

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii

January 24, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

ADMINISTRATIVE ENFORCEMENT ACTION AGAINST VOLCOM INC. FOR
VIOLATION OF HAWAII ADMINISTRATIVE RULE, SECTION 13-231-51, BUSINESS OR
COMMERCIAL ACTIVITY AT WAIANAE SMALL BOAT HARBOR, WITHOUT PRIOR
APPROVAL OF THE DEPARTMENT OR THE PROPER EXECUTION OF AN
AGREEMENT WITH THE DEPARTMENT

REGULATORY AUTHORITY

Hawaii Administrative Rule (HAR) §13-230-8 Definitions:

“Business” includes all professions, trades, occupations, and callings carried on for a profit or livelihood, every kind of commercial enterprise, and the operation of games, machines, or mechanical devices.

“Commercial Activity” means the use of or activity for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise or demanding or requesting gifts, money, or services, shall be considered commercial activity.

Hawaii Administrative Rule (HAR) §13-231-51, Business Activities, provides that "No" person shall engage in any business or commercial activity at any small boat harbor or other small boat facility without:

- (1) Prior written approval of the department; or
- (2) The proper execution of an agreement with the department.

BACKGROUND

The following timeline is presented to summarize the incident that took place on August 28, 2013 pertaining to the alleged violation of HAR§13-231-51 by Volcom Inc.:

August 25, 2013: Clint Moncata, agent of Volcom Inc., submitted an application for Film Permit for a project named "Floating Ramp". Moncata sought a permit to video tape professional skateboarders skating on a floating skateboard ramp in ocean water off the beach outside of Waianae Small Boat Harbor.

August 27, 2013: DLNR DOBOR denied Moncata's Film Permit.

August 28, 2013, 1500: DOCARE Oahu Branch gets an anonymous call reporting possible illegal commercial activity at the Waianae Small Boat Harbor. The activity involved a “half pipe” skateboarding ramp that was launched from Waianae Small Boat Harbor. Per Humphreys, the call came from John Swift.

August 28, 2013, 1530: Humphreys arrives on scene. No half pipe observed. Humphreys was told that a blue truck dropped off the half pipe into the water. While running checks on the blue truck, Humphreys was approached by Russ Keaulana who stated that he transported the half pipe for Moncata of Volcom from Heeia Kea Harbor to Waianae Small Boat Harbor. He further stated that two jet skis went out with the half pipe.

August 28, 2013, 1620: Humphreys called DOBOR who reported that Moncata’s film permit was denied for commercial activities on 8/28/13 and 8/29/13. Humphreys proceeded to Pokai Bay where he spotted the half pipe, an orange twin hull vessel towing the half pipe, and two jet skis transporting individuals to the half pipe. Individuals were observed skateboarding and doing tricks on the half pipe.

August 28, 2013, after 1620: Humphreys waited at Waianae Small Boat Harbor for Moncata to return. Eventually, the jet returned and were cited (Jeffery K. Walthall, Ronald B. Jose) under 14-0353-OA, 14-0355-OA, 14-0356-OA. Both individuals denied any involvement in the commercial activities.

August 29, 2013: Humphreys is notified by Chuck Krause that Moncata and the half pipe ended up at Koolina marina on August 28, 2013 at approximately 2230. Krause made Moncata remove the half pipe. The half pipe was then moved to Kalaeloa Deep Draft Harbor and subsequently removed from waters by an employee of The Phoenicians.

APPLICABLE PENALTIES

§13-230-4 Penalties and prosecution. Any person who violates any of these rules or who violates any lawful command issued pursuant to these rules by any small boat harbor master, harbor agent or any boating district manager, while in the discharge of that person’s duty, shall be guilty of a misdemeanor. Recommended fines for each violation are as set forth in the bail schedule for boating, small boat harbors, ocean waters, navigable streams and beaches, provided that nothing in these rules shall prohibit a court from imposing the maximum fine of not more

than \$10,000 for each violation as provided in section 200-14, Hawaii Revised Statutes. In addition to or as a condition to the suspension of any fines, the offender may be deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than two years as prescribed in section 200-14, Hawaii Revised Statutes. Prosecution of offenders shall be as provided by law. [Eff 2/24/94] (Auth: §§200-2, 200-3, 200-4, 200-14) (Imp: 200-2, 200-3, 200-4, 200-14)

Hawaii Revised Statutes (H.R.S.) §200-14.5 authorizes the Board to set, charge, and collect administrative fines and recover administrative costs.

[§200-14.5] General administrative penalties. (a) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder. Each day or instance of violation shall constitute a separate offense.

(b) For violations involving pollution of the waters of the State, the administrative fine shall be as follows:

- (1) For a first violation or a violation beyond five years of a previous violation, a fine of not more than \$10,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$15,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$25,000.

(c) For all other violations the administrative fine shall be as follows:

- (1) For a first violation or a violation beyond five years of a previous violation, a fine of not more than \$5,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$10,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$15,000.

(d) Any criminal action against a person for any violation of subtitle 8 of title 12 or any rule adopted thereunder shall not preclude the State from pursuing civil legal action to recover administrative fines, fees and costs, or damages against that person. Any civil legal action to recover administrative fines, fees and costs, or damages for any violation of subtitle 8 of title 12 or any rule adopted thereunder shall not preclude the State from pursuing any appropriate criminal action against that person. All fines, fees and costs, or damages recovered by the department under this section shall be deposited in the boating special fund. [L 1999, c 41, §1]

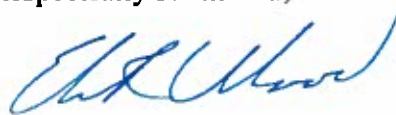
Staff believes that unless there are consequences for violating the HRS and HAR people do not have an incentive to abide by the rules or the direction of Harbor Staff. In order to send a strong message and curb present and future violation of the rules, the recommendation from staff is to issue a five thousand dollar fine (\$5,000.00) to Volcom Inc.

RECOMMENDATIONS

That the Board:


1. Find that an administrative violation of **HAR section 13-231-51** was committed and that the individuals listed above committed the violation.
2. Issue a five thousand dollar fine to Volcom Inc. for the willful violation of the Hawaii Administrative Rules.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL



William J. Aila, Jr.
Chairperson