

F98000005156



ACCOUNT NO. : 072100000032

REFERENCE : 908444 4322134

AUTHORIZATION :

Patricia Pignatelli

COST LIMIT : \$ 9446.25

*****PLEASE SEE ATTACHED LETTER*****

300002639073--9
-09/14/98--01145--001
***5376.25

ORDER DATE : July 29, 1998

ORDER TIME : 11:29 AM

ORDER NO. : 908444-020

CUSTOMER NO: 4322134

100002639071--5

CUSTOMER: Ms. Mary Templeton
Corbin, Silverman &
805 Third Avenue
11th Floor
New York, NY 10022

~~100002639071~~

FOREIGN FILINGS

NAME: PROFESSIONAL DETAILING
NETWORK, INC.

XXXX QUALIFICATION (TYPE: CO)

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

- CERTIFIED COPY
- PLAIN STAMPED COPY
- CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Jeanine Reynolds

RECEIVED
98 AUG 11 PM 12: 09
DIVISION OF CORPORATION

12714

FILED
98 SEP 14 PM 3: 36
SECRETARY OF STATE
DIVISION OF CORPORATIONS

CORBIN SILVERMAN & SANSEVERINO LLP

805 THIRD AVENUE
NEW YORK, NY 10022-7513

TELEPHONE (212) 308-5000
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July 27, 1998

STEPHEN B. SILVERMAN
RAYMOND A. SANSEVERINO
JOSEPH W. MUCCIA
RICHARD A. NARDI
KENNETH W. SOLD
MARC J. GOTTRIDGE
JOHN J. GALLAGHER
JAMES SANDNES
GARRY C. BERMAN

SOL NEIL CORBIN
SENIOR COUNSEL
JOSEPH L. BROADWIN
OF COUNSEL

Department of State
Division of Corporations
P. O. Box 6327
Tallahassee, Florida 32314

This firm represents Professional Detailing Network, Inc. ("PDN"), a New Jersey corporation with offices located at 1009 Lenox Drive, Building IV, Suite 103, Lawrenceville, NJ 09648. The purpose of this letter is to request that the Department of State confirm that, given the limited nature of PDN's activities in the state, PDN is not required to file for a Certificate of Authority to Transact Business in the State of Florida. However, in the event that PDN is required to so qualify, we request that the Department of State waive or, in the alternative substantially reduce, the penalties that would otherwise be imposed because of PDN's failure to qualify in a timely manner. We are advised by the Office of the Secretary of State that the penalties are \$9376.25.

BACKGROUND

PDN was incorporated in 1987 and undertook to comply with the laws of the states in which it did business. PDN timely filed income tax returns, unemployment tax and other employee-related assessments. However, as PDN did not have significant resources during its start-up period, it did not consult counsel and was unaware that it might separately have to qualify to do business in Florida or other states. The situation has remained largely unchanged since 1990.

ACTIVITIES OF PDN IN FLORIDA

PDN engages in contractual promotional activities principally for drug companies. Through employees who may be residents of Florida, PDN calls on physicians and others in the medical field and delivers samples of pharmaceutical products ("samples") that are manufactured and sold by drug companies. Acting as an independent contractor, PDN distributes free samples on behalf of drug companies who pay PDN based on the time required to effect such deliveries and not with respect to any sales. Periodically, PDN's employees transmit to its service bureau in New Jersey, using the telephone or the Internet, reports of the calls completed and the

samples delivered. From its headquarters in New Jersey, PDN delivers reports and other information to the drug companies. All of PDN's activities, other than making calls and delivering samples, occur at its headquarters in New Jersey.

PDN does not manufacture products. PDN does not solicit or accept orders on behalf of drug companies. PDN does not fill orders or arrange for delivery of goods. PDN does not maintain an office and has no assets or bank accounts in Florida.

DISCUSSION

Given the limited nature of PDN's activities and the tenuous nexus between its activities and the State of Florida, we believe that PDN is not required to qualify to transact business in the state.

Section 607.1501 of the Florida 1989 Business Corporation Act provides, in part:

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1)

... (e) Selling through independent contractors.

(f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts.

(3) The list of activities in subsection (2) is not exhaustive.

