



OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
STATE OF HAWAII

**INSTRUCTIONS FOR FILING A PETITION FOR ORDER OF ABATEMENT AGAINST
INFRINGEMENT OF TRADE NAME, TRADEMARK OR SERVICE MARK**

A. General Instructions

Determine if this is the correct form. **Are you the owner of a trade name, trademark or service mark that is being infringed on by a registered entity?** (For example: The name of an LLC, Corp. or LP is infringing on your trade name or mark.) If not, please see other available petition forms.

The party filing this petition (owner of the trade name or mark) is designated as the “Petitioner”. The registered entity infringing on the trade name or mark is designated as the “Respondent”.

The Office of Administrative Hearings does not provide legal advice. If you have any need for legal advice, please consult with your attorney.

Who can file a Petition? Any person claiming to be the owner of a trade name, trade mark or service mark may file a petition for an order of abatement against infringement.

B. Instructions for Completing the Petition

1. (Case No.): This is for office use. A case number will be assigned when the Petition is filed. Make sure to fill out the Petition correctly and include the registered entity’s (“Respondent”) full name so that the appropriate case prefix and number can be assigned.
2. Fill in the caption: In the Matter of the Registered Entity “_____”. This is the name of the registered entity (Respondent) whom you are seeking an order of abatement against. (Do **not** fill in Petitioner’s trade name or mark.)
3. Fill in the full name of the party submitting the petition (“Petitioner”) and the name of Respondent.
4. Paragraph 1: Place a check in front of the applicable box and fill in the required information. If Petitioner is the owner of a trade name, fill in the trade name. If Petitioner is the owner of a trademark or service mark, fill in the name and/or description of the trademark or service mark.
5. Paragraph 2: Fill in the current address of Petitioner’s principal place of business, or residence, if applicable.

6. Paragraph 3: Fill in Respondent's name and the current address of its principal place of business.
7. Paragraph 4: Fill in the name and current address of Respondent's officer, director, partner, manager, member, or registered agent in the State of Hawaii. [Business registration information may be found on the webpage of the Business Registration Division (BREG) of the Department of Commerce and Consumer Affairs (DCCA): cca.hawaii.gov/breg]
8. Paragraph 6: Fill in Respondent's registered name, and the date it was registered in the State of Hawaii.
9. Paragraph 7: Place a check in front of the applicable box for the statutory authority Petitioner is relying on for the order of abatement. If there is/are other statutes not listed, fill in the other statutory section(s) Petitioner is relying on.
10. Paragraph 8: If Petitioner is relying on Hawaii Revised Statutes (HRS) § 482-8.5(b) (substantially identical), fill in Petitioner's registered trade name, the date the certificate of registration was issued, and the certificate of registration number.
11. Paragraph 9: Fill in the facts that support the petition for abatement. For example, if Petitioner is relying on HRS § 482-8.5(a), include facts detailing Petitioner's ownership of the tradename or mark, facts detailing these rights are being infringed upon by Respondent, whose registered entity name is confusingly similar to, or substantially identical to Petitioner's trade name or mark, and that further use of Respondent's name should be abated. If relying on HRS § 482-8.5(b), include facts showing that Respondent registered its entity name after Petitioner's trade name was registered, that Respondent's name is substantially identical to Petitioner's trade name, and that further use of Respondent's name should be abated. You may attach additional pages to the Petition if necessary.
12. Petitioner must fill in the applicable city, date, and sign the petition.
13. The original and two copies of the petition must be filed with the Office of Administrative Hearings ("OAH"), Department of Commerce and Consumer Affairs ("DCCA"), 335 Merchant Street, Suite 100, Honolulu, Hawaii 96813.

C. Overview of the Hearings Process

Upon receipt of the original and two copies of the petition, OAH will serve a Notice of Hearing and Pre-Hearing Conference on both parties. If service on the Respondent by registered or certified mail is not successful, Petitioner, at Petitioner's expense, shall notify Respondent of the hearing in the manner prescribed by the director and HRS § 91-9.5, which may include service by publication.

The Petitioner has the burden of proof. If the Petitioner fails to meet the burden of proof, the petition will be denied because it is up to the Petitioner to show why the order or abatement should be granted.

Please consult the Administrative Practice and Procedure Rules for OAH contested hearings, Hawaii Administrative Rules (“HAR”) Title 16, Chapter 201 for additional requirements. You may purchase a copy of the Administrative Practice and Procedure Rules from the DCCA cashier, or you may download a copy from the DCCA webpage: cca.hawaii.gov/Hawaii-administrative-rules/

Please remember that you have the right to retain legal counsel at all stages of these proceedings.

D. How to Contact Us

Office of Administrative Hearings
335 Merchant Street, Suite 100
Honolulu, Hawaii 96813
Telephone: 808-586-2828
Fax: 808-586-3097
Email: oah@dccahawaii.gov

You may also find additional information, resources, and prior decisions on our webpage: www.cca.hawaii.gov/oah