



DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2009 FEB 24 A 10: 51

HEARINGS OFFICE

BUSINESS REGISTRATION DIVISION  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the ) CN-2008-3  
)  
Limited Liability Company Name ) DIRECTOR'S ORDER  
) OF ABATEMENT  
"KEEP IT KAILUA, LLC" )  
\_\_\_\_\_ )

DIRECTOR'S ORDER OF ABATEMENT

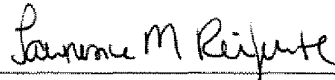
On January 29, 2009, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the Director of the Department of Commerce and Consumer Affairs ("Director"). Copies of the Hearings Officer's recommended decision were also transmitted to the parties. No exceptions were filed by either party.

Upon review of the entire record of this proceeding, the Director adopts the Hearings Officer's recommended decision as the Director's Order of Abatement. Accordingly, the Director finds and concludes that Petitioner Keep It Kailua ("Petitioner") has proven by a preponderance of the evidence that Petitioner has common law rights of ownership to the trade name, "Keep It Kailua" and that Respondent Keep It Kailua, LLC's ("Respondent") use of "Keep It Kailua, LLC" is confusingly similar to Petitioner's trade name and constitutes an infringement of Petitioner's name.

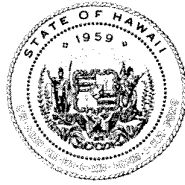
Accordingly, the Director orders that within 60 days of the issuance of this Order of Abatement, Respondent shall (1) change its registered name; (2) register the new name with the Director; and (3) transact business in this State under its new name. If

Respondent fails to comply with this Order within the 60-day period, Respondent may be involuntarily dissolved or terminated or canceled upon the filing of an affidavit from Petitioner attesting (1) to Respondent's noncompliance with the Director's Order of Abatement, (2) that the time to appeal has lapsed; and (3) that no appeal has been timely filed by Respondent. In that event, notice of the involuntary dissolution, termination, or cancellation shall be mailed to Respondent at its last known mailing address and Respondent shall wind up its affairs in accordance with HRS Chapters 482 and 428, as applicable.

DATED: Honolulu, Hawaii: February 20, 2009



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LAWRENCE M. REIFURTH, Director  
Department of Commerce and  
Consumer Affairs



DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2009 JAN 29 A 11: 48

HEARINGS OFFICE

BUSINESS REGISTRATION DIVISION  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the	)	CN-2008-3
	)	
Limited Liability Company Name	)	HEARINGS OFFICER'S
	)	FINDINGS OF FACT,
"KEEP IT KAILUA, LLC"	)	CONCLUSIONS OF LAW,
	)	AND RECOMMENDED
	)	ORDER
_____	)	

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On May 30, 2008, Keep It Kailua, an unincorporated nonprofit association, ("Petitioner"), filed a petition requesting an order of abatement against the infringement of its trade name by Keep It Kailua, LLC ("Respondent"). The matter was scheduled for hearing and a Notice of Hearing and Pre-hearing Conference was duly transmitted to the parties.

On November 13, 2008, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer. Petitioner was represented by its authorized representative, Charles A. Prentiss and Respondent was represented by its authorized representative, Arthur Kam.

Having reviewed and considered the evidence and arguments presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order.

## II. FINDINGS OF FACT

1. Petitioner is an unincorporated nonprofit association formed in June 2004.
2. Petitioner's steering committee included, among other individuals, Charles A. Prentiss.
3. Petitioner's stated purpose is to maintain the character and lifestyle of Kailua town.
4. Since its formation in 2004 to the present, Petitioner has continuously and consistently identified itself and operated as "Keep It Kailua".
5. "Keep It Kailua" has become synonymous with Petitioner.
6. Since its formation in 2004, Petitioner has actively promoted its stated objectives by, among other things, holding meetings on a regular basis, participating in community-related events, communicating with governmental agencies and other third parties, submitting media releases, and endorsing political candidates. Petitioner has also publicized itself by distributing over 2,400 "Keep It Kailua" bumper stickers and by creating a logo.
7. Respondent filed its Articles of Organization for Limited Liability Company on December 12, 2007.
8. Since its formation in 2007, Respondent has referred to itself on the internet as "Keep It Kailua, LLC" and/or "Keep It Kailua".

## III. CONCLUSIONS OF LAW

Petitioner requests an order of abatement against the infringement of its name, "Keep It Kailua" by Respondent based upon Hawaii Revised Statutes ("HRS") §482-8.5. HRS §482-8.5(a) provides in relevant part:

**§482-8.5 Administrative order of abatement against a registered or authorized entity.** (a) Any person claiming to be the owner of a trade name or mark who believes that the name of any entity registered or authorized to transact business under the laws of this State is confusingly similar to its trade name or mark may file a petition with the director for an administrative order of abatement to address

the infringement of its trade name or mark. The petition shall set forth the facts and authority supporting the claim that the petitioner has common law rights of ownership of the trade name or mark, that these rights are being infringed upon by a registered or authorized entity whose name is confusingly similar to the petitioner's trade name or mark, and that further use of the entity name should be abated.

\* \* \* \*

There is no dispute that beginning in 2004, more than three years prior to Respondent's formation and use of the identical name, through the present, Petitioner has actively and continuously operated under the trade name, "Keep It Kailua". Based on a preponderance of the evidence, the Hearings Officer concludes that Petitioner has common law rights of ownership to the trade name and that Respondent's use of "Keep It Kailua, LLC" is confusingly similar to Petitioner's trade name and, as such, constitutes an infringement of Petitioner's name.

#### IV. RECOMMENDED ORDER

Based on the foregoing findings and conclusions, the Hearings Officer recommends that the Director of the Department of Commerce and Consumer Affairs ("Director") find and conclude that Petitioner has proven by a preponderance of the evidence that Petitioner has common law rights of ownership to the trade name, "Keep It Kailua" and that Respondent's use of "Keep It Kailua, LLC" is confusingly similar to Petitioner's trade name and constitutes an infringement of Petitioner's name<sup>1</sup>.

Accordingly, the Hearings Officer further recommends that the Director issue an Order of Abatement requiring that within 60 days of its issuance, Respondent shall (1) change its registered name; (2) register the new name with the Director; and (3) transact business in this State under its new name. The Hearings Officer also recommends that the Director's Order of Abatement provide that if Respondent fails to comply with the order within the 60-day period, the Director may involuntarily dissolve or terminate Respondent or cancel or revoke Respondent's registration or certificate of authority upon the filing of an

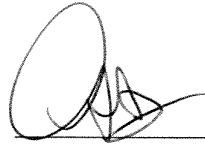
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<sup>1</sup> Respondent did not present any evidence at the hearing to contradict the evidence presented by Petitioner. Instead, Respondent relied on the argument that Mr. Prentiss was not authorized to represent Petitioner. According to the record, however, the members of Petitioner met on October 6, 2008 and voted to appoint Mr. Prentiss as its representative in this matter in place of Donald Bremner who had retired from Petitioner.

affidavit from Petitioner attesting (1) to Respondent's noncompliance with the Director's Order of Abatement, (2) that the time to appeal has lapsed; and (3) that no appeal has been timely filed by Respondent. In that event, notice of the involuntary dissolution, termination, or cancellation shall be mailed to Respondent at its last known mailing address and Respondent shall wind up its affairs in accordance with HRS Chapters 482 and 428, as applicable.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

JAN 29 2009



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CRAIG H. UYEHARA  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs