



March 28, 2016

Washington Department of Financial Institutions
Division of Consumer Services
Attention: Sara Rietcheck
P.O. Box 41200
Olympia, WA 98504-1200

Re: Proposed Amendment of WAC 208-690-230

Dear Ms. Rietcheck:

PayPal, Inc. (“PayPal”), a Washington State licensed money transmitter, respectfully submits this comment regarding the Department of Financial Institutions’ (“DFI”) proposal to amend Section 208-690-230 of the Washington Administrative Code (the “Advertising Rule”). As explained below, we believe that the DFI’s well-intentioned effort to avoid customer confusion goes beyond the steps that are necessary or appropriate to address the underlying policy concerns, would impose significant burdens on licensees that are not experienced by other similarly-situated financial institutions and is in no way required by the Washington Revised Code. Accordingly, we propose a modification of the proposed Advertising Rule, attached as Exhibit A, that we believe provides a more tailored solution that will meet the DFI’s policy objectives without imposing unnecessary burdens on the industry.

In order to assess whether the Advertising Rule is appropriately scoped to the risk that the Advertising Rule is intended to address, it is first necessary to evaluate the nature of that risk. We understand that the advertising regulation is intended to address the potential for customer confusion arising out of the use by a licensee of a “trade name” other than its legal name in its advertising. In the abstract, avoidance of “customer confusion” is of course a laudable goal that PayPal shares with the DFI, but there are different types of customer confusion risk in connection with the provision of financial services to consumers. For example, confusion as to the fees and charges associated with a product or service can result in consumers incurring unexpected costs in using that product or service. Such confusion must be studiously avoided.

“Confusion” regarding the identity of the provider of the service poses a very different type of risk, depending on the nature of the financial service and the provider. For example, when insured depository institutions operate divisions under separate d/b/a trade names, there may be significant risk because customers may not otherwise be aware that deposit insurance caps are aggregated across different divisions of the same legal entity. Accordingly, the federal banking agencies have regulated the use of trade names in such circumstances.

By contrast, insured depository institutions routinely utilize different product names in other areas of their business because the identity of the provider of the product is secondary to the product association with the brand, the ability of the customer to understand the product terms, and the availability of obtain customer service. For example, most retail co-branded credit cards



are issued by banks, yet the bank name will typically be used only on the back of the card, on customer agreements and on legal disclosures. The “risk” that a customer who applies for a “Nordstrom” credit card will be confused as to whether that card is issued by Nordstrom or by the actual issuer, TD Bank USA, N.A. has no real impact on the customer. The cardholder is given clear direction as to how to make payments to the bank, which actually extends credit, and how to receive customer service. Otherwise, the association of the card with the Nordstrom brand is more meaningful than the association with the bank issuer.

The use of product names by licensees is much more akin to this latter fact pattern than the former. A consumer who uses two different payment products of the same licensee does not lose any protections, in contrast to the circumstance of having two deposits at the same institution as described above. As you are well aware, all outstanding money transmission obligations will be fully protected by eligible securities as well as the corporate bonding required by statute. Instead, consumers who are provided two money transfer products from the same institution are well protected as long as their agreements and legal disclosures properly reference the licensee, as already required by law, and customer service/error resolution protections are in place.

In light of the foregoing, the Advertising Rule for money transmitters should not be overly prescriptive, such as by requiring **all** use of names other than the legal name of the licensee be accompanied by an **equally prominent** display of the legal name. Instead the regulation should allow flexibility to consider the totality of the circumstances. For example, even institutions that use a d/b/a can adequately identify the difference between the legal name and the d/b/a with disclosure such “a division of [Licensee]” without forcing that language to be on every use of the division name or requiring equivalent prominence.

