

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

November 6, 2013

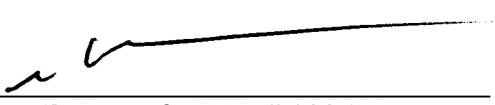
SHOW CAUSE PROCEEDING AGAINST OPEN) DOCKET NO. 13-00095
BUSINESS DIRECTORY, LTD. FOR ALLEGED)
VIOLATIONS OF TENN. CODE ANN.)
§ 65-4-501 et seq.)
)
)
)
)

TENNESSEE CODE ANNOTATED SECTION 4-5-313 NOTICE

Comes now the Tennessee Regulatory Authority, by and through the Legal Division, and hereby serves notice pursuant to Tenn. Code Ann. § 4-5-313 as follows:

1. An executed version of the accompanying Affidavit of Slayde Warren, (attached exhibit 1) may be introduced as evidence at the hearing of Open Business Directory, LTD., before the Tennessee Regulatory Authority, Docket No. 13-00095.
2. Slayde Warren may not be called to testify orally, and you would then not be entitled to question such affiant unless you notify Shiva K. Bozarth, at Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, Tennessee 37243, that you wish to cross-examine such affiant. To be effective, your request must be received on or before November 14 at 11:30 a.m. CST.

Respectfully submitted this the 6th day of November, 2013.

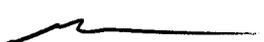


Shiva K. Bozarth, BPR # 022685
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon Open Business Directory, LTD., Service Agent USA, 225 Franklin St., 26th Floor, Boston, MA 02110 and Michael Barron, Open Business Directory Ltd. Legal Department, email: legal@open-business-directory.com, by delivering same in the United States First Class Mail, with sufficient postage thereon to reach its destination.

This 6th day of November, 2013.



Shiva K. Bozarth

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

IN RE:)	Tennessee Regulatory Authority
)	TRA Docket No.
SHOW CAUSE PROCEEDING AGAINST OPEN)	13-00095
BUSINESS DIRECTORY, LTD. FOR ALLEGED)	
VIOLATIONS OF TENN. CODE ANN. § 65-4-501 <i>et</i>)	
<i>seq.</i>)	

**AFFIDAVIT OF SLAYDE WARREN IN SUPPORT OF ALLEGATIONS OF VIOLATIONS
OF TENN. CODE ANN. § 65-4-501 *et seq.* PURSUANT TO A PROCEEDING REQUIRING
OPEN BUSINESS DIRECTORY TO SHOW CAUSE WHY A CEASE AND DESIST ORDER
AND/OR FINE SHOULD NOT BE IMPOSED**

- I, Slayde Warren, being first duly sworn upon oath, do hereby state as follows:
1. I have personal knowledge of the facts stated herein.
 2. I am employed by the State of Tennessee in the capacity of Investigator with the Do Not Call-Do Not Fax Program of the Tennessee Regulatory Authority (“Authority” or “TRA”).
 3. As an Investigator in the Do Not Call-Do Not Fax programs my duties include investigation of complaints from Tennessee consumers alleging violation of the Tennessee Do Not Fax Law, Tenn. Code Ann. § 65-4-501, *et seq.*
 4. I am submitting this affidavit in support of allegations of violations of Tenn. Code Ann. § 65-4-501 *et seq.* pursuant to a Show Cause proceeding in TRA Docket No. 13-00095.
 5. On February 23, 2012, February 24, 2012, March 15, 2012, June 8, 2012, September 24, 2012, November 8, 2012 and May 1, 2013, Notices of Alleged Violations (NAV) were sent via certified mail to Open Business Directory Ltd., at 225 Franklin St, 26th Fl, Boston, MA 02110.



6. On February 15, 2013, May 1, 2013 and May 16, 2013, NAVs were sent certified and standard mail to Open Business Directory, Ltd, at Al Barsha, PO Box 450676, Dubai, UAE.
7. Between February 7, 2011 and May 7, 2013, the Consumer Services Division (“CSD”) received complaints from five (5) Tennessee consumers. The complaints total twelve (12) alleged violations of the TENN. CODE ANN. § 65-4-501 *et seq.* The following is a summary of the complaints.
 - The Tennessee Regulatory Authority received an unsolicited facsimile advertisement at (615)741-2336 from the Respondent on February 23, 2012, September 20, 2012, October 25, 2012, February 12, 2013, and May 2, 2013. The CSD sent an NAV related to the complaints filed by the Tennessee Regulatory Authority to the Respondent via certified mail. Respondent responded via mail but denied violating any state or federal Do Not Call laws.
 - Linda Wiggins received an unsolicited facsimile advertisement at (901) 861-0019 from the Respondent on March 9, 2011. On March 15, 2012 the CSD sent a NAV related to the complaint filed by Linda Wiggins to the Respondent via certified mail. Respondent responded via mail but denied violating any state or federal Do Not Call laws.
 - Vista Radiology, PC received an unsolicited facsimile advertisement at (865) 546-1920 from the Respondent on February 3, 2011, March 9, 2011, and September 27, 2011. On March 15, 2012 and June 8, 2012 the CSD sent a NAV related to the complaints filed by Vista Radiology, PC to the Respondent via certified mail. Respondent responded via mail but denied violating any state or federal Do Not Call laws.

- Riverbend Maximum Security Institution received an unsolicited facsimile advertisement at (615) 350-3400 from the Respondent on February 3, 2011 and March 8, 2011. On March 15, 2012, the CSD sent a NAV related to the complaints filed by Riverbend Maximum Security Institution to the Respondent via certified mail. Respondent responded via mail but denied violating any state or federal Do Not Call laws.
 - Chalfant Travel Services received an unsolicited facsimile advertisement at (615) 377-9045 from the Respondent on January 18, 2012. On February 24, 2012, the CSD sent a NAV related to the complaints filed by Chalfant Travel Services to the Respondent via certified mail. Respondent responded via mail but denied violating any state or federal Do Not Call laws.
8. The CSD received a letter from the respondent on March 15, 2012 denying violating any state law and denies their “order form” meets the definition of an advertisement for a good or service. Respondent states that they have no record of a business relationship with this particular business (Exhibit A). The CSD received a letter from the respondent dated May 14, 2012 denying any business relationship with the company on the complaint or being in violation of any state law or regulation. Respondent stated that they feel that it is likely that this business was contacted by a similar company within the same market sector (Exhibit B). The CSD received a letter from the respondent on July 18, 2012 stating they are unable to find record of business relationships with alleged complainants and denies their “order form” meets the definition of an advertisement for a good or service (Exhibit C). The CSD received a letter from the respondent on September 6, 2012 denying violating any state law and denies their

“order form” meets the definition of an advertisement for a good or service (Exhibit D). The CSD received a letter from the respondent on October 19, 2012 denying a business relationship with the company on the complaint and denies sending “faxes” to businesses (Exhibit E). The CSD received a letter from the respondent on May 24, 2013 denying a business relationship with the company on the complaint and denies sending any unsolicited faxes as a business practice (Exhibit F).

9. Respondent has responded to a total of nine (9) complaints. NAVs have been issued on all complaints to Open Business Directory, Ltd.
10. Numerous attempts have been made to contact persons at Open Business Directory, Ltd., including attempts via mail and telephone. Contact, via USPS has been made with Mr. Michael Barron. Contact has been made with several customer service agents via telephone. The agents indicated that all correspondence and any payments be forwarded to the Boston, MA address listed below. Open Business Directory list their mailing address as being 225 Franklin St, 26th Floor, Boston, MA 02110 and Al Barsha, PO Box 450676, Dubai, UAE. Signed certified mail receipts have been returned but the signatures are not legible.

FURTHER AFFIANT SAITH NOT.

Stacy W
Name

Subscribed to and signed before me on this 18 day of October, 2013.

