

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

In the Matter of the Citation Against:

MOOREBEAUTYLOVE, LLC

4200B Klose Way

Richmond, CA 94806

Citation No.: 2022074

Case No.: BPPE21-253

OAH Case No.: 2022040491

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 October 21, 2022.

It is so ORDERED September 14, 2022.

"Original signature file"

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

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FOR THE BUREAU FOR
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In the Matter of the Citation Against:

MOOREBEAUTYLOVE, LLC, Respondent.

Agency Case No. BPPE21-253

OAH No. 2022040491

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on August 8, 2022, by video- and audioconference.

Deputy Attorney General Carter Ott represented complainant Christina Villanueva, Discipline Manager for the Bureau for Private Postsecondary Education.

Jamar Moore appeared for respondent MooreBeautylove LLC.¹

The matter was submitted for decision on August 8, 2022.

FACTUAL FINDINGS

1. Respondent MooreBeautylove, LLC (MBL), is a California limited liability company. Maya Moore and Jamar Moore are the company's members.

¹ Moore participated in the hearing from a hotel lobby, using the wireless Internet service available in the lobby for hotel guests. Because he did not believe his Internet connection was robust enough to support simultaneous video- and audioconferencing, he participated mostly by audioconference.

Complainant had made documents available to respondent in prehearing discovery, and had made proposed exhibits available to respondent before the hearing in accordance with orders from the Office of Administrative Hearings. Moore had not reviewed those documents before the hearing. Also, Moore had not arranged for document access that he could control during the hearing; instead, he relied on the hearing judge to show hearing exhibits to him using the videoconference software's screen-sharing feature.

Moore offered no explanation for his failure or inability to participate more effectively in the hearing, and did not request a continuance to permit him to address any participation obstacles.

2. MBL's business includes training adults to perform tattoo-like eyebrow grooming services. MBL offers several courses, ranging in duration from a few hours to a few days, some for novice practitioners and others for people with experience performing these techniques.

3. The Bureau for Private Postsecondary Education (Bureau) has never approved MBL to open, conduct, or do business in California as a private postsecondary educational institution. The Bureau also has never confirmed to MBL that its business qualifies for exemption from the general requirement to obtain Bureau approval before offering private postsecondary education to the public.

4. On October 14, 2021, acting in her official capacity as Discipline Manager for the Bureau, complainant Christina Villanueva issued a citation (Citation No. 2122074) to MBL. Complainant modified and reissued the citation on February 7, 2022. MBL had requested a hearing upon receiving the original citation, and did not withdraw that request after receiving the modified citation.

5. As modified, the citation alleges that MBL advertises and conducts courses that the Education Code permits MBL to advertise and conduct only with Bureau approval, but that MBL lacks such approval. The modified citation assesses a \$25,000 fine. It also includes an order of abatement directing MBL to cease advertising or conducting any courses that require Bureau approval unless and until MBL has received such approval, and to submit a "school closure plan to the Bureau" describing how MBL will ensure that it ceases violating the Education Code.

Bureau Contacts With Respondent in 2019 and 2020

6. In November 2019, Bureau investigator Ashley Cornejo investigated a report she had received to the effect that MBL's training program included courses

requiring Bureau approval. Cornejo confirmed that MBL had never obtained such approval.

7. Cornejo reviewed MBL's Internet website and also spoke with Maya Moore. She learned that MBL offered a four-day "Brows Deluxe" training course for \$3,495, and a "Nano Brows" course also for \$3,495. MBL offered other courses as well, at course prices less than \$2,500.

8. Cornejo discussed the matter with Maya Moore. She provided information to Moore about how to apply to the Bureau either for Bureau approval to operate a private postsecondary educational institution or for verification that the Education Code exempts MBL from the requirement to receive Bureau approval.

9. In April 2020, Cornejo confirmed that MBL had reduced the price its website advertised for the "Brows Deluxe" course to \$2,495. The website no longer listed the "Nano Brows" course, and every other course the website listed cost less than \$2,200. Cornejo closed her investigation, believing that MBL had ceased offering courses costing more than \$2,500.²

Bureau Investigation in 2021 and 2022

10. Cornejo investigated an anonymous complaint to the Bureau about MBL in June 2021. That complaint alleged simply that MBL's courses provided poor value to students ("Prices too high, not enough support").

² An institution that offers only courses for which the total price is less than \$2,500 generally is exempt from Bureau regulation. (Ed. Code, § 94874, subd. (f).)

11. Cornejo drew no conclusions about the price-to-value ratio for any of MBL's courses. In visiting MBL's website, however, she observed that it advertised a "Brows Deluxe" course and a "Lavish Nano Deluxe" course, each for \$3,095, as well as other courses for prices less than \$2,500.

12. Cornejo corresponded by email with Maya Moore about the "Brows Deluxe" and "Lavish Nano Deluxe" courses. Moore told Cornejo that the "Course Instruction" cost for each course was \$2,495, but that students also could purchase an "Optional Course Kit" for \$600. She explained further that the website listed the \$3,095 total "to avoid confusion and a back and forth with potential students inquiring about the class," but that "students only are required to pay the \$2495 and can pay for the course kit separately on their own."

13. Cornejo replied to Maya Moore, stating that even if the course kits were "optional," any student who did purchase both a course and its kit would pay MBL more than \$2,500. For this reason, Cornejo and her supervisors concluded that the Education Code would not exempt these students' courses from the requirement that MBL receive Bureau approval to advertise and operate them. She advised Moore,

In order for you to continue to operate legally within the State of California you have two options:

- Submit an application for an approval to operate and close your doors until the application has been approved.
- Lower the price for the "Brows Deluxe Course" and the "Lavish Nano Deluxe Course" so if a student should purchase a kit, the charges for completion of these courses total less than \$2,500.

14. MBL did not respond further to Cornejo. Cornejo confirmed in August 2021 that MBL still offered the two courses at issue, and found no evidence suggesting that MBL had changed the courses' prices. In reliance on Cornejo's investigation, complainant issued the original citation described above in Finding 4.

15. Acting Enforcement Chief Jason Alley conducted an informal citation conference with Maya Moore and Jamar Moore on January 5, 2022. The Moores explained their efforts to ascertain and understand the Education Code requirements that apply to MBL. They also described their wish to advertise and conduct their courses in a manner that is fair and transparent to students. Finally, they stated that they had further modified MBL's prices for its most expensive courses so that students would pay only \$2,495 per course, to cover both the instructional experience and a "full working kit." In reliance on these representations, Alley recommended and complainant agreed to modify the citation as described above in Findings 4 and 5.

Additional Evidence

16. The course kit to which Maya Moore referred in summer 2021 (as described above in Finding 12) included tools and consumable supplies (such as pigments) that a student would need to learn and practice the techniques these courses teach. A student could not complete either course or meet its instructional objectives without access to these tools and supplies. A student would not wear out the tools or use up all the supplies during the course, however, and could use the tools and remaining supplies after completing the course to provide the services the student had learned.

17. Jamar Moore testified that all the tools and supplies MBL included in 2021 in its course kit were available from other retailers, including Internet retailers. He

described MBL's kit as comprising high-quality, high-value versions of these items, as part of MBL's overall commitment to offering high-quality, high-value instruction. Moore noted that some students who enroll in MBL's courses already possess some or all of the kit items, and do not need to buy kits. He acknowledged, however, that a prospective student who had never used these tools and supplies might not know enough about them to choose high-quality, high-value versions from among the many options available for sale, if the student shopped for the items personally rather than paying MBL for a kit.

18. The evidence did not establish how much a prospective student would have paid at any relevant time to purchase the minimally necessary tools and supplies for either the "Brows Deluxe" or the "Lavish Nano Deluxe" course from vendors other than MBL. The evidence also did not establish whether MBL's \$600 price for a course kit was less than, equal to, or more than MBL's reasonable cost to purchase the items and assemble them into a kit.

19. Jamar Moore also testified that more recently, and as he and Maya Moore told Alley in January 2022, MBL has modified its course price structure to eliminate the need for a student to buy any tools or supplies to take either the "Brows Deluxe" or the "Lavish Nano Deluxe" course. The courses now cost \$2,495 each, and this price includes access to a "basic" set of tools and supplies that is sufficient for the student to carry out the training exercises. If a student wants more or better tools and supplies, the student may purchase an "advanced" course kit. Moore did not state how much MBL charges for this "advanced" kit.

20. In December 2021, MBL submitted an application to the Bureau for verification that its instructional program was exempt from the general statutory requirement for Bureau approval. The Bureau denied this application in late January

2022. Neither the application nor any information about how the Bureau evaluated it was in evidence.

21. In July 2022, MBL's website did not show prices for the "Brows Deluxe" and "Lavish Nano Deluxe" courses,³ although it announced upcoming courses in July and September 2022. The website invited viewers to "Request the Complete Course Outline" by providing an email address. In response to such a request, the requester received a course outline, accompanied by an email stating,

There are two payment options for this class. See the break down below.

Option 1: Pay in full \$2,495 (does not include the \$600 course kit and must be purchased separately)

Option 2: Hold your seat with a \$600 *deposit* and pay your balance of \$1,895 *prior to start of class*.

22. The evidence did not establish how many students took either the "Brows Deluxe" or the "Lavish Nano Deluxe" course in 2021 or 2022. The evidence did not establish how much these students paid for their courses.⁴ The evidence did not establish how many of these students bought course kits from MBL, or how many

³ Even though the website pages for these courses showed no prices if one viewed them through Internet browser software, printouts of the pages showed each course's price as \$3,095.

⁴ Jamar Moore implied in testimony that MBL has charged some students less for courses than the prices stated on MBL's website.

brought and used tools and supplies they had bought elsewhere. Finally, since MBL revised its course pricing as described in Finding 19, the evidence did not establish how many students have bought "advanced" course kits from MBL, and how many have relied solely on the "basic" kits they bought with their course fees.

LEGAL CONCLUSIONS

1. The Bureau may issue citations for violations of the laws governing private postsecondary educational institutions in California, including for operating a private postsecondary educational institution without Bureau approval. (Ed. Code, §§ 94936, 94944.) If the recipient of a citation contests it by requesting a hearing, the Bureau must prove facts justifying the citation by a preponderance of the evidence.

2. A private postsecondary educational institution is "a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge." (Ed. Code, § 94858.) Under Education Code section 94857, postsecondary education comprises instructional programs for adults, "including programs whose purpose is academic, vocational, or continuing professional education." Under Education Code section 94868, to offer postsecondary education to the public means to advertise or publicize such education, or to solicit or recruit students for it. The matters stated in Findings 2, 7, 9 through 12, 14, and 21 establish that MBL is a private postsecondary educational institution.

3. "Except as exempted in Article 4 (commencing with Section 94874) ... , 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." (Ed. Code, § 94886.) The only statutory exemption MBL has asserted, and the only one

that Findings 6 through 22 implicate, is the exemption for an institution "that solely provides educational programs for total charges of two thousand five hundred dollars (\$2,500) or less." (*Id.*, § 94874, subd. (f).)

4. In light of the matters stated in Finding 3, the matters stated in Findings 2, 7, 9 through 12, 14 and 21 establish that respondent MBL did business during 2021 as a private postsecondary educational institution in California without having obtained an approval to operate from the Bureau. Moreover, the matters stated in Findings 11, 12, and 14 establish that MBL advertised and conducted courses during this period that required students to pay total charges of more than \$2,500. Finally, the matters stated in Findings 15 through 22 do not establish that any students paid less than \$2,500 for either the "Brows Deluxe" or the "Lavish Nano Deluxe" courses during this period. These matters also do not establish that MBL ever has advertised and provided these courses and course kits in a manner making the course kit fee clearly independent from the instruction fee. Regardless of whether complainant or respondent bears the burden of proof with respect to any statutory exemption from the approval requirement, cause exists for complainant to have issued Citation No. 2122074 to respondent MBL.

5. Education Code section 94944 authorizes a penalty of up to \$100,000 for operating an unapproved private postsecondary educational institution.

6. Education Code section 94944 states no criteria governing the amount of the administrative penalty it authorizes. For administrative citations relating to violations other than operating an unapproved institution, Education Code section 94936, subdivision (b)(2), identifies factors the Bureau should consider in setting the amount of any fine. These factors, including MBL's persistence in violating Education

Code section 94886 (a negative factor) and its apparent good faith in attempting to communicate prices clearly to students (a positive factor) have been considered.

7. In light of all evidence, a fine of \$25,000, representing course fees for fewer than 10 students for either of the courses at issue, is reasonable.

8. The matters stated in Findings 15 through 22 suggest that MBL has made efforts to abate its violations of Education Code section 94886, but they do not establish that the violations have ceased. The order of abatement in Citation No. 2122074 remains appropriate.

ORDER

Bureau of Private Postsecondary Education Citation No. 2122074, issued to MooreBeautylove, LLC, is affirmed.

DATE: "8/29/2022"

"Original signature on file"

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings