

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
STATE OF CALIFORNIA**

In the Matter of the Affirmed Citation Against:

TROPHY BEAUTY

2384 Maritime Dr., Suite 220

Elk Grove, CA 95758

Citation No: 2223147

BPPE Case No.: BPPE22-182

OAH Case No.: 2024040818

Respondent.

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective on May 7, 2025.

It is so ORDERED April 1, 2025.

"Original Signature on File"

RYAN MARCROFT
DEPUTY DIRECTOR, LEGAL AFFAIRS DIVISION
DEPARTMENT OF CONSUMER AFFAIRS

**BEFORE THE
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Affirmed Citation Against:

TROPHY BEAUTY, Respondent

Agency Case No. BPPE22-182

OAH No. 2024040818

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on February 25, 2025, from Sacramento, California.

Patricia Heim, Deputy Attorney General, represented complainant Elizabeth Elias, Deputy Bureau Chief of Enforcement, Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs, State of California.

Kellan Patterson of the Law Office of Kellan Patterson represented respondent Trophy Beauty. Destiny Oliphant also appeared on behalf of respondent as its owner.

Evidence was received, the record closed, and the matter submitted for decision on February 25, 2025.

FACTUAL FINDINGS

The Bureau's Investigation of Respondent

1. On March 16, 2022, the Bureau received an anonymous tip that respondent was advertising microblading trainings for more than \$2,500 on its website. The tipster included a printout of the website. The top of the printout identified the business as "Trophy Beauty By Destiny Renee."¹ Further down, Ms. Renee was identified as a "master trainer." The website advertised a "7 Day Course April 25-28 ****Masterclass" for \$3,700. The description for the course explained, "You will learn Ombre, Microblading, and Eyebrow Henna."

2. The anonymous tip was assigned to Dezi Contreras, Sr., for investigation. Mr. Contreras has worked for the Bureau as an enforcement analyst/investigator for approximately seven years. At the conclusion of his investigation, he prepared an investigation report. Mr. Contreras testified at hearing consistently with his investigation report, which was admitted into evidence.

3. After reading a summary of the anonymous tip and the attached printout, Mr. Contreras searched respondent's website for additional evidence it was a postsecondary educational institution. On April 26, 2022, he found advertisements on the website for: (1) the same seven-day course included with the anonymous tip, but the price was \$2,900; (2) "7 Day Course May 23-26 ****Masterclass" for \$2,900; and (3)

¹ The evidence established Destiny Oliphant and Destiny Renee are the same person. Subsequent references will be to Ms. Renee to maintain consistency with the documentary evidence.

"Private Training (Microblading & Shading & Ombre)" for \$4,500. The descriptions for both seven-day courses were the same as the one for the course included with the tip. The description for the Private Training course appeared to have been cut off.

4. Respondent's website contained the following biography for Ms. Renee:

After being in the industry for 10 years, Destiny Renee has opened Trophy Beauty Academy & Trophy Beauty Suites! Trophy Beauty Academy is about building confidence in creating a community of successful small businesses. The Academy offers two and four-day courses that will give students the skills to stand apart and give clients the best possible service. Discover the rewarding career of permanent makeup through studies on theory, sanitation, health safety and pigment color theory as well as brow shaping and patterning through hands-on practice. Contact destiny to get started today!

5. Mr. Contreras also searched the California Secretary of State's website for respondent's name. No results were produced. He then searched the Bureau's database and confirmed respondent did not have: (1) an approval to operate from the Bureau; (2) a verification of exempt status on file with the Bureau; or (3) an application for an approval to operate or a verification of exempt status pending with the Bureau.

6. Mr. Contreras searched respondent's website again on July 5, 2022. He found advertisements for the following: (1) "Microblading & Ombre Brows Training" on August 22 through 25 or September 19 through 22, 2022; (2) "7 Day Course August 22-25**Masterclass"; (3) "7 Day Course September 19-22**Masterclass"; and (4)

"Private Training (Microblading & Shading & Ombre)." The descriptions for both seven-day courses were the same as the one for the course included with the tip. The description for Private Training was cutoff.

7. The cost of each training varied depending on the number of days attended, except for "Private Training" which cost \$4,500. Attending all four days of the "Microblading & Ombre Brows Training" cost \$2,900, only the first three days cost \$1,850, and only the last day cost \$499. The "7 Day Course" consisted of three days of online training and four days of in-person, hands-on training. Attending all seven days cost \$2,999, only the first six days cost \$1,850, and only the sixth day cost \$499.

8. The following day, Mr. Contreras called Ms. Renee and left a message with his contact information. She returned his call later that day. Mr. Contreras explained he was an investigator with the Bureau and assigned to investigate an anonymous tip about respondent operating without the Bureau's approval. Ms. Renee explained she did not know she needed the Bureau's approval and further explained she did not even know who the Bureau was.

9. Mr. Contreras explained who the Bureau was and what its functions were. Ms. Renee expressed her belief respondent was not a private postsecondary educational institution because it was not a cosmetology school. Nonetheless, she answered Mr. Contreras's questions. In addition to other information, she confirmed the pricing listed on respondent's website was accurate.

10. After Mr. Contreras spoke with Ms. Renee, he finished his investigation report. He wrote the following summary:

Through the course of the investigation and evidence obtained, it was determined the institution is in violation of

the California Education Code. [Respondent] does not have an approval to operate, a verification of exemption on file, nor does it have an application pending. The screenshots provided and obtained indicate [respondent] offers program[s] that exceed \$2[,]500 and [respondent's] owner, Renee, confirmed the prices were accurate.

11. Mr. Contreras concluded respondent violated Education Code section 94886 by operating a private postsecondary educational institution without an approval to operate or a verification of exempt status. Therefore, he recommended that his report "be referred to the Discipline Unit for further review."

Review of Investigation Report and Issuance of Citation

12. Complainant has been the Deputy Bureau Chief of Enforcement since May 2024. She previously had been the Bureau's Enforcement Chief for almost two years. It was in her former capacity that she reviewed Mr. Contreras's investigation report to confirm he included sufficient evidence to support his conclusion. Complainant concluded he did, and on June 30, 2023, she issued respondent Citation Order Number 2223147 (Citation) solely in her official capacity.

13. The Citation alleges respondent violated Education Code section 94886 by "operating as a private postsecondary educational institution in California without an approval to operate granted by the Bureau or valid exemption." It imposes a \$50,000 fine and includes the following order of abatement:

The Bureau orders the Institution [to] cease to operate as a private postsecondary educational institution, unless the Institution qualifies for an exemption under CEC section

94874, or until such time an approval to operate is obtained from the Bureau.

Pursuant to Business and Professions Code (BPC) section 149, the Institution shall cease unlawful advertising and shall notify the telephone company furnishing services to disconnect the telephone numbers contained in any unlawful advertising.

- The Institution shall discontinue recruiting or enrolling students and cease all instructional services and advertising in any form or type of media, including <https://trophybeautypro.com/>, <https://trophybeautyusa.com/> and any other websites not identified here that are associated with the Institution.
- The Institution shall disconnect all telephone service numbers including, but not limited to: (800) 733-6194.

Further, the Institution shall provide a roster of each student currently enrolled at the Institution. The roster must include the names of the students, their contact information (including phone number, email address, and physical address), the programs in which they are enrolled, [and] the amount paid for the programs.

The Institution shall submit a statement of attestation they have corrected all violations and have complied with the order of abatement. The statement of attestation shall be

dated and signed by an authorized representative of the Institution.

Further, pursuant to CEC 94917 – Enforceability of Loans:

A note, instrument, or other evidence of indebtedness relating to payment for an educational program is void and not enforceable unless, at the time of execution of the note, instrument, or other evidence of indebtedness, the institution held an approval to operate or valid out-of-state registration with the Bureau.

Therefore, the Institution shall not enforce any loans pursuant to CEC 94917.

14. The Citation informs respondent of its right to appeal the Citation and the process and deadline for doing so. It requires payment of the fine and proof of compliance with the order of abatement within 30 days of issuance of the Citation. However, the Citation also states, "If a hearing is requested, you are not required to comply with this citation until final order is entered against you."

Respondent's Appeal

15. The day before respondent's written appeal was due, complainant agreed to extend the deadline until close of business the following day. Respondent timely appealed the Citation and requested an informal conference and administrative hearing.

16. Complainant held an informal conference with respondent, respondent's prior attorney, and the Bureau's attorney. The purpose of an informal conference is to provide the party cited an opportunity to present evidence why it believes the Citation should be withdrawn or modified.

17. Respondent's prior attorney argued for an exemption from needing an approval to operate because respondent offers continuing education courses. However, no evidence was provided that respondent is approved, certified, or sponsored by a: (1) government agency responsible for issuing professional licenses; (2) state-recognized entity responsible for issuing professional licenses; or (3) bona fide trade, business, or professional organization. (Ed. Code, § 94874, subd. (d)(2)(A)–(C).) On October 2, 2023, complainant issued respondent Affirmed Citation Order 2223147 (Affirmed Citation) solely in her official capacity. The Affirmed Citation alleges the same violation of the Education Code and includes the same fine, order of abatement, and prohibition of enforcing loans as the Citation.

18. Complainant explained at hearing "no new substantive information was provided" at the informal conference to justify withdrawing or modifying the Citation. She further explained she originally chose \$50,000 as the fine amount because "unlicensed activity" is one of the more serious violations of the California Private Postsecondary Education Act of 2009 (Ed. Code, § 94800 et seq.) and the regulations adopted pursuant to it because of the risk unapproved institutions pose to the public and the potential for significant harm. Complainant wanted the amount to be significant enough to be a deterrent and not considered "a cost of doing business." Additionally, the analyst who drafted the Affirmed Citation confirmed respondent was still operating without an approval or a verification of exempt status, despite being told it was violating the law.

Ms. Renee's Testimony

19. Ms. Renee graduated from high school in 2004. She attended San Francisco City College and earned a certificate in digital designing. She earned her cosmetology license in 2016. She described microblading and microshading as semi-permanent eyebrow tattooing techniques. Microblading creates hair-like strokes that mimic natural eyebrows, whereas microshading uses tiny dots to create a more filled-in look. Ombre brows is a cosmetic tattooing technique that uses semi-permanent ink to create a shaded look on the eyebrows. Eyebrow henna is a temporary treatment that uses henna to create a powdered brow look.

20. Ms. Renee has owned and operated respondent for eight years – the first two under a prior name. She described respondent as a "service-based business." She has two locations – Elk Grove and Carmichael – and provides skincare treatment, business coaching, and training. She employs nurse practitioners who provide injectables, such as Botox, at both locations. Ms. Renee estimated that training is only about 10 percent of her entire business.

21. Ms. Renee recalled receiving Mr. Contreras's message asking her to call him back. She did not recall exactly what he said in his message, but it was sufficient that it made her "curious" and she called him back. During the conversation, she began to suspect Mr. Contreras was a "scammer" because she had never heard of the Bureau and he asked for money. She did not specify what he said or how he asked for money, but she insisted he did. Ms. Renee was hesitant to provide him too much personal information because she knew providing information could help scammers steal her identity.

22. After talking with Mr. Contreras, Ms. Renee called the Bureau to ask questions. She felt no one "could give a straight answer," which convinced her even more that Mr. Contreras's call was not legitimate. It was not until she retained an attorney that she learned the Bureau was a legitimate state agency. Once she did, she immediately had an attorney review her business practices and lowered the cost of her courses.

23. Ms. Renee conceded she advertised trainings on respondent's website for which she charged more than \$2,500. However, she insisted those trainings consisted of multiple different trainings she "bundled" together as a convenience for clients, and no single training exceeded \$2,500. Although a client was welcome to take all the trainings in a bundle, he or she was not required to.

24. Ms. Renee "thought it was obvious" a client did not have to take all the trainings in a bundle because the asterisks in the name indicated additional information was available. She also insisted her trainings are generally taken by "people in the industry," and they would know the trainings bundled together cover separate and distinct procedures. She admitted most clients took all the trainings in a bundle "because it allows them to charge more" for their services.

25. Ms. Renee eventually concluded her manner of advertising was creating confusion because she combined trainings but did not make it clear clients could take only some of the trainings in the bundle. Though she continues to bundle trainings, she lowered the cost of bundles to \$2,500 or less.

Analysis

CAUSE TO ISSUE THE AFFIRMED CITATION

26. The persuasive evidence established respondent has been a private postsecondary educational institution in California at all times relevant. On at least April 26 and July 5, 2022, it offered postsecondary educational programs to the public by advertising one or more of the following trainings on its website: (1) "7 Day Course April 25-28****Masterclass"; (2) "7 Day Course May 23-26****Masterclass"; (3) "Private Training (Microblading & Shading & Ombre)"; (4) "Microblading & Ombre Brows Training" on August 22 through 25 and September 19 through 22, 2022; (5) "7 Day Course August 22-25**Masterclass"; (6) "7 Day Course September 19-22**Masterclass"; or (7) "Private Training (Microblading & Shading & Ombre)." It charged more than \$2,500 for each training. The Bureau has never issued respondent an approval to operate, and respondent has never had a verified exemption on file with the Bureau.

