

The Retail Review

A publication of
the Virginia Retail Merchants Association

100+
years



VIRGINIA RETAIL MERCHANTS ASSOCIATION
THE VOICE OF FREE ENTERPRISE SINCE 1905

February/March 2007

Richmond, Virginia

Vol. 45, No 1

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VRMA CALENDAR

Reconvened Session
April 4, 2007

Spring Board Meeting
Richmond
Dinner w/Legislators
April 24, 2007
Board Meeting
April 25, 2007

Loss Prevention Seminar
Fredericksburg
May 22-23, 2007

VRMA Annual Membership Meeting
Williamsburg
October 26-27, 2007*

Council of State Retail Association's
Annual Meeting/Williamsburg
October 27-30, 2007

*NOTE: New Annual Meeting
Timeframe

Excellent Session for Retailers! Look what VRMA did for you!

Legislative News

Legislative activity on behalf of
our members is our #1 priority



This session was considered a short one, but it did not feel like it. It was a tough session from many perspectives. Although this was designated the transportation session, many major issues were addressed; and with this being an election year for all 140 legislators, they were all looking for items to campaign on. 3067 bills, studies, and resolutions were introduced this session. 1551 have been sent to the Governor who has 30 days to act. Reconvened session is April 4th. The following is a recap of some of the bills VRMA worked on your behalf:

Minimum Wage - Senator Colgan's SB1327 to raise the minimum wage to \$6.50 in Virginia which passed the Senate and the House Commerce and Labor Committee was re-referred to the Appropriations Committee. Since committees were not meeting for the remainder of the session, the bill was killed.

We did not oppose SB758 by Senator Stosch which states individuals over 65 should also be paid minimum wage. It passed the House and its companion bill HB2738 passed the Senate.

E-Fencing - VRMA requested HB2321 carried by Delegate Gilbert. According to the larceny code in Virginia venue is determined where the stolen goods are received. The bill addresses larceny over the internet by stating venue for the prosecution may lie in any jurisdiction where any part of the unlawful act occurred. The bill was requested by some of our members because e-fencing cases are not being prosecuted. Prosecution is difficult because the cases get to be so large and confusion about where to try the cases results in them being sent from one location to another. The bill passed unanimously out of the House but failed to receive a motion in Senate Courts.

Cont'd page 3



Downtown Petersburg, Inc.
Petersburg

The Opera House Gourmet
Manassas

Williamson & Associates, Inc.
Columbia, SC

Member News...

Hank Cominiello, President of the Eastern Division of *Safeway Inc.*, will be the 2007 Honoree at this year's Greater Washington Muscular Dystrophy Association Heartsongs Gala. The event will be held on Saturday, March 10th at the Marriott Wardman Park of DC. The Heartsongs Gala is held in memory of former National MDA Goodwill Ambassador Mattie Stepanek who was also a nationally known peacemaker and poet.

Under Cominiello's leadership, Safeway actively supports several community programs, contributing more than \$5 million each year to charities throughout the Washington-Baltimore metropolitan area. The money raised by campaigns like Safeway's Aisles of Smiles, and proceeds from the Heartsongs Gala help MDA fund

research for treatments and cures for 43 neuromuscular diseases. It also helps to pay for services, like MDA Summer Camp, available to children ages 6 to 21. It funds clinic visits, support group sessions, and assists with the purchase of wheelchairs, leg braces or communication devices.

Kroger recently opened its largest store in the Richmond area—its biggest in Virginia. The new store is in the Ivymont Square Shopping Center just off Midlothian Turnpike near state route 288 in Chesterfield County. Pete Williams, president of Kroger's mid-Atlantic division calls it "Kroger's store of the future."

Kroger entered the Richmond market in 2000 when it purchased 10 Hannaford Bros. stores. Kroger has since built five new stores and remodeled seven. Additional stores are planned for later this year and in 2008.

Member News...

VRMA introduces two new member services:

Dental services provided by
Dominion Dental
and

A job posting service provided
by *Boxwood*.

Read about these new services on
page 7 (*Dominion Dental*) and
page 10 (*Boxwood-Retail Career Center*)

MARYLAND-VIRGINIA REGIONAL CONFERENCE ON RETAIL THEFT AND PREVENTION

SPONSORED BY: MARYLAND RETAILERS ASSOCIATION
VIRGINIA RETAIL MERCHANTS ASSOCIATION

DATE: May 22-23, 2007

LOCATION: Fredericksburg, VA

PURPOSE: Bring together retail security professionals with state and local law enforcement to improve collaboration in combating retail theft.

The Maryland Retailers Association and the Virginia Retail Merchants Association have teamed up to bring retailers a much needed conference on retail theft and prevention. The conference will be held in Fredericksburg, Virginia, an ideal location for attendees from both states.

The event will open May 22, 2007, from 5:00 to 9:00 pm, with a two hour trade show, networking reception and dinner. The next day will feature an early morning trade show, with the remainder of the day being filled with important information from a host of panelist. Some of the panelists include Joe Laroca, *National Retail Federation*, Detective David Hill, *Montgomery County (MD) Police Department*, Jim Lee, *Editor of Loss Prevention Magazine* and a host of other law enforcement, states attorneys and loss prevention specialist.

**Look for registration material in early spring.
Make plans now to attend this important conference.**

The Retail Review is published bi-monthly by the Virginia Retail Merchants Association, Suite 809, 701 East Franklin Street Richmond, VA 23219
Phone: (804) 649-0789
Fax: (804) 644-8762
www.virginiaretail.org

President
Laurie Peterson Aldrich

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The Retail Review is intended to be a source of information for VRMA members. The contents are advisory in nature and not intended to be legal advice.

Legislative News Cont'd

Gift Cards - HB2552 expanded the definition of gift cards and gift certificates and prohibits ANY fees from being charged. Moments before the bill was to be heard a substitute was presented. This version required no fees for 12 months and no expiration for 24 months. The bill was narrowly defeated. We expect this bill to come back; therefore, we will look at this again before next session.

Wine Delivery (not self-distribution from wineries) - VRMA put in a House and Senate bill to restore the privilege for retailers to deliver wine. This privilege was taken away last year because of a court case that deemed it unconstitutional unless we also allow for out of state retailers to deliver into the state. Unfortunately, we had to compromise on the bill. The final bill creates a license for out of state retailers and restores the privilege for instate retailers to deliver with no additional cost to their current license. It limits the number of cases retailers can deliver to 4 cases, yet if they plan to deliver more, they must give 24 hour advance notice (not seek permission) to ABC. Also, regarding the shipment of wine, retailers may now get blanket permission from the wholesalers when they receive the wine rather than having to seek permission from each winery.

Self-distribution from Wineries – passed. A compromise was worked out between everyone putting a significant burden on the state. HB 2450 and SB 1413 enable wholesale distribution by Virginia wineries without an independent wholesaler. Under these bills, the Virginia Department of Agriculture and Consumer Services (VDACS) will create a nonprofit corporation to secure a wine wholesale license under which Virginia wineries and farm wineries may distribute up to 3,000 cases per year to Virginia shops and restaurants.

Electric Re-Regulation – Dominion introduced a self serving bill and after extensive attempts for change, a bill still favoring Dominion was the result. Dominion has at least 22 registered lobbyists and made \$209,000 in contributions in a non-election year and \$3.8 million in the last decade. From nearly every perspective from the Attorney General to the legislature, competition has not worked in Virginia; and they all feel the need to fix it before Virginia becomes like Maryland with 75-100% increases. The result is a hybrid approach that gives some power back to the State Corporation Commission. This approach has never been done and many fear it won't be a success. So far, we have unsuccessfully requested some protective measures for our retailers relating to being able to aggregate and shop the market.

Some highlights of the legislation are that it advances the scheduled expiration of the capped rate period from December 31, 2010, to December 31, 2008, and establishes a new mechanism for regulating the rates of investor-owned electric utilities, and limits the ability of most consumers to purchase electric generation service from competing suppliers. The ratemaking procedure requires the State Corporation Commission (SCC) to conduct a rate case for investor-owned utilities in 2009; thereafter, the SCC will review each utility's rates, terms, and conditions using two 12-month test periods ending December 31, 2010. With regard to the ability of customers to purchase generation services from competing providers, the measure provides that after the capped rate period ends, only customers whose annual demand exceeds five megawatts will be permitted to shop, and the load of the switching customers does not exceed one percent of the utility's load. However, two or more individual nonresidential retail customers may aggregate their demand for the purpose of meeting the five megawatt threshold if the Commission finds that neither their incumbent electric utility nor its retail customers will be adversely affected and that the demand of the customers who are allowed to buy power from competitors will not exceed one percent of the utility's peak annual load. The ability of large customers to purchase electric power from a licensed competitive supplier is subject to the condition that they cannot thereafter purchase electricity from their incumbent utility without giving 5 years' notice, with certain exceptions.

