the general public as expressed in Section 4.0 below, the Division of Banks declines to authorize any use of the word “Bank” by your Company or Subsidiary in the conduct of its present business or any other non-banking or non-mortgage lending activity that would involve doing business in Washington State or interaction with Washington State residents. Moreover, unless your Company or Subsidiary hereafter becomes a national bank or a state-chartered bank, savings bank, savings and loan association, alien bank authorized to do business in this state, or qualified mortgage lender pursuant to RCW 30.04.020(3), then your Company or Subsidiary may not use the word “Bank” as any part of its name, trade name, alter ego or other business designation, including Internet domain. This includes, without limitation, any use of the term “Bank” in association with “Domain,” so as to form the name “DomainBank,” or the like.

While we cannot officially opine on the laws of other states, we note that there may be several other states that prohibit the use of the word “Bank” in connection with businesses that are not engaged in banking, or otherwise require the discretionary permission of their respective departments of financial institutions prior to use.<sup>2</sup> In any event, if you sought to use “DomainBank” in connection with your Web Site or any other Web site, the DFI would reserve its plenary authority in such a situation to –

- Enjoin any use of a Web site entitled “DomainBank” or containing, in any part of its name, the word “Bank”; and/or
- Make a referral to an appropriate prosecutor for criminal prosecution [see Subsection 4.1 below].<sup>3</sup>

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<sup>1</sup> We note parenthetically that, while we do not know exactly the nature of Subsidiary’s business, neither Delaware nor Washington State permits a domestic chartered bank to be organized as a limited liability company. [See further, Section 4.4 below]

<sup>2</sup> For example, Chapter 23, California Finance Code (Cal. Fin. Code §§3900 et seq.), sets forth the procedures by which a non-bank corporation doing business in California may obtain permission from the California Department of Financial Institutions to use the term “Bank” in its name.

<sup>3</sup> You, or any other company similarly situated, should seriously consider whether it is worth having a national trade name or brand that is prohibited in certain states or is otherwise difficult to obtain in others, because you would necessarily have to disclose on your Web Site that you

#### 4.0 Analysis & Discussion

4.1 Unauthorized Use of “Bank” Is a Gross Misdemeanor. There are serious consequences in the State of Washington for the unauthorized use of the word “Bank.” Indeed, the unauthorized use of the word “Bank” in one’s name, trade name or business identification, with prior knowledge of one’s lack of authority, is a gross misdemeanor pursuant to subsection (4) of RCW 30.04.020.

4.2 Internet Domain Name Akin to a Business Name. We note, preliminarily, that an Internet (second-level) domain name (i.e., Internet address) is more than just an “address.” Indeed, it is typically the most identifiable name that the general Internet-browsing public has with a business, and is, even if not so perceived, usually akin to a business name, trade name or alter ego.

4.2 Statutory Prohibition. Washington State’s commercial banking law, at RCW 30.04.020, declares, as follows:

(1) The name of every bank shall contain the word "bank" and the name of every trust company shall contain the word "trust," or the word "bank."  
***Except as provided in RCW 33.08.030 or as otherwise approved by the director, no person except:***

***(a) A national bank;***

***(b) A bank or trust company authorized by the laws of this state;***

***(c) A corporation established under \*RCW 31.30.010;<sup>4</sup>***

***(d) A foreign corporation authorized by this title so to do, shall:***

***(i) Use as a part of his or its name or other business designation or in any manner as if connected with his or its business or place of business any of the following words or the plural thereof, to wit: "bank," "banking," "banker," "trust."***

***(ii) Use any sign at or about his or its place of business or use or circulate any advertisement, letterhead, billhead, note, receipt, certificate, blank, form, or any written or printed or part written and part printed paper, instrument or article whatsoever, directly or indirectly indicating that the business of such person is that of a bank or trust company.***

(2) A foreign corporation, whose name contains the words "bank,"

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did business in some states but not others. As a practical matter, the appeal of the name “DomainBank” as a national brand may not be worth it from a legal and regulatory perspective.

<sup>4</sup> Chapter 31.30 RCW was repealed by the Washington State Legislature in 1998. 1998 Session Laws, Chapter 12, Section 1.

