



MEMORANDUM

To: Members of the Authority

From: Caren Franzini
Chief Executive Officer

Date: December 5, 2011

Subject: Technology Business Tax Certificate Transfer Program (the “Program”)
Appeal – Software Synergy Inc.

I have reviewed the attached Hearing Officer’s report regarding the appeal by Software Synergy Inc (SSI) in regard to the Technology Business Tax Certificate Transfer Program. I concur with the recommendation that SSI be disapproved under the Program.

Background:

Pursuant to the Program’s enabling legislation, NJEDA annually reviews applications to ensure the applicants meet the statutory requirements of the Program. Staff’s recommendation for approval or declination is then presented to the Members for approval. Applicants that are declined have 20 days to submit appeals which are reviewed by an independent Hearing Officer.

At EDA’s September 14, 2011 Board Meeting, the Members considered 83 requests from companies to participate in the Technology Business Tax Certificate Transfer Program. A total of 10 of those requests, including SSI were disapproved.

SSI submitted an initial appeal of the disapproval based on lack of Protected Proprietary Intellectual Property (“PPIP”). As staff reviewed the appeal, a clerical oversight came to light that led to a second reason to disapprove, based on the company not having the required minimum number of employees. On October 11, 2011, the Board approved the second declination and SSI was given additional time to appeal the second reason for disapproval.

On November 9, 2011, the Hearing Officer recommended and EDA’s Board disapproved SSI’s appeal. During the public comment portion of the meeting, the President and CEO of SSI, Rose Oxley asked for a review of the appeal.

Recommendation:

After review of the Hearing Officer's report regarding the appeal by Software Synergy Inc (SSI) in regard to the Technology Business Tax Certificate Transfer Program, I concur with the recommendation that SSI be disapproved under the Program.



Caren S. Franzini

Attachment

Prepared by: Kim Ehrlich



MEMORANDUM

TO: Caren S. Franzini, Chief Executive Officer
Members of the Authority

FROM: Lisa Coane
Hearing Officer

DATE: December 5, 2011

SUBJECT: Technology Business Tax Certificate Transfer Program (the “Program”)
Appeal –Software Synergy Inc.

Request:

Recommend disapproval of Software Synergy, Inc. (“SSI”) under the Program.

Background:

Pursuant to the program’s enabling legislation, NJEDA annually reviews applications to ensure the applicants meet the statutory requirements of the Program. Staff’s recommendation for approval or declination is then presented to the Members for approval. Applicants that are declined have 20 days to submit appeals which are reviewed by an independent Hearing Officer. Heather O’Connell fulfilled the role of Hearing Office and completed the initial review of the appeals with legal guidance from the Attorney General’s Office.

At EDA’s September 14, 2011 Board Meeting, the Members considered 83 requests from companies to participate in the Technology Business Tax Certificate Transfer Program. A total of 10 of those requests, including SSI were disapproved. Following the September Board meeting, the companies that were disapproved were sent written notice of the Board’s action along with the reasons for the disapproval and were given 20 days to appeal.

SSI submitted an initial appeal of the disapproval based on lack of Protected Proprietary Intellectual Property (“PPIP”). As staff reviewed the appeal, a clerical oversight came to light that led to a second reason to disapprove, based on the company not having the required minimum number of employees. On October 11, 2011, the Board approved the second declination and SSI was given additional time to appeal the second reason for disapproval.

On November 9, 2011, the Hearing Officer recommended and EDA’s Board disapproved SSI’s appeal. During the public comment portion of the meeting, the President and CEO of SSI, Rose Oxley asked for a review of the appeal. In the absence of Hearing Officer Ms. O’Connell, Chairman Al Koepp directed me to be the successor Hearing Officer. After conclusion of the Board meeting, a hearing was convened with Ms. Oxley, John Rosenfeld, Director of Bonds &

Incentives and Elizabeth A. Renaud, Deputy Attorney General. It was agreed at the conclusion of the hearing that SSI would submit clarifying information in support of its request of a reconsideration of the disapproval.

After reviewing clarifying information submitted by the applicant, I am recommending that the Board disapprove SSI for the following reasons. (Detailed analysis attached).

Software Synergy, Inc.

SSI was declined because it did not demonstrate that it owns or licenses protected proprietary intellectual property (“PPIP”) as required by N.J.S.A. 34:1B-7.42(b) and because it did not meet the definition of being a new or expanding technology or biotechnology company as required by N.J.S.A.34:1B-7.42 (b) by not having a minimum of 10 full-time employees as of June 30, 2011.

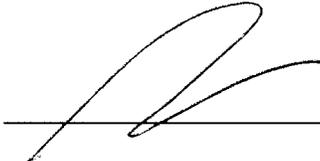
In response to the first reason for disapproval, SSI provided a letter from its attorney to clarify that it owned its PPIP as required in N.J.S.A. 34:1B-7.42(b) and to support Ms. Oxley’s argument that a trade secret is equivalent to a patent. The letter, while challenging the requirement of registering a copyright in the statute, did not provide evidence that SSI’s copyright was registered, nor did it provide support that a trade secret is equivalent to a patent.

In response to the second reason for disapproval, SSI did not provide additional information that would support that it had 10 full-time employees working in this state as of June 30, 2011. Instead, SSI provided a certification from one of its employees that confirmed that he works remotely from Pakistan. By removing this individual from SSI’s work force, SSI only had 9 full-time employees working in this state as of June 30, 2011, which does not meet the Program requirement.

Recommendation:

As a result of careful consideration of the above appeal in consultation with the Attorney General's Office, I am recommending SSI for disapproval under the Program.

Attachment



Prepared by: Lisa Coane, Hearing Officer