Subsection (e) is apparently predicated on the assumption that independent contractors in the state will qualify to transact business in the state such that the qualification of an out-of-state drug company is not necessary to protect the state's interest in sales occurring within the state. Although PDN is an independent contractor to drug companies, its activities do not involve sales; its employees simply deliver samples of drugs to prescribers of the drugs. The drugs are later sold, if at all, through an independent sales distribution channel. PDN's promotional activities are more akin to activities of the out-of-state drug company that is exempt from qualifying to transact

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business in the state under Subsection (e).

Subsection (f) exempts activities including solicitation where the order is accepted outside the state. While the delivery of samples to physicians in the state may generate interest in pharmaceutical products, PDN's activities fall short of soliciting or obtaining orders for out-of-state sales. Therefore, PDN plays a less significant role in the distribution of goods in the state than is exempted by Subsection (f).

PDN's activities are similar to, although less broad than, activities that are exempt from qualification under the foregoing exemptions. Given the expressed intent of Subsection (3) of Section 607.1501 to exempt such similar activities, we believe that PDN is not required to obtain a Certificate of Authority in order to conduct its business in Florida. We ask that you confirm this view to us.

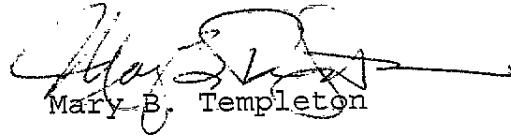
In the event that PDN is required under the facts and circumstances set forth above to qualify, we submit that it would be inappropriate to subject PDN to penalties related to such limited activities in the past, particularly in view of the fact that PDN has acted in good faith and without intent to violate Florida law. If a penalty is unavoidable, we request that it be reduced to reflect the fact that the failure to qualify is due solely to inadvertence and not to any intentional malfeasance. PDN is voluntarily acting to qualify in Florida, if such qualification is necessary, having only recently been advised that it may be necessary.

In the event that PDN is required to file, in the interest of efficiency only, I have enclosed the Application for to Transact Business in the State of Florida together with the filing fee. If filing is not required, please return the forms to my attention. If the filing is required, we ask that the application be accepted without penalty or, in the alternative, that the penalty be reduced to take into account the circumstances outlined in this letter.

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We would like to resolve this matter promptly and request that you telephone the undersigned if you have any questions or require any additional information.

Very truly yours,



Mary B. Templeton



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

August 11, 1998

CSC-JEANINE REYNOLDS

SUBJECT: PROFESSIONAL DETAILING NETWORK, INC.
Ref. Number: W98000018204

We have received your document(s) in this office, however, a copy of the document is being returned for the following:

We have received the qualification documents and correspondence requesting the Department of State to consider the waiver or reduction of the civil penalties due this state by the above referenced New Jersey corporation.

This office will now forward the qualification documents and request to the Department's Assistant General Counsel for review and consideration. The General Counsel's office will contact Mary Templeton directly concerning this matter.

If you have any questions concerning the filing of your document, please call (850) 487-6092.

Hart Collins
Senior Corporate Section Administrator

Letter Number: 098A00041720

RECEIVED

AUG 12 1998

Office of General Counsel
Department of State



Department of State

Memorandum Office of the General Counsel

TO: File

FROM: Gerard York, Assistant General Counsel

DATE: September 14, 1998

RE: Professional Detailing Network, Inc.

Based on my review of the file and the payments received from the corporation, it is my recommendation that this file be closed. Corporation has paid outstanding report fees from 1990 of \$1376.25 and foreign non-qualified penalties from 1990 of \$ 4000.00 assessed at the statutory minimum of \$500.00 per year and wishes to be qualified to do business in the State of Florida. Accordingly, it is recommended corporation be issued a certificate of authority.

/gty

**APPLICATION BY FOREIGN CORPORATION FOR AUTHORIZATION TO
TRANSACTION BUSINESS IN FLORIDA**

*IN COMPLIANCE WITH SECTION 607.1503, FLORIDA STATUTES, THE FOLLOWING IS
SUBMITTED TO REGISTER A FOREIGN CORPORATION TO TRANSACTION BUSINESS IN THE
STATE OF FLORIDA:*