Transportation –A transportation plan has been passed on to the Governor with about \$1.5 billion a year in funding. Governor Kaine doesn't like the plan because it takes money from the General Fund; therefore, he will likely amend the bill in some way. In particular, Kaine said he opposes a provision that would pay off \$2.5 billion in bonds over an eight year period using approximately \$184 million in money now earmarked for other government services.

Legislative News Cont'd

The legislation establishes regional authorities for Hampton Roads and Northern Virginia. In Hampton Roads it empowers them to impose a 2 percent gas tax, a 5 percent tax on car repairs, a 1 percent vehicle registration fee and an increase in the tax rate on commercial real estate of 10 cents per \$100 of assessed value. It also would increase taxes on home sales. The Northern Virginia plan includes a commercial real estate tax increase of 25 cents per \$100 on property value; a 2% hotel tax, and a 2% car rental tax. It also increases taxes on homes.

Among other items for the statewide plan, it includes a \$10 vehicle registration fee (down from \$150 under an earlier version of the transportation plan) and a heavy truck registration fee increase that varies by weight.

Alcohol Advertising patroned by Delegate Dave Albo at the request of both VRMA and the VA Hospitality & Travel Association passed. It would permit Virginia retailers to choose what types of alcoholic beverage advertising materials that may be displayed inside their retail establishments. Current ABC regulations are outdated and impose arbitrary restrictions on the forms of advertising materials that may currently be displayed. HB 2491 would allow breweries and wineries; manufacturers and wholesalers to lend or give advertising materials to retailers up to a limit of \$40 per item. Retailers can purchase advertising materials up to \$250 as long as it is not purchased from a wholesaler, manufacturer or authorized vendor; therefore, that only leaves you to purchase it from other retailers.

Sales Tax Holiday for computers – there were multiple bills proposed to add computers and computer equipment up to \$1500 on to the current back to school holiday. This effort unfortunately failed.

A Hurricane Preparedness sales tax holiday passed. It begins in 2008, for seven-days from May 25 and ends on May 31. This holiday exempts portable generators with a selling price of \$1000 or less; and certain other hurricane preparedness equipment with a selling price of \$60 or less each, including, but not limited to, blue ice, carbon monoxide detectors, cell phone batteries, cell phone chargers, gas or diesel fuel tanks, non-electric food storage coolers, portable self-powered light sources, portable self-powered radios, two-way radios, weather band radios, storm shutter devices, tarpaulins or other flexible waterproof sheeting, ground anchor systems or tie down kits, and batteries.

A Sales Tax Holiday for Energy Star Products with a sales price of \$2,500 or less per product purchased for noncommercial home or personal use passed. Beginning in 2007, this holiday applies only to sales occurring during the four-day period that begins each year on the Friday before the second Monday in October and ends at midnight on the second Monday in October. For the purposes of this exemption, an Energy Star qualified product is any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program.

Crab Meat Labeling - HB2043 originally required that crab meat processors must date label all processed crab meat sold in Virginia. However, a substitute popped up that would have put the burden on the retailer to date label the product and it applied to all crab meat not just processed crab meat. VRMA was the only organization to express opposition to the bill before committee. The bill was defeated.

Smoking Ban - Delegate Griffith's HB 2422 bans smoking in all restaurants except when the owner posts a sign stating "Smoking Permitted" at each public entrance. The bill states that for the first and second offenses there is a civil penalty, and then increases to a Class 1 misdemeanor for the restaurant. A similar punishment applies to any person who does not comply. The bill passed and goes to the Governor who is likely to expand the bill possibly to an all out ban of smoking in restaurants.

Cont'd on next page

Legislative News Cont'd

Credit File Freezing - There were a slew of bills on this subject again this year. I reached out to our coalition from last year to address these as a unified front. I was able to get one bill stricken by the patron and in working with the coalition, we killed the other bills by getting them referred to the Governor's study Committee on identity theft and privacy.

Document Destruction – House Bill 2600 by Delegate Plum, says that every business in Virginia including this association has to develop a document destruction plan for anything containing personal information and put it in our employee manual and our corporate policy and procedures. Personal information is very broadly defined! The way we read it is that if you write a name and phone number on a post-it note, it would have to be burned, shredded or pulverized. The Virginia Auto Dealers and VRMA rallied opposition and the bill was sent to the Governor's study along with the credit file freezing bills.

Radio Frequency Identification (RFID) Labeling – There was bill put in to label all products that used RFID. We successfully worked to send this bill to the Joint Committee on Technology and Science also known as JCOTS. JCOTS studies things such as this outside of session. The Chairman of JCOTS Delegate May, serves on the NCSL RFID committee and believes this action will demonize the technology; therefore, we are in good shape.

Immigration – There were many bills targeting illegal aliens that impacted employers, among them were proposals to make it illegal for an employer to hire or harbor an alien who is in the United States illegally. Another was to prohibit an individual from getting a business license if they are here illegally.

The most worrisome were two bills that stated that it is an unfair employment practice for an employer to discharge any United States citizen or legally authorized worker if the employer, on the date of the discharge, employed an unauthorized alien within the Commonwealth. Someone discharged in violation of this bill was entitled to recover lost wages from the date of the discharge until the date the employee has procured new employment and reasonable attorney's fees and costs.

Yet, another bill required an employer, rather than the employer's workers' compensation insurance carrier, be liable for payment of workers' compensation benefits payable to an unauthorized alien. A person violating these provisions is guilty of a Class 2 misdemeanor and subject to a civil penalty of \$25,000.

While these may have been well intended, the repercussions of several of these were a problem especially if an employer had unknowingly hired an illegal alien. All of these bills failed.

Electronics Recycling – There was a study to look at the issue of electronic recycling which failed. There was also another bill that was presented to us for review and after explaining retailers' voluntary efforts the bill was not filed. However, a bill just passed that would require state computers to be recycled and that a plan be developed to do so.

Electronic Logs for Meth Precursors – two bills were put in to require an electronic log rather than the written one we have today. The State Police said electronic logs were not needed. We opposed the bills due to the burden it would place on our retailers and they failed.

Optometry Study - This year we requested a study to look at the Federal Trade Commission reports and to look at other information about Virginia's law that restricts putting a door between the Doctors office and the eyewear shop. This restriction has been the law since 1938 and as the FTC reported our laws are very restrictive. The request for a study failed.

Healthcare mandates – There were many health care mandates proposed again this year. All were sent to the Mandate Review Board or failed before the Board and therefore failed in the legislature.

Cont'd on next page

Legislative News Cont'd

Streamlined Sales Tax Project – Senator Hanger presented a bill but then struck the bill stating we need to look at this in the future but this year was not the year.

Internet Wine License – With the passage of this bill a new license was created for internet wine sellers, which no longer requires a retail store just a warehouse. Food sales are also not required.

Other Tobacco Products – the proposal was to change the way this product (moist snuff, chewing tobacco, etc.) would be taxed. The change would be from a percentage of the price to a weight based system. After much discussion, this bill was struck to work on over the upcoming year. The final version of this bill addressed many of our original concerns.

BPOL on Gasoline – Legislation passed, retroactively effective January 1, 2001, that clarifies that the motor fuels tax is exempt from gross receipts for purposes of the BPOL tax.

Eminent Domain – There was a great deal of work on this issue. This legislation is in reaction to the Kilo case. There is still some work being done on this issue relating to the blighted property. The bill defines the term “public uses” as embracing only the acquisition of property for certain use and purpose. The bill also states that property can only be taken when the public interest dominates the private gain and the primary purpose is not private financial gain, private benefit, an increase in tax base or revenues, or an increase in employment, with certain exceptions for utilities and public service corporations. The bill defines the terms “blighted property,” “government utility corporation,” “public corporation,” and “public facilities.” The bill also provides that a property owner may challenge that a taking is a pretext for an unauthorized use. A former property owner, or his successors, may also request to repurchase the taken property upon the completion or abandonment of the stated public use.

These are only a fraction of bills that we worked on, followed and impacted. There was the dual signature/assignment of benefits, meal tax bills, gas tax, sales tax increases and too many more to list. Many thanks to Tom Lisk, May Fox, Jackie McClenney of LeClair Ryan for their lobbying assistance; these issues could not have been sufficiently covered without their help.



Stay at the newly renovated Williamsburg Lodge

VRMA Annual Membership Meeting

Williamsburg

**October 26-27, 2007*



Enjoy Charming Historic Surroundings!



