

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
STATE OF CALIFORNIA

12 In the Matter of the First Amended Statement 13 of Issues Against:	Case No. 999671
14 SAN DIEGO BEAUTY COLLEGE, 15 TRANG LE, 100% OWNER, CEO/DIRECTOR	FIRST AMENDED STATEMENT OF ISSUES
16 School Code: 3709511	
17 Respondent.	

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Joanne Wenzel (Complainant) brings this First Amended Statement of Issues solely
22 in her official capacity as the Chief of the Bureau for Private Postsecondary Education,
23 Department of Consumer Affairs.
- 24 2. On or about May 12, 2011, the Bureau for Private Postsecondary Education received
25 an application for a Renewal of Approval to Operate and Offer Educational Programs for Non-
26 Accredited Institutions (Application #23524) from San Diego Beauty College, Trang Le, 60%
27 Owner, CEO/Director; Kim Loan T. Tran, 20% Owner; Diep Ngoc Ho, 10% Owner; and, Naomi
28 C. Trantu, 10% Owner (Respondent). On or about January 7, 2011, Trang Le and Diep Ho

1 certified under penalty of perjury to the truthfulness of all statements, answers, and
2 representations in the application. The Bureau denied the application on April 14, 2014.

3 JURISDICTION

4 3. This Statement of Issues is brought before the Director of the Department of
5 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
6 authority of the following laws. All section references are to the Education Code unless
7 otherwise indicated.

8 4. The former Bureau for Private Postsecondary and Vocational Education sunsetted on
9 July 1, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009
10 (SB 48 and hereinafter, "the Act") was signed into law. The Act, which became operative on
11 January 1, 2010, established the Bureau for Private Postsecondary Education (hereinafter
12 "Bureau").

13 5. Education Code Section 94886 states:

14 Except as exempted in Article 4 (commencing with section 94874) or in
15 compliance with the transition provisions in Article 2 (commencing with
16 Section 94802), a person shall not open, conduct, or do business as a private
postsecondary educational institution in this state without obtaining an approval
to operate under this chapter.

17 6. Education Code Section 94887 states:

18 An approval to operate shall be granted only after an applicant has presented
19 sufficient evidence to the bureau, and the bureau has independently verified the
20 information provided by the applicant through site visits or other methods
deemed appropriate by the bureau, that the applicant has the capacity to satisfy
21 the minimum operating standards. The bureau shall deny an application for an
approval to operate if the application does not satisfy those standards.

22 STATUTORY AND REGULATORY PROVISIONS

23 7. Education Code (hereinafter "Code") section 94891, subdivision (b) states that "[t]o
24 be granted a renewal of an approval to operate, the institution shall demonstrate its continued
25 capacity to meet the minimum operating standards."

26 8. Code section 94832 defines "Diploma" as "a recognized educational credential, other
27 than a degree, awarded by an institution that signifies satisfactory completion of the requirements
28

1 of a postsecondary educational program below the associate's level. A diploma is also known as
2 a certificate.”

3 9. Code section 94893 states:

4 If an institution intends to make a substantive change to its approval to operate,
5 the institution shall receive prior authorization from the bureau. Except as
6 provided in subdivision (a) of Section 94896, if the institution makes the
substantive change without prior bureau authorization, the institution's approval
to operate may be suspended or revoked.

7 10. Code section 94897 states in part:

8 An institution shall not do any of the following:

9

10 (p) Offer an associate, baccalaureate, master's, or doctoral degree without
11 disclosing to prospective students prior to enrollment whether the institution or
the degree program is unaccredited and any known limitation of the degree,
12 including, but not limited to, all of the following:

13 (1) Whether a graduate of the degree program will be eligible to sit for
the applicable licensure exam in California and other states.

14 (2) A statement that reads: “A degree program that is unaccredited or a
15 degree from an unaccredited institution is not recognized for some employment
positions, including, but not limited to, positions with the State of California.”

16 (3) That a student enrolled in an unaccredited institution is not eligible for
17 federal financial aid programs.

18 . . .

19 11. Code section 94909 states in part:

20 (a) Prior to enrollment, an institution shall provide a prospective student, either
21 in writing or electronically, with a school catalog containing, at a minimum, all
of the following:

22

23 (14) A description of the student's rights and responsibilities with respect
24 to the Student Tuition Recovery Fund. This statement shall specify that it is a
state requirement that a student who pays his or her tuition is required to pay a
25 state-imposed assessment for the Student Tuition Recovery Fund. This
statement shall also describe the purpose and operation of the Student Tuition
26 Recovery Fund and the requirements for filing a claim against the Student
Tuition Recovery Fund.

27 (15) The following statement:

28 “NOTICE CONCERNING TRANSFERABILITY OF CREDITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AND CREDENTIALS EARNED AT OUR INSTITUTION

The transferability of credits you earn at (name of institution) is at the complete discretion of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or certificate) you earn in (name of educational program) is also at the complete discretion of the institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that you earn at this institution are not accepted at the institution to which you seek to transfer, you may be required to repeat some or all of your coursework at that institution. For this reason you should make certain that your attendance at this institution will meet your educational goals. This may include contacting an institution to which you may seek to transfer after attending (name of institution) to determine if your (credits or degree, diploma or certificate) will transfer."

(16) A statement specifying whether the institution, or any of its degree programs, are accredited by an accrediting agency recognized by the United States Department of Education. If the institution is unaccredited and offers an associate, baccalaureate, master's, or doctoral degree, or is accredited and offers an unaccredited program for an associate, baccalaureate, master's, or doctoral degree, the statement shall disclose the known limitations of the degree program, including, but not limited to, all of the following:

(A) Whether a graduate of the degree program will be eligible to sit for the applicable licensure exam in California and other states.

(B) A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California.

(C) That a student enrolled in an unaccredited institution is not eligible for federal financial aid programs.

12. Code section 94911 states in part:

An enrollment agreement shall include, at a minimum, all of the following:

...

(i) (1) The following statement: "Prior to signing this enrollment agreement, you must be given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to review prior to signing this agreement. These documents contain important policies and performance data for this institution. This institution is required to have you sign and date the information included in the School Performance Fact Sheet relating to completion rates, placement rates, license examination passage rates, salaries or wages, and the most recent three-year cohort default rate, if applicable, prior to signing this agreement."

(2) Immediately following the statement required by paragraph (1), a line for the student to initial, including the following statement: "I certify that I have received the catalog, School Performance Fact Sheet, and information regarding completion rates, placement rates, license examination passage rates, salary or wage information, and the most recent three-year cohort default rate, if applicable, included in the School Performance Fact sheet, and have signed,

1 initialed, and dated the information provided in the School Performance Fact
Sheet.”

2 ...

3 13. Title 5, California Code of Regulations (“CCR”), section 71475 states in part:

4

5 (o) The institution shall include, with its application, exemplars of all student
6 enrollment agreements and instruments of indebtedness.

7

8 (bb) The application shall include a copy of the institution's catalog, in
9 published or proposed-to-be-published form. The catalog shall meet the
10 requirements of the Act and of section 71810.

11 ...

12 14. Title 5, CCR, section 71700 states:

13 The Bureau may request that an institution document compliance with the
14 standards set forth in the Act and this Division to obtain and maintain an
15 approval to operate.

16 15. Title 5, CCR, section 71745 states:

17 (a) The institution shall document that it has at all times sufficient assets and
18 financial resources to do all of the following:

19 (1) Provide all of the educational programs that the institution represented it
20 would provide.

21

22 (3) Maintain the minimum standards required by the Act and this chapter.

23

24 (5) Pay all operating expenses due within 30 days.

25

26 (b) At an institution's request, the Bureau may consider the financial resources
27 of a parent company if the parent company, as defined by section 94853 of the
28 Code, meets and maintains all of the following provisions:

 (1) consents in writing to be sued in California;

 (2) consents in writing to be subject to the jurisdiction of the Bureau with
 respect to the institution's regulation under the Act and this Chapter;

 (3) designates and maintains an agent for service of process, consistent
 with section 74190;

1 (4) agrees in writing to pay any refund, claim, penalty, or judgment that
the institution is obligated to pay; and

2 (5) files financial reports, maintains financial records, and consents in
3 writing to permit the inspection and copying of financial records to the same
extent as is required of the institution.

4 (c) An institution shall provide to the Bureau its most current financial
5 statements upon request.

6 16. Title 5, CCR, section 71810 states in part:

7 ...
8 (b) The catalog shall contain the information prescribed by Section 94909 of
9 the Code and all of the following:

10 ...

11 (13) Housing information including all of the following:

12 ...

13 (B) The availability of housing located reasonably near the
14 institution's facilities and an estimation of the approximate cost or range
of cost of the housing; and

15 (C) If the institution has no responsibility to find or assist a student
16 in finding housing, a clear and conspicuous statement so indicating. A
statement that the program is "non-residential" does not satisfy this
subparagraph.

17 ...

18 17. Title 5, CCR, section 76215 states:

19 (a) A qualifying institution shall include the following statement on both its
20 enrollment agreement for an educational program and its current schedule of
student charges:

21 "You must pay the state-imposed assessment for the Student Tuition
22 Recovery Fund (STRF) if all of the following applies to you:

23 1. You are a student in an educational program, who is a California
24 resident, or are enrolled in a residency program, and prepay all or part of
your tuition either by cash, guaranteed student loans, or personal loans,
and

25 2. Your total charges are not paid by any third-party payer such as an
26 employer, government program or other payer unless you have a separate
agreement to repay the third party.

27 You are not eligible for protection from the STRF and you are not
28 required to pay the STRF assessment, if either of the following applies:

1 1. You are not a California resident, or are not enrolled in a residency
program, or

2 2. Your total charges are paid by a third party, such as an employer,
3 government program or other payer, and you have no separate agreement
to repay the third party.”

4 (b) In addition to the statement described under subdivision (a) of this section, a
5 qualifying institution shall include the following statement on its current
schedule of student charges:

6 “The State of California created the Student Tuition Recovery Fund
7 (STRF) to relieve or mitigate economic losses suffered by students in
educational programs who are California residents, or are enrolled in a
8 residency programs attending certain schools regulated by the Bureau for
Private Postsecondary and Vocational Education.

9 You may be eligible for STRF if you are a California resident or are
10 enrolled in a residency program, prepaid tuition, paid the STRF
assessment, and suffered an economic loss as a result of any of the
11 following:

12 1. The school closed before the course of instruction was completed.

13 2. The school's failure to pay refunds or charges on behalf of a student to
a third party for license fees or any other purpose, or to provide
14 equipment or materials for which a charge was collected within 180 days
before the closure of the school.

15 3. The school's failure to pay or reimburse loan proceeds under a federally
guaranteed student loan program as required by law or to pay or
16 reimburse proceeds received by the school prior to closure in excess of
tuition and other costs.

17 4. There was a material failure to comply with the Act or this Division
18 within 30 days before the school closed or, if the material failure began
earlier than 30 days prior to closure, the period determined by the Bureau.

19 5. An inability after diligent efforts to prosecute, prove, and collect on a
20 judgment against the institution for a violation of the Act.”

21 However, no claim can be paid to any student without a social security number
22 or a taxpayer identification number.

23 **FACTS**

24 18. On May 12, 2011, the Bureau received an Application for Renewal of Approval to
25 Operate and Offer Educational Programs for Non-Accredited Institutions, Application Number
26 23524, from Respondent. Respondent had been approved to offer the following non-degree
27 educational programs: Barbering, Cosmetician, Cosmetology, Health Holistic Practitioner,
28

1 Manicuring, Massage Technician, Massage Therapist and Teacher Training. The approval to
2 operate expired on May 31, 2013.

3 19. On June 13, 2012, the Bureau sent Respondent a letter advising that the Bureau could
4 not grant Respondent a renewal of its approval to operate because of deficiencies in the
5 application, including deficiencies in the identification of the institution's ownership and control,
6 and financial statement. On July 11, 2012, the Bureau received a response from Respondent that
7 included an Application for Change of Business Ownership, a school catalog, policies and
8 procedures for supplying library services, an enrollment agreement and financial statements.

9 20. On July 26, 2012, the Bureau sent Respondent another deficiency letter advising of
10 the deficiencies that remained with Respondent's application and that a \$500 fee must be
11 submitted with the Application for Change of Business Ownership.

12 21. On September 13, 2012, the Bureau sent Respondent another deficiency letter
13 advising of additional deficiencies in Respondent's application. On May 28, 2013, the Bureau
14 received a response from Respondent including a cover letter explaining the ownership of the
15 institution.

16 22. On August 12, 2013, the Bureau issued another deficiency letter advising of the
17 deficiencies that remained with Respondent's application. On August 28, 2013, the Bureau
18 received a request to withdraw the Application for Change of Business Ownership. On August
19 29, 2013, the Bureau acknowledged withdrawal of the Application for Change of Business
20 Ownership.

21 23. The Bureau, having received no further response from Respondent, sent Respondent a
22 "Notice of Denial" of Respondent's Application for Renewal of Approval to Operate and Offer
23 Educational Programs for Non-Accredited Institutions on April 14, 2014.

24 24. On or about February 8, 2016, Respondent submitted an updated application for
25 renewal of the institution's approval to operate as well as additional documents in support of its
26 application for an approval to operate. The updated application identified Trang Le as owning
27 100% of the institution. On March 2, 2016, the Bureau noted that some deficiencies in the
28 application were corrected while other deficiencies remained.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Deficiencies in Enrollment Agreement)**

3 25. Respondent's application is subject to denial under Education Code sections 94887
4 and 94891, subdivision (b), in conjunction with Code section 94911 and title 5, CCR, section
5 71475, subdivision (o), in that the enrollment agreement exemplar submitted by Respondent
6 contains the following deficiencies:

7 a. The enrollment agreement fails to include the specific required language regarding
8 the Student Tuition Recovery Fund pursuant to title 5, CCR, section 76215, subdivisions (a) and
9 (b).

10 b. The enrollment agreement fails to include the following required language in its
11 entirety, as required by Code section 94911, subdivision (i)(1):

12 Prior to signing this enrollment agreement, you must be given a catalog or
13 brochure and a School Performance Fact Sheet, which you are encouraged to
14 review prior to signing this agreement. These documents contain important
15 policies and performance data for this institution. This institution is required to
16 have you sign and date the information included in the School Performance
17 Fact Sheet relating to completion rates, placement rates, license examination
18 passage rates, salaries or wages, and the most recent three-year cohort default
19 rate, if applicable, prior to signing this agreement.

17 The underlined language is missing from the disclosure.

18 c. The enrollment agreement fails to include the required language for the student to
19 certify receipt of the most recent three-year cohort default rate where the student certifies receipt
20 of the catalog, School Performance Fact Sheet, and information regarding completion rates,
21 placement rates, license examination passage rates, and salary or wage information, as required
22 by Code section 94911, subdivision (i)(2).

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Deficiencies in School Catalog)**

25 26. Respondent's application is subject to denial under Education Code sections 94887
26 and 94891, subdivision (b), section 94909, and title 5, CCR, section 71475, subdivision (bb), and
27 as further identified below, in that the school catalog contains the following deficiencies:
28

1 a. The school catalog contains an error in the caption regarding transferability
2 disclosures that is required by Code section 94909, subdivision (a)(15). The caption in
3 Respondent's catalog states, "NOTICE CONCERNING TRANSFERABILITY OF CREDITS
4 AND CREDENTIALS EARNING [sic] AT OUR INSTITUTION." The caption should state,
5 "NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS
6 EARNED AT OUR INSTITUTION."

7 b. The school catalog does not include a statement specifying whether the institution or
8 any of its degree programs are accredited by an accrediting agency recognized by the United
9 States Department of Education. In the alternative, if the institution is unaccredited and offers a
10 degree program or the institution is accredited and offers an unaccredited degree program, the
11 school catalog does not include a statement disclosing the known limitations of the degree
12 program, as required by Code sections 94909, subdivision (a)(16) and 94897, subdivision (p).

13 c. The school catalog fails to state the specific required language regarding the Student
14 Tuition Recovery Fund as required by Code section 94909, subdivision (a)(14) and to title 5,
15 CCR, section 76215, subdivisions (a) and (b).

16 d. Respondent's updated school catalog contains the housing information required by
17 title 5, CCR, section 71810, subdivision (b)(13), however, Respondent explained that housing is
18 not available because the program of study is on-line. The programs the institution were
19 approved to provide were hands on classroom instruction.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Failure to Document Institution Has Sufficient Assets and Financial Resources)**

22 27. Respondent's application is subject to denial under title 5, CCR, section 71745 in that
23 Respondent failed to document that it has at all times sufficient assets and financial resources to
24 provide all of the educational programs that the institution represented it would provide and to
25 maintain the minimum standards required by the Act and this chapter as follows:

26 a. Respondent provided a new Limited Liability Company (LLC) as the owner of the
27 institution. However, new financial statements were not submitted that support the minimum
28 operating requirements for the new LLC, Worldwide Beauty, LLC.

1 b. The reviewed financial statements submitted for the year ending 2011 does not
2 demonstrate that the institution can meet the 30-day operating expenses. The total operating
3 expenses for 12 months in 2011 was listed as \$190,340. The cash or cash equivalent to pay the
4 average monthly expenses is \$15,861. The cash or cash equivalent was listed as \$3,112.

5 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

6 **(Failure to Submit Change in Business Organization)**


7 28. Respondent's application is subject to denial under Code section 94893 in that an
8 institution shall receive prior authorization from the Bureau if the institution intends to make a
9 substantive change to its approval to operate. Respondent changed its business organization by
10 changing the LLC from Blue Green Crystal to Worldwide Beauty without submitting an
11 application for a change in its business organization and receiving authorization from the Bureau.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Director of the Department of Consumer Affairs issue a
15 decision:

- 16 1. Denying the application of San Diego Beauty College, Trang Le, 100% Owner, for a
17 Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited
18 Institutions;
- 19 2. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 3/8/16


22 JOANNE WENZEL
23 Chief
24 Bureau for Private Postsecondary Education
25 Department of Consumer Affairs
26 State of California
27 Complainant

28
SD2014707592
12152032.doc