

TENNESSEE REGULATORY AUTHORITY



RECEIVED
FEB -5 PM 3:37
T.R.A. DOCKET ROOM

500 Deaderick Street, 4th Floor
Nashville, Tennessee 37242-0001

February 5, 2014
Shiva.bozarth@tn.gov

Michael Barron
Open Business Directory, Ltd.
225 Franklin, Street, 26th Floor
Boston, Massachusetts 02110
Facsimile: (781)658-2381
Email: legal@open-business-directory.com
Email: info@open-business-directory.com

Re: *In Re: Open Business Directory*, Tennessee Regulatory Authority Docket No. 13-00095

Mr. Barron:

This letter is in response to your letter dated February 3, 2014. On November 4, 2013, the Authority sent the Show Cause Order (attached as Exhibit 1), the Notice of Hearing (attached as Exhibit 2), and the Petition (attached as Exhibit 3) to Open Business Directory, Ltd. ("Open Business"). On January 23, 2014, the Order finding that Open Business was in violation of the Tennessee Do Not Fax law was sent via certified mail to 225 Franklin Street, Boston, Massachusetts as well as the email address legal@open-business-directory.com. The certified mail was returned "refused by addressee".

I have reviewed your letter and it appears you are requesting reconsideration under Tenn. Code Ann. §4-5-317. I am willing to agree to a reconsideration hearing if Open Business would like to avail itself of the opportunity to be heard by the Authority. This hearing can be conducted at the regularly scheduled Authority conference on April 14, 2014, at 1:00. At that hearing Open Business will have the opportunity to present witnesses and evidence. You can file any evidence or other pleadings with the TRA Docket Clerk located at the above address. It is imperative that

you or another representative of Open Business contact me as soon as possible and not later than February 15, 2014.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shiva K. Bozarth', followed by a long horizontal line extending to the right.

Shiva K. Bozarth

Legal Counsel

Compliance Division

Encl: As stated above

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

November 4, 2013

IN RE:

**SHOW CAUSE PROCEEDING AGAINST DIRECT
OPEN BUSINESS, LTD., FOR ALLEGED
VIOLATIONS OF TENN. CODE ANN. §§ 65-4-501,
*et. seq.***

**DOCKET NO.
13-00095**

**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.**

This matter is before the Hearing Officer upon the Order of the Tennessee Regulatory Authority ("TRA" or "Authority") to determine whether an Order for Show Cause should be issued against Open Business Directory, Ltd. ("Open Business"), and if so, to prepare the matter for hearing before the panel. The Consumer Services Division of the Authority ("CSD") has presented a *Petition* and the *Affidavit of Slayde Warren*, alleging that Open Business has violated Tenn. Code Ann. §§ 65-4-501, *et. seq.* Based thereon, the Hearing Officer determines that an Order should be issued, and contested case proceeding convened, requiring Open Business to appear before the Authority and show cause why the TRA should not issue a cease and desist order, impose civil penalties and sanctions, and seek appropriate additional relief for violations of State law.

JURISDICTION

The Authority is specifically authorized and charged, to ensure that the laws of this State as they relate to the Authority's jurisdiction "are enforced and obeyed, that violations thereof are

promptly prosecuted, and all penalties due the State are collected.”¹ The Authority is empowered to hear this matter and render an Order pursuant to the powers delegated by the Tennessee General Assembly, including those provided in Tenn. Code Ann. §§ 65-2-106, 65-3-105, 65-4-116, and 65-4-504.

RELEVANT FACTS

1. Open Business transmits/sends, or causes to be transmitted/sent, unsolicited facsimile advertisements to Tennessee consumers.²

2. Between February 7, 2011 and May 7, 2013, the CSD received complaints from five (5) Tennesseans or Tennessee entities that had received from Open Business, which had sent or caused to be sent, at least twelve (12) unsolicited facsimile advertisements soliciting the purchase of goods and/or services.³

3. CSD’s investigation determined that these Tennesseans or Tennessee entities had no pre-existing business relationship with Open Business.⁴

ALLEGED VIOLATIONS OF STATE LAW

The following actions, alleged to have been performed by Open Business, constitute violations of state law:

A. On at least twelve (12) separate occasions Open Business sent or caused to be sent unsolicited facsimile advertisements to at least five (5) Tennesseans or Tennessee entities.

COUNT 1:

Open Business’ actions of sending or causing to be sent an unsolicited facsimile

¹ Tenn. Code Ann. § 65-1-113 (2004).

² *Affidavit of Slayde Warren*, ¶ 7 (October 18, 2013).

