



October 23, 2014

VIA EMAIL

Nova Dubovik, Executive Secretary
State Records Committee
346 S. Rio Grande
Salt Lake City, UT 84101-1106
[REDACTED]

Re: Appeal of Denial of Request for Records Regarding Vapex LLC, Sinless Vapor LLC, and OZN Web LLC

Dear Records Committee:

I write on behalf of Truth in Advertising, Inc. (TINA.org¹) in order to appeal the decision of the State of Utah Department of Commerce, Division of Consumer Protection (“the Division”) to withhold records regarding consumer complaints (with personal identifying information of the complaining consumers redacted) relating to three Utah companies: Vapex LLC, Sinless Vapor LLC, and OZN Web LLC.

Pursuant to the Utah Government Records Access Management Act, § 63-2-101 *et seq.*, TINA.org made a request for such records on August 28, 2014.¹ See Aug. 28, 2014 ltr from F. Silverman to J. Bolton, attached hereto as Exhibit A. The Division denied the request on September 3, 2014, citing two reasons for the denial: First, such records are classified as protected records under Utah Code Ann. § 63G-2-305(10), and second, such records are classified as private records under Utah Code Ann. § 63G-2-302(2)(d). See Sep. 3, 2014 ltr from D. Pierson to F. Silverman, attached hereto as Exhibit B.

On September 29, 2014, TINA.org appealed this decision, explaining that, to the extent any of the consumer complaints contain personal identifying information of the complaining consumers, such information could be redacted from the records (instead of wholly barring the disclosure of the documents) so that the release of such records would

¹ In its initial request, TINA.org also requested copies of citations by the Utah Department of Commerce, Division of Consumer Protection against the companies, as well as a copy of the Division’s settlement agreement with OZN Web LLC, both of which have been provided. Accordingly, this appeal pertains only to TINA.org’s request for redacted copies of consumer complaints relating to these companies.

not violate regulations prohibiting the disclosure of such personal information. *See* Sep. 29, 2014 ltr from L. Smith to F. Giani, attached hereto as Exhibit C.

On October 7, 2014, Administrative Law Judge Masuda Medcalf notified TINA.org that its appeal had been denied. The stated reason for the denial is that the disclosure of the requested records, whether redacted or not, would violate Utah Code Ann. § 63G-2-305(10) as the disclosure could reasonably be expected to interfere with pending enforcement proceedings. *See* Oct. 7, 2014 ltr from M. Medcalf to L. Smith, attached hereto as Exhibit D.

Respectfully, TINA.org disagrees that the disclosure of consumer complaints about a company could in any way impede, interfere with, or have any negative impact on an investigation or enforcement proceeding against the company at issue. To the contrary, the disclosure of issues encountered by consumers who have had prior dealings with the company can only serve to educate, warn, and protect other consumers, as well as potentially prevent additional problematic dealings with the company under investigation. In addition, releasing redacted records of consumer complaints allows watchdog organizations, such as TINA.org, to evaluate and report on whether state agencies are appropriately responding to complaints and protecting consumers from unfair dealings.

And this is precisely why TINA.org, a nonprofit organization that uses investigative journalism, education, and advocacy to help consumers protect themselves against false advertising, has requested the records – to arm consumers with critical information that is otherwise unattainable and ensure that appropriate measures are being taken to protect them. In addition, since investigations and enforcement proceedings can often take months, if not years, to conclude, the timely disclosure of consumer complaints to TINA.org can, at the very least, allow it to warn consumers that there may be issues worth considering before dealing with the company.

In short, the benefit that would come from disclosing the substance of consumer complaints against a company far outweighs any minimal risk of interference with proceedings. As such, the release of these records is authorized under Utah Code Ann. § 63G-2-201(5)(b)(ii) (“A governmental entity may disclose a record that is . . . protected under Section 63G-2-305 . . . if the head of a governmental entity, or a designee, determines that . . . the interests favoring access are greater than or equal to the interest favoring restriction of access.”).²

As such, TINA.org appeals the Division’s decision and respectfully requests copies of any and all complaints the Division has received relating to Vapex LLC, Sinless Vapor

² *See also* Utah Code Ann. § 63G-2-401(6) (“Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.”)

LLC, and OZN Web LLC, with the personal identifying information of the complainant(s) redacted.

Please let me know if you need any other information to process this appeal and renewed request. Thank you for your assistance and your attention to this matter.

Sincerely,



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CC: Masuda Medcalf, Administrative Law Judge
David J. Pierson, Records Officer, Division of Consumer Protection
Rosemary Cundiff, Government Records Ombudsman