

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Petitioner, vs. ONLINE BUSINESS ASSOCIATION, INC., Respondent.	DOCKET NO. FCU-2010-0011 (C-2009-0184)
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**ORDER GRANTING PETITION FOR PROCEEDING TO CONSIDER CIVIL
PENALTY AND ASSIGNING TO PRESIDING OFFICER**

(Issued September 1, 2010)

On July 31, 2009, the Consumer Advocate Division of the Iowa Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a "Petition for Proceeding to Consider Civil Penalty" in this matter. In the petition, Consumer Advocate describes the relevant facts, which can be summarized as follows:

On April 10, 2009, Michael D. Crapnell of Crapnell Land Surveying of Davenport submitted a complaint to the Iowa Attorney General against Online Business Association, Inc. (OBA). On May 21, 2009, the complaint was referred to the Board. The complaint alleged that OBA caused unauthorized monthly charges of \$29.95 for an Internet Web site listing, totaling \$299.50, to be placed on Crapnell Land Surveying's local telephone bill, in violation of Iowa Code § 476.103.

By letter dated June 16, 2009, OBA responded to the complaint, stating that the customer purchased OBA's services on May 2, 2008, by accepting a free preview of an Internet business package. OBA provided a recording by an independent third party of an alleged verification of the authorization which indicated that the services were authorized by Kevin Cox, who gave his title as "administrative assistant." OBA said it had canceled Crapnell Land Surveying's account on April 8, 2009, and had issued a full refund of \$299.50.

By reply dated June 25, 2009, Mr. Crapnell responded that the recorded conversation never took place. He noted that Mr. Cox is a project manager and head of the company's drafting department and would never refer to himself as an administrative assistant. He also noted that the offer of services included "internet dial-up services," a service his company would never order because it has used high-speed DSL service for years.

On July 22, 2009, Board staff issued a proposed resolution finding that OBA had committed a cramming violation.

Consumer Advocate has requested a proceeding to consider civil penalties pursuant to Iowa Code § 476.103. When Consumer Advocate requests formal proceedings, the Board will grant that request whenever there are reasonable grounds for further investigation of the matter, pursuant to § 476.3(1). Here, the Board finds reasonable grounds for further investigation and will grant the petition.

When contacted with the original complaint, OBA's response included a third-party verification (TPV) recording that appeared to comply with the requirements of 199 IAC 22.23(a)"3." If no other factors were to be considered, then Board staff would have found no cramming and no further investigation would be warranted. However, the record before the agency includes other information that provides a reasonable basis for granting the petition.

First, there is reason to question the validity of the TPV. Mr. Crapnell alleges the recording must have been altered. While Mr. Cox's voice can be heard on the recording, the statements he appears to be making are difficult to accept as true. It seems unlikely that a project manager would describe his position as administrative assistant. It also seems unlikely that a company that uses a high-speed Internet connection would order a slower, dial-up service. It is possible, of course, that there are explanations for these events, but OBA has not yet offered any such explanations in this matter.

Further, the Board has looked into OBA and the services it sells and has questions about the value of those services. For example, the OBA Web site (myoba.biz) does not seem to offer the advertising benefits one might expect. The myoba.biz Web sites did not show up in response to the Board's searches. The search engine on the myoba.biz site itself does not seem to offer much functionality; in just one example, it apparently cannot be used to locate a specific type of business unless the user already knows the name of the business being sought.

Furthermore, when a viewer manages to locate one of the myoba.biz advertising sites, the site itself seems to be of low quality, using generic clip art that does not always correspond to the business being advertised¹ and offering little beyond basic, publicly available information (such as address, telephone number, and business hours), along with a "Homepage" link that does not link to anything. The Board recognizes that the slamming and cramming rules are not directed at protecting businesses from potentially flawed advertising purchases, but the nature of the services supplied by OBA are relevant to a determination of whether it is likely that Mr. Cox (or anyone at Crapnell Land Surveying) would have actually ordered the services.

Similarly, the Board has learned that the Delaware Better Business Bureau has received a number of complaints against OBA and gives the company an "F" rating (on a 13-point scale ranging from A+ to F). The Better Business Bureau's description of OBA reads as follows: "Consumers report that they are solicited for a "Free" listing with this company but are then enrolled in a Business directory program without their knowledge." Clearly, this information does not directly prove whether Mr. Cox placed an order for OBA's services, but it is relevant to the overall question of whether the TPV is likely to be a valid one.

¹ The site for a horse breeding farm featured a close up picture of blackberries and raspberries, the site for a lawn and landscaping business showed people in business suits holding a meeting in an office and talking on a cell phone, and a site for a sod farm showed a picture of building blueprints, construction tools, and a hard hat. It is possible that each of these businesses chose these advertising campaigns that are apparently unrelated to their business; it is also possible that the businesses in question do not even know that the Web sites exist and may not be aware that they are paying a monthly fee for them.

Finally, during the same time frame that the Board was considering Consumer Advocate's petition in this matter, the Board was considering a similar petition in another complaint proceeding, C-2010-0009, involving a company identified as Internet Business Association (IBA). There is an unusual degree of similarity between the two cases. Both companies claim to sell the same service: a listing in an online business directory and a Web page. The companies' domain names are very similar ("myoba.biz" and "myiba.biz"). Both provided a TPV in which the customer who allegedly authorized the service gives the wrong job title. In both cases, the customers alleged the TPV recording had been altered and Board staff found the allegations credible. The online directories for the two companies are very similar, if not identical, with the same nonfunctional search engine, the same organization of the categories of business information, the same generic clip art that sometimes seems unrelated to the business being advertised, the same nonfunctional "Homepage" links, and more.

Furthermore, the domain name for OBA is registered at IBA's street address. Corporate records show apparent cross-ownership of the companies. There are many other indications that OBA and IBA are related. Again, by itself this information does not directly prove or disprove the validity of the TPV provided by OBA in this matter, but it paints a picture that may be consistent with a company engaged in a pattern and practice of making unauthorized changes to telecommunications

accounts and, at a minimum, provides reasonable grounds for further investigation of this matter.

The Board finds the record assembled in this case to date is sufficient to establish reasonable grounds for formal proceedings to further investigate this complaint and to consider the possibility of assessing civil penalties. Consumer Advocate's petition will be granted.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed in this matter on July 31, 2009, by the Consumer Advocate Division of the Iowa Department of Justice is granted. The matter is identified as Docket No. FCU-2010-0011. The issues in this docket will be as alleged in the petition, as described in this order, and as they may develop during the course of this proceeding.

2. Pursuant to 199 IAC 7.3, Administrative Law Judge Amy Christensen is designated as the presiding officer in this matter.

UTILITIES BOARD

/s/ Robert B. Berntsen

/s/ Krista K. Tanner

ATTEST:

/s/ Joan Conrad
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 1st day of September 2010.