***New Annual Meeting Timeframe--
MARK YOUR CALENDAR
October 26-27, 2007**

*(Early Reservations strongly recommended:
800-261-9530 code VIRJ07H)*

DOMINION DENTAL

A New Member Service Dental Benefits Are Now Available!

After careful consideration, Dominion Dental Services, Inc. (DOMINION) has been selected as the dental provider for our member benefit package. DOMINION is a full-service dental plan that has been active locally for more than 10 years and currently serves over 150,000 members. This special program is now available to all of our members and their families.

What are The Virginia Retail Merchants Association's dental benefits?

Extensive dental coverage is provided through three unique options. You select the one that fits your needs and budget.

Choose between a dental HMO (DHMO) plan, a PPO plan and a reduced fee program. Each option provides dental care at significant savings. The DHMO provides superior benefits through a panel of participating dentists, the PPO permits the use of any dentist and the discount plan provides reduced fees for each procedure in exchange for a low monthly payment.

**Best of all, rates start at
less than \$7.50 a month!**

To find out more about the dental program or to enroll, visit the VRMA web site at www.virginiaretail.org or go directly to our dental insurance product site at www.dominiondental.com/edental/vrma.

If you have any questions regarding this benefit, please contact us at:

VRMA
800 232 8762

Take advantage of this program to maintain your oral health and decrease the overall cost of healthcare for you and your family.

Legislative Profile

Delegate John A. Cosgrove, a Republican, represents the city of Chesapeake in the 78th House District. Elected in 2001, and now serving his third term in the General Assembly, Delegate Cosgrove has focused his efforts on protecting our family values, public safety, education, transportation and protecting the Chesapeake Bay.



In the General Assembly, Delegate Cosgrove serves on four very important committees, Transportation, General Laws, Privileges and Elections and Technology. He serves as Chairman of the Professions/Occupations and Administrative Process sub-committee of the General Laws Committee and he is a member of the ABC/Gaming subcommittee of the General Laws Committee. Delegate Cosgrove also serves as Vice Chairman of the Virginia Delegation of the Chesapeake Bay Commission. He has been appointed to the Joint Commission on Technology and Science (JCOTS), the BRAC related Virginia Commission of Military Bases, and the Virginia Housing Commission. He is Chairman of the Modeling and Simulations sub-committee and the Cyber Crimes sub-committee of JCOTS.

Delegate Cosgrove has been the chief sponsor of legislation on various issues, including but not limited to, the Constitutional Amendment on Marriage, the "Laci" Peterson Bill that makes it a murder to kill the child of an expectant mother, as well as bills establishing Veteran's Recognition Week, a Drug Court in Chesapeake, and a School Holiday Tax Bill. He also patroned a VRMA bill on re-establishing the ability of retailers to deliver wine.

Delegate Cosgrove was born in Montgomery, Alabama and later moved to Springfield, Virginia. He attended Shenandoah College and Conservatory of Music to study his love of music. He later continued his education graduating from Tidewater Community College in 1983 and from Old Dominion University in 1985 with a degree in Electrical Engineering Technology. He also served in the United States Navy as an Aerospace Engineering Office/Maintenance Officer.

Delegate Cosgrove attends Great Bridge Baptist Church and lives in the Great Bridge section of Chesapeake with his wife Sue. He and Sue have been married since 1978 and have two sons, Michael and Brian.

President's Note: This is a continuing series of Legislative Profiles of Members of the Virginia General Assembly. Please make sure you read each carefully. This information may aid you in suggesting a legislator as the VRMA's next Legislator of the Year.

The Care and Feeding of Your Trademark: (Or How To Avoid Losing This Valuable Company Asset)

By Donna Ray Chmura

The Legal Minute



1. Spotting the Trademark (*What is a Trademark?*)

A trademark is a symbol, design, name, image or word used to identify a particular good or service as being offered by a particular source. Trademarks, and their cousin, the service mark, allow consumers to seek or avoid the products sold under those symbols. Imagine the BURGER KING king mascot, the Ford oval, the shape of a Coca-Cola bottle or the slogan, “JUST DO IT” for athletic apparel. Without them, how could consumers distinguish one company’s hamburgers, automobiles, soda or tennis shoes from another’s?

Trademarks, sometimes called brand names, protect commercial goodwill, and thus are important business assets that themselves must be protected and used correctly.

A trademark is *not* a description of a product or a type of product. In fact, a trademark is often followed by such a description: FORD trucks, COCA-COLA soft drinks, NATIONWIDE insurance services.

Trademarks can be:

- words (McDONALD’S; APPLE);
- stylized words (COCA-COLA, FORD);
- logos, symbols, designs and shapes (Nike swoosh, McDonald’s golden arches, Apple Computer’s apple, Microsoft’s butterfly);
- letters (IBM, CNN);
- numbers (409 cleaner, CHANEL No. 5 perfume);
- telephone number combinations (1-800-MATTRESS, DIAL-LAWYERS);
- abbreviations (COKE, BUD, VW);
- slogans (“COLOR SO NATURAL ONLY HER HAIRDRESSER KNOWS FOR SURE” for Clairol hair color; “FINGER LICKIN’ GOOD” for Kentucky Fried Chicken food);
- colors (pink for OWENS CORNING insulation, green-gold for QUALITEX brake pads);
- shapes (COCA-COLA bottle, APPLE i-Pod Nano);
- building designs (MCDONALD’S restaurants, FOTOMAT kiosks);
- clothing (DALLAS COWBOYS cheerleader outfits);
- sounds (NBC chimes, MGM lion’s roar);
- fragrances (PLUMERIA scented yarn).

When a mark identifies services, rather than goods (APPLEBEE’S for restaurant services; ERNST & YOUNG for accounting services), the mark is technically called a “service mark,” instead of a trademark. There is no practical difference between a trademark and a service mark for federal or state registration purposes. The registration procedures and the scope of protection offered for each are identical.

It is important to note the difference between a trademark and a trade name. A trade name is the name of a company. Many companies check with their Secretary of State to determine if a trade name or corporate name is available in that state. If the Secretary of State allows registration of that corporate name, it means only that there is not a preexisting company with a confusingly similar name in that state. The Secretary of State is not responsible for determining whether the proposed corporate name infringes the federal or state trademark rights of another party. For example, a company could form a North Carolina corporation called McDonald’s Restaurants, Inc. in North Carolina, because no other corporation has registered that name. Most likely, however, if it were to do so, it would receive a cease-and-desist letter from the McDonald’s hamburger chain in short order; although the trade name is available, the proposed name infringes the trademark rights of another business.

Trademarks exist, and others can be prohibited from using them, whether or not they are registered, although Sands Anderson Marks & Miller strongly recommends protecting your valuable trademark with a state or federal registration.

1. The Natural Habitat of a Trademark

(Using the Mark as a Trademark)

To obtain rights in a trademark, the name needs to be affixed directly on the goods, the packaging or the container and sold in commerce. A service mark must be displayed in the sale or advertising of the service. One way to tell if your company is using a trademark is to look for “specimens.” When registering a trademark or service mark, an owner is required to submit several examples of how the mark is used in commerce to identify the source of the goods or services. If a computer company introduces a line of laptops called

“PORTABLE POWERHOUSE,” but does not use the mark on the computer itself, advertisements, labels, packaging, point-of-sale displays, or promotional literature in showrooms, and uses only a model number internally to designate this line, it cannot prove it actually used the mark as a trademark. Customers would never see the term PORTABLE POWERHOUSE in connection with the goods, and thus, PORTABLE POWERHOUSE does not really identify who manufactured the computer to the public.

Similarly, the owners of “CANINE CREATIONS” dog grooming service are well-advised to include a description of the services on their business stationary, promotional materials and advertisements, so that customers will associate CANINE CREATIONS groomers with the particular company that offers the service of picking up your dog, taking it to a groomer who will create a unique hair style and color for your dog, and deliver the dog back to your home at the end of the day.

2. The Care and Feeding of a Trademark:

(How to Use a Trademark To Properly Identify Your Company)

Once your company has created a trademark, it is essential to make sure you don't lose your rights to this valuable asset through improper use. Whether or not a mark is registered, it is important to prevent it from becoming a generic or descriptive term and losing its proprietary significance. Who wants to own the next failed trademark: escalator, kerosene, thermos, cellophane, shredded wheat and aspirin.

Here are some tips to make sure your company and its trademark enjoy a long and healthy relationship:

>Always set the trademark apart from other words appearing nearby (through different lettering styles, quotation marks, capital letters or other appropriate means):

TEXAS PETE hot sauce
 Tabasco brand pepper sauce
 “Pace” chunky style picante sauce
 Old El Paso salsa

>Use a trademark symbol after the name of the product. The “®” symbol indicates that the mark is subject to a federal registration, while the “™” symbol indicates a state trademark registration, a common-law trademark or a trademark that has not yet received federal registration. It is important *not* to use the “®” symbol until the federal registration certificate is issued. If your mark is subject to a state registration only, you are not allowed to use

the “®” symbol.