1. Professional Detailing Network, Inc.
(Name of corporation: must include the word "INCORPORATED", "COMPANY", "CORPORATION" or words or abbreviations of like import in language as will clearly indicate that it is a corporation instead of a natural person or partnership if not so contained in the name at present. /
2. New Jersey 3. 22-2838757
(State or country under the law of which it is incorporated) (FEI number, if applicable)
4. 9/17/87 5. perpetual
(Date of Incorporation) (Duration: Year corp. will cease to exist or "perpetual")
6. 1/1/90
(Date first transacted business in Florida. (See sections 607.1501, 607.1502, and 817.155, F.S.)
7. 1009 Lenox Drive, Building IV, Suite 103, Lawrenceville, New Jersey 08648

(Current mailing address)

8. Contract Selling
(Purpose(s) of corporation authorized in home state or country to be carried out in the state of Florida)

9. Name and street address of Florida registered agent: (P.O. Box or Mail Drop Box acceptable)
- Name: Corporation Service Company
- Office Address: 1201 Hays Street
Tallahassee, Florida, 32309
(Zip Code)

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DIVISION OF CORPORATIONS
9:07 AM
SEP 14 1987

10. Registered agent's acceptance:

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this application, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Corporation Service Company

By: Vicki Schreiber, Asst. V.P.
(Registered agent's signature)

Vicki Schreiber, Asst. Vice President

11. Attached is a certificate of existence duly authenticated, not more than 90 days prior to delivery of this application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the law of which it is incorporated.

12. Names and addresses of officers and/or directors: (Street address ONLY- P.O. Box NOT acceptable)

A. DIRECTORS (Street address only- P.O. Box NOT acceptable)

Chairman: Wayne K. Nelson

Address: 41 Madison Ave., 31st Floor, New York, New York 10010

Vice Chairman: _____

Address: _____

Director: Thomas A. Moore

Address: 41 Madison Ave., 31st Floor, New York, New York 10010

Director: _____

Address: _____

B. OFFICERS (Street address only- P.O. Box NOT acceptable)

President: Judith A. Salaba

Address: 1009 Lenox Drive, Building IV, Suite 103, Lawrenceville, New Jersey 08648

Executive Vice President: Thomas A. Moore

Address: 41 Madison Ave., 31st Floor, New York, New York 10010

EVP, Secretary: Peter Law-Gisiko

Address: 41 Madison Ave., 31st Floor, New York, New York 10010

Treasurer: Peter Law-Gisiko

Address: 41 Madison Ave., 31st Floor, New York, New York 10010

NOTE: If necessary, you may attach an addendum to the application listing additional officers and/or directors.

13. _____

(Signature of Chairman, Vice Chairman, or any officer listed in number 12 of the application.)

14. Peter Law-Gisiko, Executive Vice President, Secretary and Treasurer

(Typed or printed name and capacity of person signing application)

STATE OF NEW JERSEY
DEPARTMENT OF TREASURY
SHORT FORM STANDING

PROFESSIONAL DETAILING NETWORK, INC.

*I, the Treasurer of the State of New Jersey,
do hereby certify that the above-named
New Jersey Domestic Profit Corporation was
registered by this office on September 17, 1987.*

*As of the date of this certificate, said business
continues as an active business in good standing
in the State of New Jersey, and its Annual Reports
are current.*

*I further certify that the registered agent and
registered office are:*

Wayne K. Nelson
109 Lenox Drive
Lawrenceville, NJ 08648

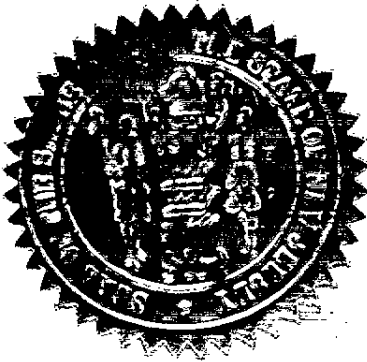
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DIVISION OF CORPORATIONS

STATE OF NEW JERSEY
DEPARTMENT OF TREASURY
SHORT FORM STANDING

PROFESSIONAL DETAILING NETWORK, INC.



IN TESTIMONY WHEREOF, I have
hereunto set my hand and
affixed my Official Seal
at Trenton, this
30th day of July, 1998

A handwritten signature in black ink, reading "James A. DiEleuterio, Jr." in a cursive script.

James A DiEleuterio, Jr.
Treasurer

98 SEP 14 PM 3:37
SECRETARY OF STATE
DIVISION OF CORPORATIONS