"banker," "banking," or "trust," or whose articles of incorporation empower it to engage in banking or to engage in a trust business, may not engage in banking or in a trust business in this state unless the corporation (a) is expressly authorized to do so under this title, under federal law, or by the director, and (b) complies with all applicable requirements of chapter 23B.15 RCW regarding foreign corporations. ***If an activity would not constitute "transacting business" within the meaning of RCW 23B.15.010(1) or chapter 23B.18 RCW, then the activity shall not constitute banking or engaging in a trust business.*** Nothing in this subsection shall prevent operations by an alien bank in compliance with chapter 30.42 RCW.

(3) This section shall not prevent a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act from using the words "mortgage banker" or "mortgage banking" in the conduct of its business, but only if both words are used together in either of the forms which appear in quotations in this sentence.

***(4) Every person who, and every director and officer of every corporation which, to the knowledge of such director or officer violates any provision of this section shall be guilty of a gross misdemeanor.***

[Emphasis added.]

Therefore, even without consideration of your citation of provisions of the Washington Limited Liability Company Act (Chapter 25.15 RCW), we conclude that your Company or Subsidiary may not use the name “DomainBank” or any other name containing the word “Bank” as either a trade name, alter ego or business identification without the express approval of the Director of the DFI, or his designee, the Director of Division of Banks.

4.3 No Compelling Reason to Change DFI’s Public Policy. Pursuant to our plenary and discretionary authority under RCW 30.04.020(1) [as cited above], I am authorized to convey to you that the DFI Director, by and through the Director of the Division of Banks, can find no compelling reason to authorize your Company or Subsidiary to use the word “Bank” for any purpose in connection with its trade name, alter ego or other business designation.

There has been a proliferation of the use of the word “bank” on the Internet in connection with activities that do not involve “banking,” as that term is commonly understood by the general public and as defined under numerous federal and state statutes and regulations. Among the uses of the term “bank” in connection with the Internet has been the term “data bank,” which is often a substitute for the phrase, “data barn.” Provided that the term “bank” or “banking” is not used in one’s Internet domain name or other official name, trade name, alter ego and/or official business designation, the mere descriptive and textual use of these terms to describe one’s service or operation, without having the tendency, in context, to confuse the general public that one might be a bank, does not pose a problem for banking regulators. Indeed, neither the DFI

nor other banking regulators may generally limit the use of the terms “bank” or “banking” as nouns, verbs or adjectives in the mere textual description of non-banking activity, provided that it would not tend to confuse the general public into believing one were a financial (depository) institution.

However, an official business name, trade name, alter ego or business designation is altogether a different situation. There is a long-standing public policy, reflected in RCW 30.04.020, for reserving unto depository banks and certain qualified non-bank mortgage lenders<sup>5</sup> the use of the word “Bank” as part of their official names, trade names, alter egos and/or official business designations, including Internet domain names. This public policy has served to (1) promote the respected image of our state-chartered financial institutions, (2) bolster the confidence of the public in those institutions in which they deposit their money, and (3) avoid confusion in the marketplace, reserving only a small exception for certain qualified mortgage lenders using the name “mortgage banker” or “mortgage banking”<sup>6</sup> and non-branch loan production offices of depository institutions. Indeed, the DFI has concluded that the use of “Bank” in one’s Internet domain name or other official name, trade name, alter ego and/or official business designation, without authority under RCW 30.04.020, would have the effect of *diluting the quality* of the name “Bank,” which is reserved only for qualified financial (depository) institutions, certain mortgage bankers,<sup>7</sup> and non-branch loan production offices of depository institutions.

The DFI declines to abrogate this long-standing public policy merely to serve the convenience of an occasional Internet provider, such as your Company or Subsidiary, which may be considering the use of a catchy or clever domain name for branding purposes.

Moreover, we take this opportunity to express our concern that any alternative precedent-setting on our part (and at this time) would have the effect of undermining our resolve to enjoin the activities of domestic, foreign and alien Internet-based businesses that (1) are or may seek to be engaged in the business of banking and (2) call themselves “Bank,” without the benefit of a recognized charter from an applicable governmental agency of the U.S. government, a state or U.S. commonwealth or territory, or a foreign country. These include Internet-based “affiliates” or “affinity partners” of depository institutions who hold themselves out to their customers as being a bank, while only revealing their relationship with an actual bank in some obscure Web pages buried deep within their respective Web sites.<sup>8</sup> They also may include Internet-based

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<sup>5</sup> Subsection (3) of RCW 30.04.020 declares:

“This section shall not prevent a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act from using the words “mortgage banker” or “mortgage banking” in the conduct of its business, but only if both words are used together in either of the forms which appear in quotations in this sentence.”

<sup>6</sup> See Footnote 5 above.

<sup>7</sup> This public policy is somewhat analogous to the underlying legislative intent of the Federal Trademark Dilution Act of 1996 [15 USC 1125(c)], which was enacted for the purpose of preventing “cyber-squatters” that, while not in competition with well-known businesses, were using Internet domain names that had a tendency to *dilute the quality* of “famous marks.”

<sup>8</sup> As an example of our continuing concern in this arena, some of these “affinity partners,” claiming to be authorized or associated with certain Native American Tribes, imply that their customers have the benefit of Indian sovereignty, even though their sponsors, which are actual depository institutions, are subject to all applicable federal and state laws and regulations, including the federal Bank Secrecy Act and the USA Patriot Act.

“affiliates” or “affinity partners” of alien non-banks or alien banks whose deposit insurance or other protections for depositors are questionable.<sup>9</sup>

4.4 Current Prohibitions Pursuant to Chapter 25.15 RCW. We do not need to address your concerns regarding (1) the prohibitions of the words “bank” or “banking” in the name of an LLC as set forth in RCW 25.15.010(1)(c) and (d), or (2) the inability of a Washington LLC to be engaged in the business of banking pursuant to RCW 25.15.030. There is a move within the banking industry (not yet enacted into law in Washington or in most other states) to permit a bank to charter as an LLC, rather than merely as a corporation. Based upon the analysis above, however, a change in Washington State law, which would permit a bank to charter as an LLC, would *not* permit Company or Subsidiary to use the word “Bank” in its name, trade name, alter ego or other business designation, including Internet domain.

#### 5.0 Concluding Remarks

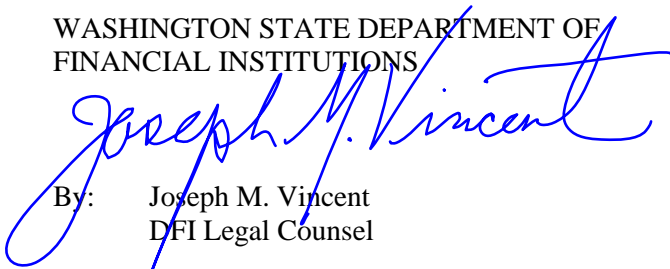
For all of the reasons set forth above, we conclude that unless one is (1) a national bank, (2) a federal savings bank, (3) a Washington State-chartered bank, savings bank or savings association, (3) an out-of-state state-chartered bank, savings bank or savings association authorized by the DFI to branch in Washington State, (4) an alien bank with a registered branch in Washington State, or (5) a qualified mortgage lender [pursuant to RCW 30.04.020(3)] using the name “mortgage banker” or “mortgage banking,” one is not authorized to use, as part of one’s name, trade name, alter ego or other business designation, including Internet domain, the word “Bank.”

The statutory standard for making the interpretation contained in this letter is uniformly applicable for any business, similarly situated to the business of your Company or Subsidiary. However, businesses other than your Company or Subsidiary are advised that the facts and circumstances of similar inquiries may differ in their respective cases; and such relevant facts and circumstances, as applied to the governing law, may result in the Division of Banks reaching a conclusion different than the one made above.

Should you have any questions, please do not hesitate to call upon the Division of Banks at either (360) 902-8704.

Sincerely,

WASHINGTON STATE DEPARTMENT OF  
FINANCIAL INSTITUTIONS



By: Joseph M. Vincent  
DFI Legal Counsel

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<sup>9</sup> Post-9/11 resort to alien (off-shore privacy) non-banks, which hold themselves out as being real banks, is fraught with peril and may subject unwitting customers to charges of money laundering under the USA Patriot Act and state money transmitter laws.