



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2009 NOV 24 P 12: 13

HEARINGS OFFICE

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

In the Matter of the) TN-2008-6
)
Corporate Name) DIRECTOR'S ORDER
) OF NONCOMPLIANCE
"ACTION PLUMBING, INC.") AND FOR INVOLUNTARY
) DISSOLUTION OF
) ACTION PLUMBING, INC.
_____)

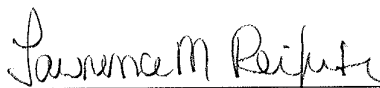
DIRECTOR'S ORDER OF NONCOMPLIANCE AND
FOR INVOLUNTARY DISSOLUTION OF ACTION PLUMBING, INC.

On June 18, 2009, an Order of Abatement was issued in this matter by the Director of the Department of Commerce and Consumer Affairs ("Director"). The Director's Order of Abatement required that within 60 days of its issuance, Action Plumbing, Inc. ("Respondent"), (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 Director's Order of Abatement further provided that if Respondent failed to comply with the order within the 60-day period, Respondent may be involuntarily dissolved or terminated or canceled upon the filing of an affidavit from Petitioner Charles J. Eiman, dba Action Plumbing ("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.

On October 22, 2009, Petitioner filed an affidavit stating that Respondent had failed to comply with the Director's Order of Abatement within the 60-day period, the time to appeal had lapsed, and no appeal had been timely filed by Respondent.

Upon review of the entire record of this proceeding, including the affidavit filed by Petitioner on October 22, 2009, the Director finds that Respondent has failed to comply with the Director's Order of Abatement of June 18, 2009 and accordingly, orders the involuntary dissolution of Action Plumbing, Inc. and the mailing of the notice of involuntary dissolution to Respondent's last known address.

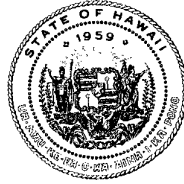
DATED: Honolulu, Hawaii: November 13, 2009.



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

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HEARINGS OFFICE



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

In the Matter of the) TN-2008-6
)
Corporate Name) DIRECTOR'S ORDER
) OF ABATEMENT
"ACTION PLUMBING, INC.")
_____)

DIRECTOR'S ORDER OF ABATEMENT

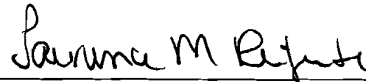
On May 22, 2009, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law, and Recommended Order in the above-captioned matter to the Director of the Department of Commerce and Consumer Affairs ("Director"). Copies of the Hearings Officer's recommended decision were also 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 Charles J. Eiman, dba Action Plumbing ("Petitioner"), has proven by a preponderance of the evidence that Petitioner has common law rights of ownership to the trade name, "Action Plumbing" and that Respondent Action Plumbing, Inc.'s ("Respondent") use of "Action Plumbing, Inc." is confusingly similar to Petitioner's trade name and constitutes an infringement of Petitioner's name.

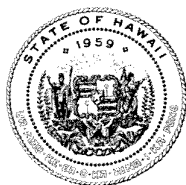
Accordingly, the Director orders that within 60 days of the issuance of this Order of Abatement, Respondent shall (1) change its registered name; (2) register the new

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 Hawaii Revised Statutes Chapters 482 and 428, as applicable.

DATED: Honolulu, Hawaii: June 17, 2009



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



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2009 MAY 22 A 9:29

HEARINGS OFFICE

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

In the Matter of the) TN-2008-6
)
Corporate Name) HEARINGS OFFICER'S
) FINDINGS OF FACT,
"ACTION PLUMBING, INC.") CONCLUSIONS OF LAW,
) AND RECOMMENDED
) ORDER
)

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

I. INTRODUCTION

On September 12, 2008, Charles J. Eiman, dba Action Plumbing ("Petitioner"), filed a petition requesting the revocation of the trade name, "Action Plumbing". The matter was scheduled for hearing and a Notice of Hearing and Pre-hearing Conference was duly transmitted to the parties. After unsuccessful efforts to locate the present whereabouts of Respondent Action Plumbing, Inc. ("Respondent"), Petitioner was granted leave to serve the notice of hearing on Respondent by publication.

On May 7, 2009, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer. Petitioner was present and appeared *pro se*. Respondent did not appear.

At the commencement of the hearing, Petitioner moved the Hearings Officer to amend the petition to seek an order of abatement against Respondent pursuant to Hawaii Revised Statutes ("HRS") 482-8.5. Petitioner's motion was granted.

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 registered the trade name, “Action Plumbing”, on July 14, 1988, and was issued Certificate of Registration No. 107180. The Certificate of Registration expired on July 13, 1999.

3. Petitioner engages in plumbing repair work.

4. Between 1988 and the present, Petitioner has actively and continuously used the trade name, Action Plumbing, in connection with his plumbing repair business.

5. Respondent is a domestic corporation that was incorporated in Hawaii on April 19, 2006 and was issued File No. 215382D1.

6. On at least two occasions in 2008, Hawaii Pacific Plumbing Supply Company billed *Petitioner* in error for the cost of plumbing materials it had supplied to *Respondent*.

III. CONCLUSIONS OF LAW

Petitioner requests an order of abatement against the infringement of its name, “Action Plumbing” 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 1988, 18 years before Respondent’s formation and apparent use of the identical name, Petitioner has actively and continuously operated under the trade name, “Action Plumbing” to the present. Based on a preponderance of the evidence presented, the Hearings Officer concludes that Petitioner has common law rights of ownership to the trade name and that Respondent’s use of “Action Plumbing, Inc.” is confusingly similar to Petitioner’s trade name and, as such, constitutes an infringement of Petitioner’s name.