Coca-Cola® soft drinks
 Introducing Tranquility™ brand mountain spring water

>A trademark is *always* an adjective, never a noun or verb.

Correct: make a copy on the XEROX copier; Let's play with a FRISBEE brand flying disk; I'm going to use SIMONIZ paste wax on my car)

Incorrect: Make a XEROX of these for me, Let's play with the FRISBEE; XEROX these documents for me, I'm going to SIMONIZ my car

>A trademark is *never* used in the plural form or the possessive form.

Incorrect: Let's play with some LEGOs; I think KLEENEX'S quality is the best.

>A generic identifier always follows the trademark. This is absolutely essential when you are introducing a completely new type of product. Often, the creators of new products coin two names for the product, allowing one to become the generic identifier of the type of product, so that the other can be protected as a trademark. Consider, for example, SANKA brand decaffeinated coffee. “Decaffeinated” was created to describe coffee without caffeine, and “SANKA” (derived from “sans caffeine”) was created as the brand name.

Correct: KODAK cameras, JEEP sport utility vehicles, LEVI'S jeans.

>Make sure other people are using your trademark correctly. Several companies offer “watch” services that monitor thousands of databases for uses of your mark, and notify you when a third party attempts to register a similar trademark

Sands Anderson Marks and Miller's Donna Chmura concentrates her practice on contract and commercial law, employment law, commercial real estate, merger and acquisition, trademark, copyright and licensing. Donna practices law in the firm's North Carolina office. In Virginia, contact Bill Lehner at (804) 783-7246 for assistance in protecting your company's trademarks and service marks.

A New Member Service

VIRGINIA RETAIL CAREER CENTER!

Job seekers and employers have discovered the advantages of searching online for the best jobs and for qualified candidates to fill them. But, the mass-market approach of the mega job boards may not be your best avenue in the retail industry.

The all-new **Virginia Retail Career Center** gives employers and jobseekers a better way to find one another and make that perfect career fit.

For Employers:

- Post your jobs
- Target a focused audience of candidates
- Search resumes
- Track applications

For Job Seekers:

- Post your resume
- Search job listings
- Set up Search Agents and have new postings sent to you via email

VRMA Members:

Save 85% over job posting rates on major commercial sites!

To find a job or fill a position, visit:

www.virginiaretail.org (or)

<http://jobsandcareers.virginiaretail.org>



Chairman's Corner



Teross Young

Dear Retailers,

First of all, I want to wish you all continued prosperity as we build on a new year. I hope that 2007 will be an explosive successful year for your company.

2006 was a busy year for many of us and I know that many of you worked hard until the last hours in your businesses. Thanks to the work of the VRMA staff, we had great representation in 2006 at the Capitol. 2006 was also a year of introduction of many new legislative proposals and we continued to see an accelerated number of proposals for 2007. As a result, our staff worked vigilantly to track and monitor these bills for our members.

Like many other states, the increase in volume of proposals has caused more uncertainty about our ability to defeat potentially harmful bills and pass advantageous bills that could help us. Review the highlights featured in "Legislative News" (cover page) for additional information about the 2007 Session. Please continue to lend your support to Laurie in her mission to represent us at the Capitol. Retail issues do not end just because Session has ended.

Remember, we must stand up and fight everyday for our business principles and beliefs. Thank you for making a difference!

"There is no use worrying about things over which you have no control, and if you have control, you can do something about them instead of worrying."

—**Stanley C. Allyn**, former CEO of National Cash Register Co.

EDUCATIONAL OPPORTUNITY

Sands Anderson Marks & Miller

Hiring a Workforce That Works for You: *Session Two*

The Selection Process

April 5, 2007

The Place at Innsbrook
4036 Cox Road, Suite C
Glen Allen, VA

The Hiring process is the most critical aspect of the employment relationship. There are many legal pitfalls that can create significant liability. The cost of recruiting, evaluating, interviewing and training are high; doing it right from the beginning will lead to a successful and long lasting employment relationship. This two-part seminar will walk participants through some of the key areas in which legal issues may surface. A discussion will follow each session.

RSVP by March 28, 2007

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PO Box 1998

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www.SandsAnderson.com/seminars.php

Member News...

Supermarket chain **Food Lion** raised and donated more than \$9 million to nonprofit organizations in 2006. Recipients of the funds include the Children's Miracle Network, America's Second Harvest food banks, Easter Seals United Cerebral Palsy, the American Red Cross and numerous local charities.

Established in 2001, the Food Lion Charitable Foundation provides financial support for programs and organizations dedicated to improving the communities in which Food Lion operates. Food Lion, founded in 1957, is a subsidiary of Salisbury-based Delhaize America Inc., the U.S. division of Delhaize Group (NYSE:DEG) of Belgium. Food Lion has more than 73,000 employees in 11 states.

Charlotte Business Journal

Jim Erickson

--Secretary of the Board Profiled

Now director of corporate communications, member relations and public affairs at Southern States Cooperative in Richmond, Va., Jim Erickson has some 37 years of experience in those areas in the agricultural cooperative sector.

Before joining Southern States in September 2000, he held management positions with Cenex Harvest States in St. Paul, the St. Louis Bank for Cooperatives and Michigan Milk Producers Association.

He has received the Cooperative Communicators Association's top award

for career achievement and has received additional honors in publication management, writing, photography and other communications and marketing projects from a number of professional and trade groups. In addition to conducting workshops on a wide range of communications subjects, he also has worked with cooperative councils in the Midwest, Plains States and Northwest in developing and presenting seminars on board-management relationships and the role of communications in building a productive, positive workplace environment.

Born and raised in Illinois, he is an

honors graduate of the University of Illinois. Jim and his wife Barbara live in the Richmond area; have three grown children and seven grandchildren. He is active in Shady Grove United Methodist Church of Short Pump and enjoys golf and competitive running.

Jim has served as a member of the VRMA Board of Directors since October 2003 and currently serves as Secretary of the Board.



NRF Briefs. . .

Home Depot plans its new direction-Home Depot's new CEO, Frank Blake, discussed strategies with analysts to move ahead with the retailer's HD Supply business. Home Depot plans to invest in its retail business and grow it overseas to improve performance relative to the overall housing market.

Wal-Mart sets sights on future growth abroad-Wal-Mart Stores expects its future growth to come from international operations in emerging markets such as China and India, CEO Lee Scott said in a conference call after reporting strong fourth-quarter and full-year earnings. The company also has returned to its focus on deep discounts in all categories.

Paper or payment: IKEA to charge for plastic bags-As of March 15, customers will have to pay 5 cents for every plastic bag they use at IKEA U.S. IKEA, which is simultaneously lowering its price for its reusable "Big Blue Bag," projects the move will reduce plastic bag usage by its customers at least 50% in the first year.

McDonald's franchisees eye all-day breakfast-As part of its 2007-2009 Plan to Win, McDonald's Corp. has informed its franchisees of a "breakfast optimization" program that involves overhauling its kitchens to speed up and increase the breakfast service. Franchisees are speculating that increased competition in the breakfast arena might lead to the end of the 10:30 a.m. cut-off for McDonald's breakfast service.

Best Buy for Business hits the big time-For the past few years, small business IT consultants working for Best Buy have operated under the radar with limited resources and attention. Now the company is advertising the service in several urban markets and planning to build a network of IT specialists that could rival the better-known Geek Squad.

Macy's plans to open Internet fulfillment center-Macy's will meet the growing Web demand for items on Macys.com through a new Internet fulfillment center in Goodyear, Ariz., which Federated Department Stores will open by 2008.

Retailers benefit from online commentary-Customers, especially young and computer-savvy ones, love to express their praise, concerns and suggestions online, and retailers are learning to take advantage of the trend. More companies have opened up their Web sites to consumer comments in the last year, and the resulting feedback is changing the way they market their products, as well as their manufacturing and merchandising choices.

J.C. Penney revamps corporate culture, from top down-J.C. Penney is set to unveil a new ad campaign as part of an effort to elevate its brand to a new status among consumers. Before the company could change consumer perceptions, however, Chairman and CEO Mike Ullman realized the company had to completely remake its image in the eyes of its employees.

Consumer confidence increases in February-Consumer confidence hit a two-year high in February, with the RBC Cash Index at 103, up from an 95.3 in January. The rating, based on the results of polling firm Ipsos, was at the highest level since September 2004.