Moreover, when the wording at issue is a mere product name rather than a trade name for the organization, such as the case with PayPal’s Venmo product offering, there is even less risk and less justification to be proscriptive in specifying the steps that a licensee must take to avoid customer confusion as to who is providing the licensed money transmission service for the Venmo product. As long as the licensee is appropriately identified in legal documentation (agreements and disclosures) and the advertising, taken as a whole, is not misleading, licensees should have flexibility in crafting their advertising messages in such circumstances. Licensees should not be required to meet a more restrictive standard than the insured institutions reference above, when those restrictions would provide no meaningful public benefit and are not in any way required by the Uniform Money Services Act.

We have taken specific action with PayPal’s Venmo product to avoid any customer confusion as to who the licensed entity is. We included a reference on the bottom of each Venmo webpage stating, “Venmo is a service of PayPal, Inc., a licensed provider of money transfer services. All money transmission is provided by PayPal, Inc. pursuant to PayPal, Inc.’s licenses.” We included a similar disclosure on Venmo’s receipts which we have attached as Exhibit B. All of PayPal’s state money transmitter licenses are listed on the Venmo product site. We also amended the Venmo User Agreement to reflect that customers are contracting with PayPal, Inc. We believe this combination of disclosures avoids any confusion that PayPal is the provider of money transmission services and that Venmo is a product offering of PayPal.



Accordingly, we have attached as Exhibit A a proposed marked revision of the Advertising Rule that we believe provides a more balance approach to these issues. We have addressed the concerns articulated above by focusing on whether, under all the facts at issue, the consumer is being misled and requiring the official name on agreements and disclosures. This will provide the DFI with adequate flexibility to address real problems without unnecessarily burdening the industry. In addition to the matters addressed above, we also have attempted to clarify certain more technical drafting issues. For example, we have stricken the reference to “other names” in addition to “trade names” since the ambiguity of the term in addition to the more specific reference to “trade names” would create confusion as to the Rule’s coverage. As you will see, we have instead inserted a specific reference to “product name” that enables a clearer, targeted application of the Advertising Rule, and have clarified that the use of shortened forms of official names is not covered by the Advertising Rule.

We appreciate this opportunity to offer our views regarding this important change to the Washington Administrative Code, and urge the DFI to make the suggested modifications so that the proposal strikes a better balance in addressing the actual public policy at issue. We would be happy to discuss our proposal at your convenience.

Very truly yours,

A handwritten signature in blue ink that reads 'Andrew McElmeel'. The signature is fluid and cursive, written over the typed name and title.

Andrew McElmeel
Director, Legal Counsel

Encl.

EXHIBIT A

WAC 208-690-230 May I advertise using a name other than that named on my license?

Yes. You may use a trade name ~~or other name~~ under which you will do business if it has been previously approved by the department. **If you use a trade name or product name that does not incorporate, in whole or in part, the name on your license, the advertising using that trade name or product name must, taken as a whole, not mislead customers as to the entity providing the service.** ~~You may not advertise or provide money services under the trade name or other name without an equally prominent display of the name on your license.~~ **The name on your license must appear on any agreements you enter with customers and on any legally required disclosures.** You must also use the NMLS number.

Exhibit B

----- Forwarded message -----

From: Venmo <venmo@venmo.com>

Date: Thursday, March 24, 2016

Subject: You paid Andrew McElmeel \$1.00

To: jbalbers@gmail.com



 Jack Albers paid Andrew McElmeel



Mar 24, 2016 PDT  - \$1.00

[Like](#) [Comment](#)

Completed via a bank transfer from your Bank of America account ending in 4799

Payment ID: 1913260800928121811



For any issues, including the recipient not receiving funds, please contact Team Venmo at support@venmo.com. See our right to refund disclosures.

Venmo is a service of PayPal, Inc., a licensed provider of money transfer services. All money transmission is provided by PayPal, Inc. pursuant to PayPal, Inc.'s licenses.

PayPal is located at 2211 North First Street, San Jose, CA 95131

For security reasons, you cannot unsubscribe from payment emails.