Victor L. Lanfess
NOTARY PUBLIC

My Commission Expires: 1/6/2014



EXHIBIT A

Open Business Directory Ltd.
225 Franklin Street, 26th Floor, Boston, MA 02110



Tennessee Regulatory Authority
Att. Mr. B. Chalfont
460 James Robertson Parkway
Nashville
Tennessee 37243-0505
USA

Open Business Directory Ltd.

Service Agent USA:
225 Franklin Street, 26th Floor
Boston, MA 02110
Phone: + 1 (866) 214 5273
Fax: +1 (781) 658 2381

RECEIVED
DO NOT CALL / DO NOT FAX

MAR 15 2012

info@open-business-directory.com

March 7th, 2012 MB

TN REGULATORY AUTHORITY

EUROPE:
ul. Uldastova, d. 52, k.v. 1361
g. Moscow
119607
RUSSIAN FEDERATION
Tel: +7 (495) 580 3043

Your Reference: File No: F.120011

Dear Mr. Chalfont,

We are in receipt of your letter of February 23rd, 2012 in relation to an alleged violation of your code. This matter has now been passed to the writer to respond.

We would advise that we cannot locate any file from the telephone details you provided. We would also advise that the Company does not employ any direct sales staff to contact any business by telephone in order to secure new business. In order for us to investigate further we would require details of the business as it may be that no contract file exists for this business. A file is only opened when a signed authorized Order form is received by the Company.

As to the Order form that is returned to the Company so as to enable the Company to undertake the work. Notwithstanding the fact that there may not be any contract with this particular business we do not believe that such Order form would in any event be in violation of any regulation or otherwise as it is not an advertisement within the definition of an advertisement.

We trust that this clarifies the position. If you require additional information from the Company please do contact the Company. Should you wish us to investigate further please provide details as to this business as it will enable the Company to make further searches but no record of a contract could be located from the telephone number.

Yours sincerely,

A handwritten signature in black ink that reads "M. Barron". The signature is written in a cursive style.

Michael Barron
Open Business Directory Ltd.
Legal Department
e-mail: legal@open-business-directory.com

EXHIBIT B

Open Business Directory Ltd
225 Franklin Street, 26th Floor, Boston, MA 02110



Tennessee Regulatory Authority
Att. Do Not Fax
460 James Robertson Parkway
Nashville
TN 37243
USA

Open Business Directory Ltd.

Service Agent USA:
225 Franklin Street, 26th Floor
Boston, MA 02110
Phone: + 1 (866) 214 5273
Fax: +1 (781) 658 2381

info@open-business-directory.com

May 14th, 2012 MB

EUROPE:
ul. Uldastova, d. 52, k.v. 1361
g. Moscow
119607
RUSSIAN FEDERATION
Tel: +7 (495) 580 3043

**Your Reference: File No's F110038, F110172, F11030,
F110062, F1100039**

Dear Sir,

We refer to your letters of March 15th in relation to the above files and alleged violations. We apologize for any delay in responding but this matter has only just been passed to the writer to handle.

At this time we cannot trace the business's from the details provided that you state received certain faxes. As such we are unable to ascertain if such business's are Customers of this Company.

However, we would advise that the Company does not employ any direct sales staff or contact business's in respect of new contracts or business. Accordingly, we find the statement that any business was contacted by a so called Representative of this Company as surprising.

It may be that it was another Company within the same market sector. If you can provide details of the business's that were contacted then we can make further inquires.

We trust that this clarifies the Company's position and look forward to hearing from you.

Yours sincerely,

Michael Barron
Open Business Directory Ltd.
Legal Department
e-mail: legal@open-business-directory.com

EXHIBIT C

Tennessee Regulatory Authority
Att. Do-Not-Fax
460 James Robertson Parkway
Nashville
Tennessee 37243
USA

RECEIVED
CONSUMER SERVICES DIVISION

JUL 18 2012

TN REGULATORY AUTHORITY

Open Business Directory Ltd.

Service Agent USA:
225 Franklin Street, 26th Floor
Boston, MA 02110
Phone: + 1 (866) 214 5273
Fax: +1 (781) 658 2381

info@open-business-directory.com

July 9th, 2012 MB

EUROPE:
ul. Uldastova, d. 52, k.v. 1361
g. Moscow
119607
RUSSIAN FEDERATION
Tel: +7 (+95) 580 3043

**Your Reference: F110039, F110022, F110038,
F110030, F110062, F110172**

Dear Sir/Madam,

We are writing in reference to the above Official Notices of June 8th, 2012. We apologize for the delay in responding but this matter has only just been passed to the writer for attention.

We would firstly advise that the Company does not undertake any marketing itself or contact any business's by telephone. Any Order forms received by business's are dealt with by outside Agencies and we are unaware of any violations in respect of such activity.

We have checked the telephone numbers shown on each of your Notices but cannot trace any contracts so we assume from such searches that no Order forms were returned by the business to which the telephone number relates. Accordingly, there are no contracts.

We understand from the Official Notices that the alleged violation could be in breach of certain Codes that apply within your State. From our understanding such violations apply to the transmission of an unsolicited advertisement. The form that was received by the business would not be deemed to be an advertisement. It is in our opinion an Order by definition and is not material that could be deemed to be an advertisement as defined by the Code or by it's own definition. Accordingly, we do not believe that there is a violation of the Code or otherwise. The material that may be signed and returned was in fact, and in our opinion a Purchase Order which as you will appreciate is **a request to purchase goods or services** The Order form does not advertise services.

There are also issues as to protection pursuant to the First Amendment and there are also grey areas relating to the sending of so called unsolicited faxes. Accordingly, we are of the opinion that the Order form does not fall within the definitions and was not in breach for the above reasons. Even if it was deemed to be in violation of the Code there is consent to receive which would nullify such violation as there would be occasions whereby the business approved the Order and accepted the terms by reading and signing the same before returning it to the Company.

We do acknowledge that there are certain areas within the interpretation that may be unclear. However, we would seek to submit from the Company's understanding that the Order form would not constitute any violation.

Clearly, although the Company is not involved with the marketing itself, it does wish to operate within the law and regulations within this market sector. We believe that it does but would welcome any feedback should there be any issues as to the Order format itself.

We trust that this answers the Notices and clarifies the position. If you require additional information from the Company please do contact the Company

Yours sincerely,

A handwritten signature in black ink, appearing to read "M. Barron".

Michael Barron
Open Business Directory Ltd.
Legal Department
e-mail: legal@open-business-directory.com

EXHIBIT D

Open Business Directory Ltd.
225 Franklin Street, 26th Floor, Boston, MA 02110



Tennessee Regulatory Authority
Do-Not-Fax
Att. Ms. S. Balthrop
460 James Robertson Parkway
Nashville
Tennessee 37243
USA

Open Business Directory Ltd.

Service Agent USA:
225 Franklin Street, 26th Floor
Boston, MA 02110
Phone: + 1 (866) 214 5273
Fax: +1 (781) 658 2381

info@open-business-directory.com

August 28th, 2012 MB

Your Reference: F110039, F110022, F110038,
F110030, F110062, F110172

EUROPE:
ul. Uldastova, d. 52, k.v. 1361
g. Moscow
119607
RUSSIAN FEDERATION
Tel: +7 (495) 580 3043

Dear Ms. Balthrop,

We are in receipt of your letter of July 25th, 2012 which has now been passed to the writer. We appreciate your comments and acknowledge the enclosures relating to the TRA Codes which we have reviewed.

The Company will always act in a proper manner in relation to it's business and complies with the law both in the USA and Worldwide. It is apparent that the Code §65-4-501 defines an unsolicited fax as material advertising, and/or encouraging the purchase etc of services or goods. As stated in our reply of July 9th, 2012 the Company does not believe that the Order form could be deemed to be such material/advertisement as defined within the Code. As such the Order form could not be an unsolicited fax as you now seem to argue.

Whilst we can understand and agree that protection may be required notwithstanding the rights under the First amendment we do not understand how you can conclude that the Order form subject to this discussion can be defined as material advertising and therefore in violation of the TRA Code.

The terms set out within that Order form document clearly state that it is an Order. The business also confirms acceptance of the Order and "hereby order registration" as you can see from any Order form on your files. The Order form is accordingly and in our opinion not an advertisement. We welcome your further response.

Yours sincerely,

A handwritten signature in black ink, appearing to read "M Barron".

Michael Barron
Open Business Directory Ltd.
Legal Department
e-mail: legal@open-business-directory.com

RECEIVED
CONSUMER SERVICES DIVISION
SEP 06 2012
TN REGULATORY AUTHORITY

EXHIBIT E

SCANNED

RECEIVED

CONSUMER SERVICES DIVISION

OCT 19 2012

Open Business Directory Ltd.
225 Franklin Street, 26th Floor, Boston, MA 02110

TN REGULATORY AUTHORITY



YELLOW-PAGE-USA.COM

Tennessee Regulatory Authority
Do-Not-Fax
Att. S. Warren
460 James Robertson Parkway
Nashville
Tennessee 37243
USA

Open Business Directory Ltd.

Service Agent USA:
225 Franklin Street, 26th Floor
Boston, MA 02110
Phone: + 1 (866) 214 5273
Fax: +1 (781) 658 2381

info@open-business-directory.com

October 11th, 2012 MB

EUROPE:
ul. Uldastova, d. 52, k.v. 1361
g. Moscow
119907

Your Reference: F120064

RUSSIAN FEDERATION
Tel: +7 (495) 580 3043

Dear Sir/Madam,

We are in receipt of your letter of September 24th, 2012 which has now been passed to the writer.

The Company will always act in a proper manner in relation to it's business and complies with the law both in the USA and Worldwide. We note the contents of your letter but would advise that we have no record of any contract with any party on that telephone number.

Further, the Company does not employ any direct sales staff or make telephone calls or send faxes to businesses. We shall place your letter on file and thank you for your notice.

Yours sincerely,


Michael Barron
Open Business Directory Ltd. Legal Department
e-mail: legal@open-business-directory.com

EXHIBIT F

Open Business Directory Ltd.
225 Franklin Street, 26th Floor, Boston, MA 02110



State of Tennessee
Tennessee Regulatory Authority
Do-Not-Fax Program
460 James Robertson Parkway
Nashville,
Tennessee 37243-0505
USA

Open Business Directory Ltd.

Service Agent USA:
225 Franklin Street, 26th Floor
Boston, MA 02110
Phone: + 1 (866) 214 5273
Fax: +1 (781) 658 2381

SCANNED

May 15th, 2013 MB

info@open-business-directory.com

EUROPE:
ul. Uldastova, d. 52, k.v. 1361
g. Moscow
119607
RUSSIAN FEDERATION
Tel: +7 (495) 580 3043

Your Reference: File# F130008

Dear Mr. Warren,

We are in receipt of your letter of February 15th, 2013 in respect of the above file. We apologize for the undue delay in responding but this matter has only just been passed to the writer for attention.

The Company has been unable to trace any contract file from the details provided and the fax number you have stated in your letter does not show up on any search within the contract files of the Company. We would also advise that this Company does not send any unsolicited fax advertisements to any business. The Company does comply with all relevant regulations within it's busines activities.

If you have any further details then the Company will be able to respond further. We thank you for your assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read "M. Barron", is written over the typed name.

Michael Barron
Open Business Directory Ltd. Legal Department
e-mail: legal@open-business-directory.com

RECEIVED
CONSUMER SERVICES DIVISION
MAY 24 2013
TN REGULATORY AUTHORITY