

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION	:	
FOR AN ADMINISTRATIVE	:	FINAL DECISION AND ORDER
INJUNCTION INVOLVING	:	LS0701092UNL
	:	
THREADING AND HENNA	:	
AND SABIHA J. JAVED	:	
RESPONDENTS.	:	

Division of Enforcement File No.: 06 UNL 098

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 16th day of May, 2007.

Larry J. Martin
Designee
Department of Regulation and Licensing

hair removal services at the Threading and Henna kiosk who are not licensed as barbering and cosmetology practitioners in Wisconsin.

6. On or about October 30, 2006, Sabiha J. Javed submitted to the Department of Regulation and Licensing an application for an establishment license for Threading and Henna.

7. The establishment license application for Threading and Henna was considered by the Barbering and Cosmetology Examining Board at their December 4, 2006 board meeting, and was denied by the Board for failing to meet the requirement that a barbering and cosmetology establishment have hot and cold running water, and for failing to meet the requirement that an establishment have a manager who works full time in the establishment.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Regulation and Licensing has jurisdiction to act in this matter, pursuant to Wis. Stat. § 441.21.

2. Hair threading, a form of hair removal, falls within the definition of barbering and cosmetology under Wis. Stat. § 454.01(5) (d).

3. Under Wis. Stat. § 454.04(1) (a) and Wis. Stat. § 454.08(1) (b) and (2) (a), barbering and cosmetology may only be performed in Wisconsin in a licensed barbering and cosmetology establishment by licensed barbering and cosmetology practitioners.

4. By providing hair removal services for compensation without having a barbering and cosmetology establishment license in Wisconsin, Threading and Henna and Sabiha J. Javed are in violation of Wis. Stat. § 454.08(1)(b).

ORDER

THEREFORE, IT IS ORDERED: that Threading and Henna is ENJOINED from operating a barbering and cosmetology establishment that is not licensed in Wisconsin and from employing personnel who are engaging in the practice of barbering and cosmetology without being licensed in Wisconsin.

THEREFORE, IT IS FURTHER ORDERED: Sabiha J. Javed is ENJOINED from operating a barbering and cosmetology establishment that is not licensed in Wisconsin and from employing personnel who are engaging in the practice of barbering and cosmetology without being licensed in Wisconsin.

Applicable Law

Wis. Stat. § 440.21

440.21 Enforcement of laws requiring credential.

(1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

...

Wis. Stat. § 454.01 (5) (d)

(5) "Barbering or cosmetology" means, for compensation, performing any one or a combination of the following practices:

...
...
...

(d) The removal of hair of any person, except by use of an electric needle.

Wis. Stat. § 454.04(1)(a)

454.04 Practice. (1) (a) Except as permitted under pars. (b) and (d), no person may engage in barbering or cosmetology unless the person has received training in the areas of service provided and holds a current barber or cosmetologist license, manager license or temporary permit issued by the examining board or is an apprentice under s. 454.10 or a student in a barbering or cosmetology course of instruction.

Wis. Stat. § 454.08(1)(b)

454.08 Establishment licenses. (1)

(a) ...
(b) Except as permitted by rule promulgated under par. (a), no person may practice barbering or cosmetology, aesthetics, electrology or manicuring in an establishment unless the establishment is licensed to provide that practice under sub. (2).

OPINION

Sabiha J. Javed is the owner of Threading and Henna, a sole proprietorship.ⁱ Threading and Henna is a kiosk within Mayfair Mall and is located at 2500 N. Mayfair Road, Wauwatosa, Wisconsin 53226. Threading and Henna provided hair threading services for compensation which the respondents admitted in their answer to be a form of hair removal. As further admitted by the respondents, Threading and Henna also is not licensed as an establishment to provide barbering and cosmetology services.

The respondents denied that they employed unlicensed persons to perform the hair threading services at their unlicensed establishment. However, an investigator for the Wisconsin Department of Regulation and Licensing testified that on two occasions when she inspected Threading and Henna, August 29, 2006, and October 13, 2006, the kiosk was staffed by a person who was not licensed in Wisconsin to provide barbering and cosmetology services.

The respondents raised the argument in their answer and attempted to argue at the hearing that a valid defense existed based upon their claim that the December 4, 2006 denial of the establishment license application for Threading and Henna by the Barbering and Cosmetology Examining Board was arbitrary and capricious. Such a defense is not available in an action under Wis. Stat. § 440.21, because it would amount to a collateral challenge to a board exercise of discretion in granting or denying a credential. The proper forum to adjudicate a board's discretion is provided within the purview of Wis. Stat. Ch. 227.

Date: April 6, 2007

William Anderson Black
Administrative Law Judge

[i] Ms. Javed admitted in her answer that she is the "owner" of Threading and Henna. Ms. Javed did not present any evidence that Threading and Henna was a particular form of business entity, therefore by admitting to be an owner of Threading and Henna, I am treating the business as a sole proprietorship as the basis for issuing two separate injunctions, one against the business, and one personally against Ms. Javed. Were an injunction entered against the business only, its alter ego, Ms. Javed might attempt to continue business in a different name and thereafter argue the injunction has not been violated.