



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Interpretive Letter #881
February 2000

December 16, 1999

Mr. Perry LaCaria
President and CEO
Landmark Bank, N.A.
2600 East Commercial Boulevard
Fort Lauderdale, Florida 33308

Re: giantbank.com: Internet Trade Name

Dear Mr. LaCaria:

The Office of the Comptroller of the Currency (OCC) received your letter describing the future plans of Landmark Bank, N.A. (Landmark) to conduct business on the Internet under the name of “giantbank.com.” Your intent is to use the “giantbank.com” trade name exclusively on the Internet channel for those customers who wish to establish a relationship with an on-line bank.

Your letter requested our opinion and guidance regarding your proposed consumer disclosures and intended procedures. The use of multiple trade names raises a number of issues that Landmark management should address as it begins the operations under the name of “giantbank.com”¹. Your consumer disclosures and procedures should incorporate the following guidance.

The use of multiple trade names gives rise to customer confusion, as customers may be unaware that “giantbank.com” is a part of Landmark. This confusion could result in bank customers inadvertently exceeding the \$100,000 deposit insurance limit. However, this risk can be controlled by taking reasonable steps to ensure that customers receive adequate disclosures about either the identity of the bank or the extent of FDIC insurance coverage. The banking agencies have addressed this issue with

¹ The OCC has concluded nothing in the National Bank Act prohibits banks from using multiple trade names. *See* OCC Bulletin 98-22 and OCC Interpretive Letter No. 698, reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-013 (February 1, 1996). However, we have said that the official title of the bank should be used on all critical documents, including documents establishing trusts, powers of attorney, loans, and deposit account relationships, as well as regulatory filings. Moreover, national banks should review relevant state statutory and common law and federal trade name and trademark law.

the Interagency Statement on Branch Names, published as OCC Bulletin 98-22 (Branch Names Statement). This issuance provided guidance to banks that use a different name for a branch or other facility. Although the Statement refers to Internet facilities, it is not immediately apparent how to adapt the guidance to such a facility.² The Branch Names Statement suggests four measures.

First, the Branch Names Statement suggests that banks using multiple trade names should be “...disclosing, clearly and conspicuously, in signs, advertising, and similar materials that the facility is a branch, division, or other unit of the insured institution.” The Branch Names Statement further suggests that “institutions should exercise care that the signs and advertising do not create a deceptive and/or misleading impression.”

As applied to its “giantbank.com” operations, Landmark management should make clear on its homepage and on any pages that allow a customer to initiate deposit account transactions, that the customer is dealing with Landmark. Disclosures must be clear, prominent, and easy to understand. Examples of how Internet disclosures may be made conspicuous include: large print easily viewable when a page is first opened; a dialog box that pops up whenever a customer accesses a webpage; or a simple graphic near the top of the page or in close proximity to the bank’s logo. These examples are only some of the possibilities for conspicuous disclosures given the available technology.

Second, the Branch Names Statement suggests: “... using the legal name of the insured institution for legal documents, certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other similar documents.”

Thus, Landmark management should make clear to accountholders and other individuals and businesses in bank contracts and other such documents that Landmark is the legal entity with which they are contracting.

Third, the Branch Names Statement suggests: “... educating the staff of the insured depository institution regarding the possibility of customer confusion with respect to deposit insurance. The agencies recommend that the insured depository institution instruct staff at the branch and any other facilities operating under trade names to inquire of customers, prior to opening new accounts, whether they have deposits at the depository institution’s other facilities or branches. In addition, during the time period after one institution acquires or combines with another, staff should be reminded to call customers’ attention to disclosures that identify a particular branch or facility as part of an institution.”

In the present situation, this guidance means that it will be important for the staff that responds to questions from potential and current accountholders of both Landmark and Landmark d.b.a.

² The Branch Names Statement provides that banks using “different trade names over a computer network should take reasonable steps to ensure that customers are not confused about either the identity of the insured depository institution or the extent of FDIC insurance coverage.”

“giantbank.com” to clarify the status of “giantbank.com” in a way that is readily understood by customers. Thus call center employees, whether employees of the bank or employees contracted through a third party service provider, will need instruction about the possible customer confusion associated with the multiple trade names.

Fourth, the Branch Names Statement suggests that banks using multiple trade names: “... obtain from depositors opening new accounts at the branch a signed statement acknowledging that they are aware that the branch and other facilities are in fact parts of the same insured institution and that the deposits held at each facility are not separately insured.”

Thus, to address possible customer confusion with respect to FDIC insurance, the new deposit account customers of both “giantbank.com” and Landmark should sign a document indicating awareness of FDIC aggregation of deposits for the multiple identities. For example, Landmark could place the following disclosure in its “giantbank.com” deposit application forms and deposit disclosure documents on the giantbank.com website.

giantbank.com (Division of Landmark Bank N.A.) and Landmark Bank N.A. are the same FDIC-insured institution. Deposits held under each trade name are not separately insured, but are combined to determine whether a depositor has exceeded the \$100,000 federal deposit insurance limit.

We understand that management intends to establish and rely on appropriate internal control practices to ensure that all new and existing customers of Landmark and “giantbank.com” acknowledge that the two entities are not separate for deposit insurance purposes. We also understand that Landmark d.b.a. “giantbank.com” does not intend to solicit deposit accounts with existing Landmark accountholders. If that marketing strategy should change in the future, management should consider taking additional steps to detect and mitigate potential customer confusion.

Please contact National Bank Examiner Christopher Waltz at (305) 262-8203 should you have any questions regarding the Bank’s compliance with the Branch Names Statement on its website. If you have questions about compliance with the Branch Names Statement or Internet disclosures generally, please contact Cliff Wilke, Bank Technology Division at (202) 874-4157.

Sincerely,

/s/

/s/

Emory W. Rushton
Senior Deputy Comptroller
Bank Supervision Policy

Leann G. Britton
Senior Deputy Comptroller
Bank Supervision Operations