



State of Washington  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
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**ISGC-2011-003-DOB**

December 29, 2011

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: Use of "RecycleBank" Impermissible in Washington

Dear [REDACTED]

I am writing as general counsel for the Department of Financial Institutions on behalf of the Director of the Division of Banks, Richard M. Riccobono ("Director of Banks"), and in response to your letter to the Director of the Department, Scott Jarvis, dated August 17, 2011 ("Letter"). Your letter was referred to the Division of Banks, which enforces the provisions of RCW 30.04.020.

In your Letter, you seek permission for RecycleRewards, Inc. ("your client") to use in Washington State the term "RecycleBank." This is impermissible without a discretionary exception from the Director of Banks pursuant to RCW 30.04.020. Upon review of your request and for reasons apparent in your own Letter, the Director of Banks declines to exercise such discretion and denies your client's request to use the term "RecycleBank" in Washington State.

In the absence of the consent of the Director of Banks, RCW 30.04.020 permits only a national or state-chartered bank, federal or state-chartered thrift, alien bank, bank holding company, or financial holding company to use the term "bank" as part of "its name or other business designation, as a prominent syllable within a word comprising all or a portion of its name or other business designation."<sup>1</sup> Nor does your client fall within the narrow statutory exception permissible for mortgage bankers who have a direct endorsement underwriter designation from the Department of Housing and Urban Development.<sup>2</sup>

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<sup>1</sup> See RCW 30.04.020(1)(a).

<sup>2</sup> RCW 30.04.020(3).

The Director of Banks has “the power, and broad administrative discretion, to administer and interpret the provisions of [RCW 30.04.020] to facilitate the delivery of financial services to the citizens of the state of Washington by the banks, trust companies[,] and holding companies subject to [Title 30 RCW].”<sup>3</sup> In the exercise of this broad administrative discretion, the office of Director of Banks has rejected past requests – similar to your client’s – to use the term “bank” in a business name or trademark.<sup>4</sup>

Your client is not a financial institution and performs no financial services. Your client is engaged in a program that rewards people for recycling waste material. To this end, your client’s actual business name – “RecycleRewards” – amply and unambiguously describes what it does.

However, your proposed use of “RecycleBank” would be a trademark or slogan referring to a Washington State household’s ability to build up credit in a RecycleRewards’ account to use for premiums, such as discount coupons at various retailers. This juxtaposition of the words “Recycle” and “Bank” is inherently susceptible of confusion to the public, despite any suggestion of an accompanying disclaimer. Indeed, we note that the New York State Banking Department conditionally granted use of the term “RecycleBank” in New York State, but only if your client went to great length to include in all of its stationery and marketing and advertising materials the statement, “RecycleBank is not a banking institution.” Of course, Washington is a sovereign state and may elect to ignore the example of New York State or its Banking Department or any other state as cited in your Letter.<sup>5</sup> Moreover, we are of the view that the action taken by the New York State Banking Department only supports our determination that your proposed use of “RecycleBank” in Washington State would be confusing to the Washington public and contrary to the purposes for which the Washington Legislature enacted and even recently re-affirmed and strengthened the restrictions imposed by RCW 30.04.020.<sup>6</sup> We are not bound by RCW 30.04.020 to even consider suggested disclaimers in an attempt to clarify an inherently confusing use of the term “bank.” Rather, our responsibility under the statute is to deny unauthorized uses of the term “bank,” which by themselves and without resort to extraneous disclaimers or explanations, are susceptible of confusion to the Washington public and may also undermine the value of the term “bank” as one reserved for the designation of financial institutions.<sup>7</sup> The Department has made such determinations without regard to whether a business is domiciled in Washington State or is a foreign entity.

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<sup>3</sup> RCW 30.04.030(2).

<sup>4</sup> See, for example, the denial of the use of “Bank” in “DomainBank.com” by a vendor of Internet domain registrations and purveyor of affiliated email accounts. Washington State Department of Financial Institutions, Interpretive Statement of General Counsel, ISGC-2005-005-DOB (dated April 29, 2005).

<sup>5</sup> This is particularly true where your client is not a financial institution and, therefore, not subject to laws respecting reciprocity between states.

<sup>6</sup> 2010 c 88 § 4 [2010 EHB 2831, §4].

<sup>7</sup> This public policy contained in this latter reason 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” who, while not in competition with well-known businesses, were nonetheless using Internet domain names that had a tendency to dilute the quality of “famous marks.” It has been the intent of the Washington Legislature in enacting, re-affirming and strengthening RCW 30.04.020, to preclude or severely restrict the use of the term “bank” by enterprises that are not banks or engaged in conduct closely related to banking so as to not dilute the quality of the term “bank” in the mind of the public.

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

Sincerely,

WASHINGTON STATE DEPARTMENT OF  
FINANCIAL INSTITUTIONS

By:

Joseph M. Vincent  
General Counsel