

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

January 23, 2014

IN RE:)	
)	
ALLEGED VIOLATIONS OF TENN. CODE)	DOCKET NO.
ANN. SECTIONS 65-4-501 - 506, KNOWN AS)	13-00095
THE "DO-NOT-FAX" LAW, BY OPEN)	
BUSINESS DIRECTORY, LTD.)	

ORDER

This matter came before Chairman James M. Allison, Director Robin Bennett and Director David F. Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a regularly scheduled Authority Conference held on January 13, 2014, to consider evidence that Open Business Directory, Ltd. ("Open Business") violated Tenn. Code Ann. § 65-4-501 *et seq.*, known as the Tennessee "Do-Not-Fax" law, and to determine what, if any, penalty to impose.

BACKGROUND

On June 21, 2013, TRA Consumer Services Division ("CSD") investigative staff filed a memorandum requesting that the Directors appoint a hearing officer to determine whether a show cause proceeding against Open Business for violations of Tenn. Code Ann. § 65-4-501 *et seq.* should be initiated. The Directors appointed a hearing officer in this matter on July 15, 2013.¹

¹ See *Order Appointing Hearing Officer* (August 28, 2013).

CSD filed a *Petition* on November 4, 2013, setting forth its allegations against Open Business.² In the *Petition*, CSD asserts that the TRA received twelve (12) complaints from at least five (5) Tennesseans or Tennessee entities during the period of February 7, 2011 through May 7, 2013 alleging that Open Business solicited them to purchase goods and/or services by an unsolicited facsimile.³ According to CSD, Open Business responded to nine (9) of the notices of violation that were sent to them.⁴ Open Business variously denied violating state law, denied having a business relationship with the company listed in the complaint or denied that its order form met the definition of an advertisement for a good or service.⁵

On November 4, 2013, the Hearing Officer issued an *Order Requiring Open Business Directory, Ltd. to Appear and Show Cause Why the TRA Should Not Issue a Cease and Desist Order, Impose Civil Penalties and Seek Additional Relief Against It for Violations of Tenn. Code Ann. § 65-4-501 et seq.* (“*Show Cause Order*”). The *Show Cause Order* cited the alleged twelve (12) violations of Tenn. Code Ann. § 65-4-502(a) and required Open Business to appear at the January 13, 2014 Authority Conference and show cause why it should not be found in violation of state law and, upon such finding, the TRA should not immediately issue a cease and desist order, impose civil penalties and sanctions, and seek additional relief to the maximum extent allowed by law.⁶

Tenn. Code Ann. § 65-4-502(a) states: “No person shall transmit or cause another person to transmit an unsolicited facsimile advertisement....” The TRA is authorized to issue a cease

² In support of its *Petition*, CSD submitted the affidavit of Slayde Warren. See *Tennessee Code Annotated Section 4-5-313 Notice, 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* (November 6, 2013) (“*Warren Affidavit*”).

³ *Petition*, p. 1 (November 4, 2013).

⁴ *Warren Affidavit*, ¶ 9 (November 6, 2013).

⁵ *Id.* at ¶¶ 7-8.

⁶ *Show Cause Order*, p. 3 (November 4, 2013).

and desist order and impose a civil penalty up to the maximum of two thousand dollars (\$2,000) per violation of Tenn. Code Ann. § 65-4-502(a).⁷

JANUARY 13, 2014 AUTHORITY CONFERENCE

At the regularly scheduled Authority Conference on January 13, 2014, CSD presented evidence that Open Business had violated Tenn. Code Ann. § 65-4-502(a). No representative of Open Business was present in response to the *Show Cause Order*.⁸ CSD described the efforts made to notify Open Business of the *Show Cause Order*.⁹ CSD requested that the panel impose the maximum civil penalty of twenty-four thousand dollars (\$24,000), based on twelve (12) violations of Tenn. Code Ann. § 65-4-502(a), and order that Open Business cease and desist transmitting, or causing another person to transmit, any unsolicited facsimile advertisement into Tennessee.

TRA Rule 1220-1-2-.17 states:

- (1) Failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of a contested case proceeding, after due notice thereof, shall be cause for finding such party in default, pursuant to T.C.A. § 4-5-309. Failure to comply with an order of the Authority or a Hearing Officer may be deemed a failure to participate in a contested case and, therefore, be cause for finding a party in default.**
- (2) (a) Upon entry into the record of the default of the petitioner at a contested case proceeding, the petition shall be dismissed.**
(b) Upon entry into the record of the default of a respondent at a contested case proceeding, the matter shall be tried as unopposed relative to such respondent.
- (3) Where the case is unopposed, the petitioner has the burden of making out a prima facie case, which may be done on the basis of written filings. In order to carry out statutory policies, however, the Authority or Hearing Officer may require further proof.**

⁷ Tenn. Code Ann. § 65-4-504(a) (Supp. 2013).

⁸ Transcript of Authority Conference, p. 14 (January 13, 2014).

⁹ *Id.* at 14-15.

Based upon TRA Rule 1220-1-2-.17, the panel found that Open Business, after being given due notice, failed to participate in the proceeding and was in default. Further, based on the evidence presented in this docket, the panel found that Open Business had violated Tenn. Code Ann. § 65-4-502(a) on twelve (12) occasions by transmitting, or causing another person to transmit, an unsolicited facsimile advertisement to Tennesseans or Tennessee entities.

Therefore, pursuant to Tenn. Code Ann. § 65-4-504(a), the panel voted unanimously to require Open Business to pay twenty-four thousand dollars (\$24,000) immediately and to cease and desist transmitting, or causing another person to transmit, unsolicited facsimile advertisements into the state of Tennessee.

IT IS THEREFORE ORDERED THAT:

1. Open Business Directory, Ltd. shall immediately cease and desist sending, or causing to be sent, any unsolicited facsimile advertisements into the state of Tennessee; and
2. Open Business Directory, Ltd. shall immediately pay a fine of twenty-four thousand dollars (\$24,000), representing a two thousand dollar (\$2,000) fine per violation of Tenn. Code Ann. § 65-4-502(a).

Chairman James M. Allison, Director Robin Bennett and Director David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director