³ *Id.*

⁴ *Id.*, at ¶ 8.

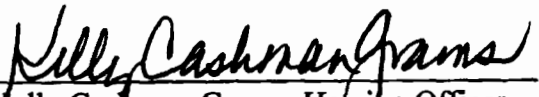
advertisement violates Tenn. Code Ann. § 65-4-502(a) (2013), which states:

No person shall transmit or cause another person to transmit an unsolicited facsimile advertisement. . .

UPON THE FOREGOING INFORMATION AND ATTACHMENTS, as presented by the CSD, the Hearing Officer acting pursuant to the scope of the TRA's regulatory authority granted under Tenn. Code Ann. §§ 65-1-113, 65-2-106, 65-3-105, 65-4-116, and 65-4-502, hereby determines that Open Business should be required to appear and show cause why it should not be found in violation of State law and, upon such finding, the Authority 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.

BE IT THEREFORE ORDERED THAT:

Open Business Directory, Ltd., shall appear before the Tennessee Regulatory Authority for a hearing at **1:00 p.m. CST on January 13, 2014**, in the Hearing Room on the ground floor of the Andrew Jackson State Office Building located at 500 Deaderick Street, Nashville, Tennessee 37242, and shall show cause why the Authority should not proceed to take action against Open Business Directory, Ltd., for the unlawful actions and omissions alleged against it in this Order, including, but not limited to, the issuance of a cease and desist order and the imposition of civil penalties and sanctions.


Kelly Cashman-Grams, Hearing Officer

TENNESSEE REGULATORY AUTHORITY



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

NOTICE TO APPEAR FOR HEARING

IN RE: *Show Cause Proceeding Against Open Business Directory, Ltd.
for Alleged Violations of Tenn. Code Ann. § 65-4-501 et seq.*

DOCKET NO: 13-00095

DATE: November 4, 2013

Open Business Directory, Ltd. ("Open Business" or "Respondent") shall appear before the Tennessee Regulatory Authority ("Authority") during its regularly scheduled Authority Conference at **1:00 p.m. CST on January 13, 2014**, and show cause, if there be any, why the Authority should not find Open Business in violation of Tenn. Code Ann. §§ 65-5-501, *et seq.* and, thereafter, proceed to issue an Order requiring that Open Business immediately cease and desist unlawful facsimile solicitation, impose civil penalties of up to two thousand dollars (\$2000) for *each* violation, and seek other appropriate relief or sanctions allowed by law.

This matter will be held in the Hearing Room on the Ground Floor located at **500 Deaderick Street, Nashville, Tennessee**, and conducted by the voting panel assigned to this docket, Chairman James M. Allison, Director David Jones, and Director Robin Bennett, in accordance with the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.* Failure to appear may constitute default and result in adverse action against Respondent, including entry of an Order that may be used to seek additional relief in any court of competent jurisdiction. Persons affected by this matter shall appear and are entitled, at their own expense, to be represented by counsel.

Any motion to continue or reschedule the date of this hearing must be made in writing and filed with the Office of the Authority Chairman **on or before Wednesday, January 8, 2014**. Participants with disabilities who require special accommodations or alternate communications formats should contact the Tennessee Regulatory Authority ADA-EEO/AA Coordinator/Officer at 460 James Robertson Parkway, Nashville, Tennessee 37243-0505, 1-800-342-8359 or TDD (615) 741-3930, so that reasonable accommodations can be made.

FOR THE TENNESSEE REGULATORY AUTHORITY:



Kelly Cashman Grams, Hearing Officer

Original in Docket File No. 13-00095

cc: Open Business Directory, Ltd., ATTN: Michael Barron, Legal Department, 225 Franklin Street, 26th Floor, Boston, MA 02110, via U.S. First Class Mail and email to legal@open-business-directory.com

Rec'd. by SH
11/4/13

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

**SHOW CAUSE PROCEEDING AGAINST
OPEN BUSINESS DIRECTORY, LTD. FOR
ALLEGED VIOLATIONS OF TENN. CODE
ANN. § 65-4-501 *et seq.***

)
)
) **DOCKET NO. 13-00095**
)
)
)

PETITION

Comes now the Tennessee Regulatory Authority ("TRA" or "Authority") Consumer Services Division ("CSD") by and through counsel and requests that the Hearing Officer appointed by the Directors on July 15, 2013, issue an Order requiring that Open Business Directory, Ltd. ("Open Business") appear and show cause before the Authority why it should not be found liable for violations of the Tennessee Do-Not-Fax law. The CSD further requests that at the hearing before the Authority that the Directors impose the maximum civil penalty allowed by law and order that Open Business cease and desist sending unsolicited facsimile advertisements to Tennessee consumers.

ALLEGATIONS OF FACT

1. Open Business sends unsolicited facsimile advertisements to Tennessee consumers.
2. Between February 7, 2011 and May 7, 2013, the CSD received complaints indicating that Open Business sent or caused to be sent at least twelve (12) unsolicited facsimile advertisements to at least five (5) Tennesseans soliciting them to purchase goods and/or services.
3. CSD's investigation determined that these Tennesseans had no pre-existing business relationship with Open Business.
4. As evidence of the above allegations the CSD submits the Affidavit of Slayde Warren as



well as accompanying evidence (Exhibit 1). The CSD requests that Exhibit 1 be entered into the record in this cause.


CAUSES OF ACTION

5. The facts alleged in paragraphs 1 - 4 constitute a violation of Tenn. Code Ann. §65-4-502.

PRAYER FOR RELIEF

6. The CSD requests that the Hearing Officer place this matter on the docket for hearing at the January 13, 2013, Authority Conference.
7. That at that hearing the Authority issue a cease and desist order barring Open Business from sending or causing another to send unsolicited facsimile advertisements to Tennessee consumers.
8. Pursuant to Tenn. Code Ann. §65-4-504 the Authority may impose a civil penalty of up to two thousand dollars (\$2,000) per violation of law.

Respectfully submitted,


Shiva K. Bozarth, BPR No.22685
Legal Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Ectory R. Lawless

To: legal@open-business-directory.com
Cc: Shiva Bozarth
Subject: Open Business Directory, Tennessee Regulatory Authority- Docket No. 13-00095
Attachments: TRA Response to Open Business Directory Letter dated 2-3-2014.pdf

*Ectory Lawless, Paralegal
Tennessee Regulatory Authority
Andrew Jackson Building
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243
(615) 770-6898*

Ectory R. Lawless

To: info@open-business-directory.com
Cc: Shiva Bozarth
Subject: FW: Open Business Directory, Tennessee Regulatory Authority- Docket No. 13-00095
Attachments: TRA Response to Open Business Directory Letter dated 2-3-2014.pdf

From: Ectory R. Lawless
Sent: Wednesday, February 05, 2014 3:14 PM
To: 'legal@open-business-directory.com'
Cc: Shiva Bozarth
Subject: Open Business Directory, Tennessee Regulatory Authority- Docket No. 13-00095

*Ectory Lawless, Paralegal
Tennessee Regulatory Authority
Andrew Jackson Building
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243
(615) 770-6898*



Tennessee Regulatory Authority Andrew Jackson Building, 4th Floor 520 Deaderick Nashville, Tennessee 37243-0505

FAX

Date: **February 5, 2014**

Number of pages including cover sheet: (**12**)

To: Open Business Directory

Attn: Michael Barron

225 Franklin Street 26th Floor

Boston, Massachusetts 02110

Phone:

Fax: (781) 658-2381

Re: Open Business Directory-13-00095

From:

Shiva K. Bozarth, Legal Counsel

Phone: (615) 770-6896

Fax:

E-mail: Shiva.K.Bozarth@tn.gov

REMARKS:

☐ Urgent

☒ For your review

☐ Reply ASAP

☐ Please comment

TRANSMISSION VERIFICATION REPORT

TIME : 04/10/2006 03:08
 NAME : TRA LEGAL DIVISION
 FAX : 615-741-9934
 TEL : 6157419934
 SER.# : 000C4J126313

DATE, TIME
 FAX NO./NAME
 DURATION
 PAGE(S)
 RESULT
 MODE

04/10 03:05
 917816582381
 00:03:07
 11
 OK
 STANDARD



Tennessee Regulatory Authority Andrew Jackson Building, 4th Floor 520 Deaderick Nashville, Tennessee 37243-0505

FAX

Date: February 5, 2014

Number of pages including cover sheet: (11)

To: Open Business Directory
Attn: Michael Barron
225 Franklin Street 26th Floor
Boston, Massachusetts 02110
 Phone:
Fax: (781) 658-2381
Re: Open Business Directory-13-00095

From:
Shiva K. Bozarth, Legal Counsel
 Phone: (615) 770-6896
 Fax:
 E-mail: Shiva.K.Bozarth@tn.gov

REMARKS: ☐ Urgent ☒ For your review ☐ Reply ASAP ☐ Please comment