27. Ms. Renee's contention that the above trainings were separate and distinct trainings that were bundled together for clients' convenience missed the point. Although she argued no single training in a particular bundle cost \$2,500, she conceded the bundled price exceeded that amount. It is irrelevant that clients were not required to take all the trainings in the bundle, and therefore would have paid less than the bundled price, because clients had the option of taking all the trainings, in which case they would have paid the bundled price. Indeed, Ms. Renee admitted most clients take all the trainings "because it allows them to charge more" for their services.

28. Additionally, Ms. Renee's belief that "it was obvious" the bundles consisted of separate and distinct trainings was belied by her admission that she created confusion by combining courses and not making it clear they could be taken

individually. Moreover, her contention that the asterisks in the names of the bundles indicated additional information was available and clients were therefore aware the trainings could be taken separately was weakened by the absence of asterisks in the names of the bundles for "Private Training (Microblading & Shading & Ombre)" and "Microblading & Ombre Brows Training."

REASONABLENESS OF THE FINE IMPOSED

29. The amount of the fine the Affirmed Citation imposes is only half the maximum allowed by statute. Complainant persuasively explained why she chose \$50,000 and found no reason to reduce that amount after the informal conference. Ms. Renee's claim she eliminated the confusion she caused when she bundled trainings by lowering the price of the bundles was disingenuous. According to her, she created confusion by not clearly indicating a client may take fewer than all the trainings in a bundle. But Ms. Renee lowering the prices of bundles adds little, if any, clarity, and it would have been more enlightening to clearly indicate trainings may be taken separately. Instead, her lowering the price of bundles appears to be an attempt to skirt the requirement to obtain the Bureau's approval by qualifying for an exemption. Ms. Renee's selfish motives raise questions about her intent to operate respondent in a manner consistent with public health, safety, and welfare. (See Ed. Code, § 94875 ["In exercising its powers, and performing its duties, the protection of the public shall be the [B]ureau's highest priority"].)

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving the violation alleged in the Affirmed Citation by a preponderance of the evidence. (*Daniels v. Dept. of Motor Vehicles* (1983) 33 Cal.3d 532, 536; *Owen v. Sands* (2009) 176 Cal.App.4th 985, 989–994.) This evidentiary standard requires complainant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, complainant must prove it is more likely than not that respondent committed the violation alleged. (*Lillian F. v. Super. Ct.* (1984) 160 Cal. App.3d 314, 320.)

Applicable Law

APPROVAL TO OPERATE

2. Unless exempt, no individual or business entity may "open, conduct, or do business as a private postsecondary educational institution in this state without obtaining approval to operate under this chapter." (Ed. Code, § 94886; see Ed. Code, § 94855.) "Approval to operate" is "the authorization pursuant to this chapter to offer to the public and to provide postsecondary educational programs, as well as the written document issued to an institution signifying its approval to operate." (Ed. Code, § 94817.) "'To offer to the public' means to advertise, publicize, solicit, or recruit." (Ed. Code, § 94868.)

3. A "private postsecondary educational institution" is "a private entity with a physical presence in the state that offers postsecondary education to the public for

an institutional charge." (Ed. Code, § 94858.) "Postsecondary education" is "a formal institutional educational program whose instruction is designed primarily for students who have completed or terminated their secondary education or are beyond the compulsory age of secondary education, including programs whose purpose is academic, vocational, or continuing professional education." (Ed. Code, § 94857.) "Institutional charges" refers to those "charges for an educational program paid directly to an institution." (Ed. Code, § 94844.) An "educational program" is

a planned sequence composed of a set of related courses or modules, or a single course or module if not offered as a component of a set of related courses or modules, that provides education, training, skills, or experience, or a combination of these, except that "educational program" does not include a single course, workshop, seminar, continuing education course, or other instruction that consists of 32 hours of instruction or less that is not designed to lead to employment.

(Ed. Code, § 94837.)

The term "institution" is synonymous with "private postsecondary educational institution." (Ed. Code, § 94843.)

AVAILABLE EXEMPTIONS

4. An approval to operate is not required if an institution: (1) does not award degrees; (2) charges no more than \$2,500 for its educational programs; and (3) does not accept state or federal student financial aid. (Ed. Code, § 94874, subd. (f).) Additionally, an approval to operate is not required for an institution to offer:

Continuing education or license examination preparation, if the institution or the program is approved, certified, or sponsored by any of the following:

(A) A government agency, other than the bureau, that licenses persons in a particular profession, occupation, trade, or career field.

(B) A state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, occupation, trade, or career field.

(C) A bona fide trade, business, or professional organization.

(*Id.*, at subd. (d)(2).)

5. An institution claiming an exemption from needing an approval to operate must apply to the Bureau for, and obtain, a verification of its exempt status. (Cal. Code Regs., tit. 5, § 71395, subd. (a).) The application must include the institution's contact information and the type of exemption(s) for which it is applying. (*Id.*, at subd. (b)(1)–(5).) If the application is being made to provide continuing education, it must be accompanied by "a letter from that entity indicating the validity of the accreditation or approval, and the name and contact information for a representative of that entity." (*Id.*, at subd. (b)(7).) Additionally, the following must be provided for each course offered or to be offered:

(A) The title and description of the educational program;

(B) The full title and description of any diploma, certificate, degree or other similar title awarded to students who complete the program[.]

(*Id.*, at subd. (b)(8).)

An application for an exemption because the institution charges no more than \$2,500 for its educational programs must include "the total institutional charges for the educational program, and whether or not the institution is approved to offer federal financial assistance." (Cal. Code Regs., tit. 5, § 71395, subd. (b)(9).)

AUTHORITY TO ISSUE CITATIONS

6. The Bureau shall issue a citation to a person found to be "operating an institution without proper approval to operate." (Ed. Code, § 94944; see Ed. Code, § 94936, subd. (a); Cal. Code Regs., tit. 5, § 75020, subd. (b).) The citation shall include an administrative fine in an amount not to exceed \$100,000. (Ed. Code, § 94944; Cal. Code Regs., tit. 5, § 75020, subd. (b).) It may include an order of abatement requiring the institution "to cease any unlawful advertising and to notify the telephone company furnishing services to the [institution]: (1) to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and (2) that subsequent calls to that number shall not be referred by the telephone company to any new number obtained by that [institution]." (Cal. Code Regs., tit. 5, § 75020, subd. (b).) Lastly, the citation may include "an order to compensate students for harm that resulted or may have resulted, including a refund of moneys paid to the institution by or on behalf of the student, as determined by the [B]ureau." (Ed. Code, § 94936, subd. (b)(3).) Education Code section 94917 provides:

A note, instrument, or other evidence of indebtedness relating to payment for an educational program is void and not enforceable unless, at the time of execution of the note, instrument, or other evidence of indebtedness, the institution held an approval to operate or valid out-of-state registration with the [B]ureau.

7. The institution has the right to appeal the citation by requesting an informal conference and/or administrative hearing, and the citation must inform the institution of that right. (Ed. Code, § 94936, subd. (c)(2); Cal. Code Regs., tit. 5, § 75040, subd. (a).) An appeal must be made in writing and sent to the Bureau "within 30 days of service of the citation." (Cal. Code Regs., tit. 5, § 75040, subd. (a); see Cal. Code Regs., tit. 5, § 75020, subd. (c)(1), (2).)

8. A timely appeal "stays the time period in which to pay the fine." (*Id.*, at subd. (f).) If a fine is ordered at hearing, it "is due 30 calendar days from when the order is effective." (Cal. Code Regs., tit. 5, § 75020, subd. (c)(2).)

Cause to Issue the Affirmed Citation

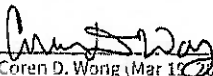
9. Cause exists pursuant to Education Code sections 94936, subdivision (a), and 94944 and California Code of Regulations, title 5, section 75020, subdivision (b), as those statutes and regulation relates to Education Code section 94886, to issue respondent the Affirmed Citation for the reasons explained in Factual Findings 26 through 28. Cause further exists pursuant to Education Code section 94944 and California Code of Regulations, title 5, section 75020, subdivision (b), to impose a \$50,000 fine, an amount that is reasonable and necessary for the reasons explained in Factual Finding 29. Cause further exists pursuant to California Code of Regulations,

title 5, section 75020, subdivision (b), to include the order of abatement in the Affirmative Citation. Finally, cause exists pursuant to Education Code section 94936, subdivision (b)(3), to include the order that "the Institution shall not enforce any loans pursuant to CEC 94917."

ORDER

Affirmed Citation Order 2223147 issued to respondent Trophy Beauty on October 2, 2023, is AFFIRMED in its entirety. Respondent shall pay the administrative fine within 30 days of the effective date of this Order. Furthermore, respondent shall provide the Bureau written evidence of compliance with the order of abatement within 30 days of the effective date of this Order.

DATE: March 19, 2025


Coren D. Wong (Mar 19 2025 13:15 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings