

In the
Supreme Court of Ohio

STANLEE E. CULBREATH,)	
	)	Case No. 06-1302
Appellant,)	
)	
v.)	
)	
GOLDING ENTERPRISES LLC, <i>et al.</i> ,)	
)	
Appellees.)	

**APPELLANT STANLEE E. CULBREATH'S
MOTION FOR RECONSIDERATION**

Submitted by,

Beth Anne Lashuk (0063144)
blashuk@lavellejurca.com
Jeffrey J. Jurca (0012107)
jjurca@lavellejurca.com
LAVELLE, JURCA & LASHUK
6797 North High Street, Suite 314
Worthington, Ohio 43085
(614) 846-9137, 846-9181 fax

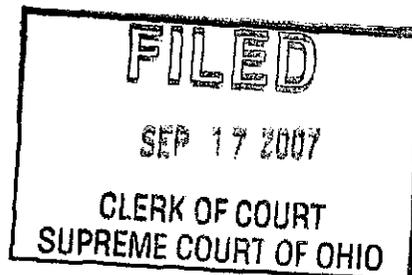
ATTORNEYS FOR APPELLEES,
U.S. FOUR, INC., W.D. EQUIPMENT
RENTAL INC., JOHN BASINGER AND
JOSH WELLINGTON

Karen S. Hockstad (0061308)
khockstad@hockstadlaw.com
HOCKSTAD LAW OFFICE LTD.
5003 Horizons Drive, Suite 200
Columbus, Ohio 43220
(614) 451-4227, 451-3516 fax

ATTORNEY FOR APPELLEES,
KAREN S. HOCKSTAD AND
GOLDING ENTERPRISES LLC

John W. Ferron (0024532)
jferron@ferronlaw.com
(COUNSEL OF RECORD)
Lisa A. Wafer (0074034)
lwafer@ferronlaw.com
Jessica G. Fallon (0079169)
jfallon@ferronlaw.com
FERRON & ASSOCIATES, LPA
580 North Fourth Street, Suite 450
Columbus, Ohio 43215-2125
(614) 228-5225, 228-3255 fax

ATTORNEYS FOR APPELLANT,
STANLEE E. CULBREATH



MOTION FOR RECONSIDERATION

APPELLANT STANLEE E. CULBREATH, by and through the undersigned counsel, hereby respectfully moves, pursuant to S. Ct. Prac. R. XI, Section 2(A)(4), for the Court's reconsideration of its recent ruling in this matter reflected in Syllabus ¶3 of the Court's opinion, which provides:

“The sending to and receipt by an individual of an unsolicited facsimile advertisement is not a violation of the Ohio Consumer Sales Practices Act unless the facsimile is deceptive, unfair, or unconscionable.”

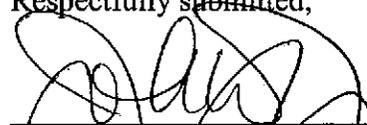
Appellant respectfully submits that the issue and law upon which the foregoing ruling is based were neither appealed, briefed nor argued to the Court. Had they been, the Court would have been advised that all of the trial and appellate courts of Ohio that have considered the issue of whether a supplier's violation of the Telephone Consumer Protection Act, 47 U.S.C. §227, *et seq.* (“TCPA”), is also a violation of the Consumer Sales Practices Act, R.C. §1345.01, *et seq.* (“CSPA”); have answered the question in the affirmative. Moreover, numerous court decisions holding that a TCPA violation also constitutes a CSPA violation have previously been adopted by the Ohio Attorney General, and made available to the public through in its Public Inspection File, pursuant to R.C. §1345.05(A)(3).

Accordingly, Appellant respectfully moves for the Court's reconsideration of Syllabus ¶3 of its recent ruling in this matter, and the modification of that Syllabus to read as follows:

“In regard to a solicitation directed to a consumer, a violation of the Telephone Consumer Protection Act, 47 U.S.C. §227, *et seq.* (“TCPA”), constitutes an unfair or deceptive action or practice and, therefore, a violation of R.C. §1345.02(A) of the Consumer Sales Practices Act.”

The reasons why Appellant maintains that the Court should grant the relief requested herein are set forth in the following Memorandum in Support of Motion.

Respectfully submitted,


John W. Ferron, Esq. (0024532)
(COUNSEL OF RECORD)

jferron@ferronlaw.com
Lisa A. Wafer, Esq. (0074034)

lwafer@ferronlaw.com
FERRON & ASSOCIATES, LPA
580 North Fourth Street, Suite 450
Columbus, Ohio 43215-2125
(614) 228-5225, 228-3255 fax

Attorneys for Plaintiff-Appellant,
Stanlee E. Culbreath

MEMORANDUM IN SUPPORT OF MOTION

Plaintiff-Appellee Stanlee E. Culbreath respectfully moves this honorable Court to reconsider the portion of its recent ruling in this matter reflected in the Syllabus at ¶3.

INTRODUCTION

On September 5, 2007, this honorable Court issued its ruling in this matter in *Culbreath v. Golding Enterprises, LLC, et al.*, 2007-Ohio-4278. By the instant Motion, Appellant respectfully moves this honorable Court to reconsider the portion of its ruling that is reflected in the Syllabus at ¶3, which reads as follows:

“The sending to and receipt by an individual of an unsolicited facsimile advertisement is not a violation of the Ohio Consumer Sales Practices Act unless the facsimile is deceptive, unfair, or unconscionable.”

Appellant respectfully urges this Court to reconsider this part of the Court’s recent ruling in this matter.

Appellant makes this request for two reasons. First, there was no briefing on this issue by any of the parties, and therefore the Court rendered its decision without any relevant input on

this topic. Second, the ruling of the Court is contrary to every other Ohio court which has considered this question.

For these reasons, this Court should consider the possibility that it may have incorrectly decided the above-described issue in this case.

LAW AND ARGUMENT

I. Background

This case arises under the federal Telephone Consumer Protection Act of 1991, 47 U.S.C. §227, *et seq.* (TCPA), and the Ohio Consumer Sales Practices Act, R.C. §1345.01, *et seq.* (CSPA). For over 16 years, the TCPA has prohibited the transmittal of commercial advertisements by telephone facsimile (“fax”) unless the sender first obtains the “prior express invitation or permission” of the recipient. 47 U.S.C. § 227(a)(4) and 227(b)(1)(C).

Unsolicited fax advertisements, often called “junk faxes” are regarded by most consumers as an invasion of privacy and theft. Because of lower telephone rates, junk faxers often transmit their intrusive advertisements in the middle of the night, rudely awakening consumers by the ringing of their telephones and whirring of their fax machines. Each junk fax also constitutes the unauthorized use of the consumer’s fax machine, paper, and toner or ink to produce the sender’s advertisement. Thus, junk faxes are essentially advertisement by intrusion and theft.

In addition to harm suffered by the recipients of unwanted junk faxes, it should be noted that each fax violates a federal law by which all business are supposed to abide. A business that ignores law governing its advertising methods has an unfair advantage over its competitors who forgo business opportunities in complying with the law.

II. The Ohio Consumer Sales Practices Act

The Ohio Consumer Sales Practices Act prohibits businesses from engaging in “unfair or deceptive” acts or practices. R.C. §1345.02(A). The statute enumerates only ten *examples* of unfair or deceptive acts or practices (R.C. §1345.02(B)(1)-(10)), and seven *examples* of unconscionable acts (R.C. §1345.03(B)(1)-(7)). In enacting the CSPA, the legislature granted wide latitude and encouraged the Courts to construe *additional* wrongful acts of suppliers to be unfair and/or deceptive practices. R.C. §1345.02(B) and (C). And the courts of Ohio have repeatedly done so, as is shown by the hundreds of decisions now contained in the Ohio Attorney General’s Public Inspection File (“PIF”).¹ Once a court’s final order declaring an act or practice to be unfair or deceptive under the CSPA has been made available to the general public in the PIF, the unlawful act or practice becomes actionable thereafter by the public at large. See R.C. §1345.09(B). Stated another way, the CSPA specifically authorizes a consumer’s private right of action under R.C. §1345.09(B) based upon any act or practice previously declared by an Ohio court to be in violation of the CSPA.

Moreover, it is well-settled that “the boundaries of illegality under CSPA must remain flexible because it is impossible to list all methods by which a consumer can be misled or deceived.” *Fletcher v. Don Foss of Cleveland Inc.* (8th Dist. 1993), 90 Ohio App.3d 82, 86, OAG PIF# 1746. An award of statutory damages and injunctive relief is available to any consumer for any act or practice that a court has declared to be unfair or deceptive. *Id.*; see also R.C. §§1345.09(B) and (D).

¹ The Ohio Attorney General’s Public Inspection File can be accessed via the Internet at <http://www.opif.ag.state.oh.us/secured/Landing.aspx>.

III. The Telephone Consumer Protection Act

Congress enacted the Telephone Consumer Protection Act of 1991, 47 U.S.C. §227, *et seq.* (“TCPA”), to eliminate or restrict certain telemarketing calls and unsolicited commercial fax advertisements. Congress targeted junk faxes, among other reasons, because they are the only form of advertising that shifts most of the cost of advertising to the recipient in the form of the cost of paper, ink, and the maintenance of a fax machine and telephone line. *Destination Ventures, Ltd. v. F.C.C.* (D. Or. 1994), 844 F.Supp. 632,636-67. The TCPA creates no uncertainty on this point: all unsolicited faxed advertisements are unlawful under the TCPA. 47 U.S.C. §227(b)(1)(C). In the case at bar, the Dockside Dolls faxes were unlawful because they were transmitted by Appellees without the recipients’ prior express approval. 47 U.S.C. § 227(a)(4) and 227(b)(1)(C). In violating the TCPA’s clear ban on such advertising, Appellees, intruded upon the privacy of numerous recipients, used their fax machines, telephone lines, paper and toner or ink without permission to produce advertisements for its “gentlemen’s club”, and thereby gained a competitive advantage over its competitors who are legally obliged to refrain from such unlawful means of promotion.

IV. A Violation of the TCPA as to a Consumer Should Also Be a Violation of the CSPA

Each of Appellees’ fax advertisements was a “solicitation” offering the entertainment services of Dockside Dolls to any consumer who received them. Solicitations for the purchase of such consumer services are specifically included within the definition of a “consumer transaction” under the Ohio Consumer Sales Practices Act at R.C. §1345.01(A). Many Ohio courts have so ruled, as they have also gone on to find that a violation of the TCPA as to a consumer is also an actionable violation of the CSPA.

In *Charvat v. Continental Mortgage Svcs., Inc.* (June 1, 2000), Franklin Cty. C.P. Case No. 99CVH12-10225, unreported (OAG PIF# 1882) (Appdx. 1), the court ruled that a business' violations of the TCPA in regard to its telemarketing calls to a consumer also amounted to violations of the CSPA because the supplier failed to honor its legal obligations to the consumer imposed by the TCPA and because the courts of Ohio are instructed to give due consideration and great weight to federal laws governing the conduct of businesses in relation to consumers.

The courts in many other cases have made similar rulings, declaring that violations of the TCPA also constitute violations of the CSPA. See, e.g., *Jemiola v. XYZ Corporation* (2003), 126 Ohio Misc.2d 68, 2003-Ohio-7321 (OAG PIF# 2205), at ¶21 ("the sending of unsolicited fax advertisements is an inherently unfair and deceptive act or practice, in violation of O.R.C. § 1345.02(A) of the Ohio CSPA, since the advertiser is using someone else's fax equipment, paper, ink and supplies to print its advertisements without prior express consent to do so."); *Bransky v. Shahrokhi*, (8th Dist. 2005), 2005-Ohio-79, (OAG PIF# 2337), at ¶6; *Compoli v. EIP Ltd.* (July 2, 2002), Cuyahoga Cty. C.P. Case No. 446780, unreported (OAG PIF# 2085) (Appdx. 27) ("A violation of the TCPA is also a breach of Section 1345.02(A) of the CSPA."); *Chambers v. R&C Delivery* (May 8, 2002), Cuyahoga Cty. C.P. Case No. 437887, unreported (OAG PIF# 2088) (Appdx. 31) ("A violation of the TCPA is also a breach of Section 1345.02(A) of the CSPA. *** Each unsolicited fax advertisement constitutes a separate violation."); *Charvat v. Mobley* (Sept. 3, 2002), Franklin Cty. C.P. Case No. 02CVH01-01, unreported (OAG PIF# 2113) (Appdx. 32) (violation of TCPA held to be a violation of CSPA, too); *Grady v. St. Cloud Mtge.* (Feb. 28, 2003), Cuyahoga Cty. C.P. Case No. 484945, unreported (OAG PIF# 2135) (Appdx. 48) ("A violation of the TCPA is also a breach of Section 1345.02(A) of the CSPA."); *Hirz v. AA Auto Insurance* (June 3, 2003), Cuyahoga Cty. C.P. Case No. 485881, unreported (OAG PIF#

2174) (Appdx. 63) (“[T]he sending of unsolicited fax advertisements is an unfair and deceptive practice under R.C. § 1345.02(A) of the Ohio CSPA.”); *State ex rel. Petro v. Logic Mortgage* (Feb. 1, 2005), Franklin Cty. C.P. Case No. 04CVH-10-11378, unreported (OAG PIF# 2317) (Appdx. 69) (by violating TCPA, mortgage company also committed unfair or deceptive acts or practices that violate CSPA).

Ohio’s appeals courts have reached the same conclusion as Ohio’s trial courts, finding that violations of the TCPA as to consumers constitute violations of the CSPA, too. See *Charvat v. Ryan* (10th Dist), 2006-Ohio-3705, ¶39, 40 (“separate CSPA damage awards should be made for each TCPA violation”); *Bransky v. Shahrokhi* (8th Dist., 2005-Ohio-97, ¶6.

Notably, the **content** of the advertisements at issue in the above cases was not significant. It was the supplier’s **method** of advertising that was at issue. The CSPA specifically authorizes a consumer’s private right of action under R.C. § 1345.09(B) based upon any act or practice previously declared by an Ohio court to be in violation of the CSPA. Once the court’s declaration is made available to the public through the Ohio Attorney General’s Public Inspection File, it establishes grounds for a cause of action by Ohio consumers based upon the act or practice declared to violate the CSPA. R.C. §1345.09(B).

The CSPA is a remedial statute which is designed to supplement traditional consumer remedies. As such, the CSPA must be liberally construed. See, e.g., *Einhorn v. Ford Motor Co.* (1990), 48 Ohio St.3d 27, 30. In evaluating a consumer’s claim under R.C. §1345.02(A), “the basic test is one of fairness.” *State ex rel Fisher. v. Rose Chevrolet* (1992), 82 Ohio App.3d 520, 526. For this Court to hold that a junk fax that clearly violates the TCPA does not also violate the CSPA, it would be obliged to find that it is “fair dealing” for a business to ring a consumer’s telephone possibly in the middle of the night, seize the use of the consumer’s fax machine, and

appropriate the consumer's paper and toner or ink to create the business's unwanted advertisement. This form of advertisement would seem to be anything but fair.

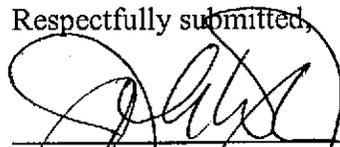
CONCLUSION

Based upon the foregoing, Appellant respectfully moves for the Court's reconsideration of Syllabus ¶3 of its recent ruling in this matter, and the modification of that Syllabus to read as follows:

“In regard to a solicitation directed to a consumer, a violation of the Telephone Consumer Protection Act, 47 U.S.C. §227, *et seq.* (“TCPA”), constitutes an unfair or deceptive action or practice and, therefore, a violation of R.C. §1345.02(A) of the Consumer Sales Practices Act.”

Alternatively, at minimum, Appellant respectfully requests that this Court declare that any unsolicited fax advertisement that violates the TCPA, and constitutes a “consumer transaction” under the CSPA, also violates the CSPA because it is an unfair or deceptive act or practice in violation of R.C. §1345.02(A).

Respectfully submitted,



John W. Ferron (0024532)
(COUNSEL OF RECORD)
jfferron@ferronlaw.com

Lisa A. Wafer (0074034)
lwafer@ferronlaw.com

Jessica G. Fallon (0079169)
jfallon@ferronlaw.com

FERRON & ASSOCIATES, LPA
580 North Fourth Street, Suite 450
Columbus, Ohio 43215-2125
(614) 228-5225, 228-3255 fax

Attorneys for Plaintiff-Appellant,
Stanlee E. Culbreath

CERTIFICATE OF SERVICE

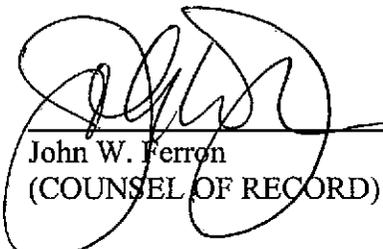
The undersigned hereby certifies that a copy of the foregoing document was served on this 17th day of September, 2007, upon the below named counsel, by regular first class U.S. mail:

Beth Anne Lashuk (0063144)
blashuk@lavellejurca.com
Jeffrey J. Jurca (0012107)
jjurca@lavellejurca.com
LAVELLE JURCA & LASHUK
6797 North High Street, Suite 314
Worthington, Ohio 43085
(614) 846-9137, 846-9181 fax

Attorneys for Appellees,
U.S. Four, Inc., W.D. Equipment Rental Inc.,
John Basinger and Josh Wellington

Karen S. Hockstad (0061308)
khockstad@hockstadlaw.com
HOCKSTAD LAW OFFICE LTD.
5003 Horizons Drive, Suite 200
Columbus, Ohio 43220
(614) 451-4227, 451-3516 fax

Attorney for Appellees,
Karen S. Hockstad and
Golding Enterprises LLC



John W. Ferron (0024532)
(COUNSEL OF RECORD)

APPENDIX

Unreported Decision

Appendix Page Nos.

<i>Charvat v. Continental Mortgage Svcs., Inc.</i> (June 1, 2000), Franklin Cty. C.P. Case No. 99CVH12-10225, unreported (OAG PIF\$ 1882)	1-26
<i>Compoli v. EIP Ltd.</i> (July 2, 2002), Cuyahoga Cty. C.P. Case No. 446780, unreported (OAG PIF# 2085)	27-30
<i>Chambers v. R&C Delivery</i> (May 8, 2002), Cuyahoga Cty. C.P. Case No. 437887, unreported (OAG PIF# 2088)	31
<i>Charvat v. Mobley</i> (Sept. 3, 2002), Franklin Cty. C.P. Case No. 02CVH01-01, unreported (OAG PIF# 2113)	32-47
<i>Grady v. St. Cloud Mtge.</i> (Feb. 28, 2003), Cuyahoga Cty. C.P. Case No. 484945, unreported (OAG PIF# 2135)	48-62
<i>Hirz v. AA Auto Insurance</i> (June 3, 2003), Cuyahoga Cty. C.P. Case No. 485881, unreported (OAG PIF# 2174)	63-68
<i>State ex rel. Petro v. Logic Mortgage</i> (Feb. 1, 2005), Franklin Cty. C.P. Case No. 04CVH-10-11378, unreported (OAG PIF# 2317)	69-71

JUN 02 2000

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

PHILIP J. CHARVAT)
Plaintiff,)
- vs -)
CONTINENTAL MORTGAGE)
SERVICES, Inc., et. al.)
Defendants.)

Case No. 99CVH12-10225
Classification: H—Other Civil
JUDGE: M. WATSON
CONSENT JUDGMENT

FILED COURT
COMMON PLEAS CO. OHIO
FRANKLIN CO. OHIO
00 JUN -1 PM 4:33
CLERK OF COURTS-CN

PREAMBLE

This matter came to be heard upon the filing of a Complaint by Philip J. Charvat charging the Defendant with having violated various provisions of the Telecommunications Act of 1934, as amended by the Telephone Consumer Protection Act 47 U.S.C. §227 ("FCPA"), the Ohio's Consumer Sales Practices Act, Ohio Revised Code §§1345.01 et. seq. ("CSPA"), and Ohio's Telephone Sales Solicitation Act, Ohio Revised Code §§4719.01 et. seq. ("TSSA").

The Plaintiff's first claim alleges telephone calls having many instances of violation of many of the FCC's TCPA regulations to be found at 47 C.F.R. §64.1200.

The Plaintiff's second claim alleges that the violations within the first claim also constitute unfair or deceptive and/or unconscionable business practices in violation of O.R.C. §1345.02 (C) and/or O.R.C. §1345.03 (B). The Plaintiff notes that the legislature granted wide latitude and *encouraged* the Courts to construe acts of suppliers to be unfair and/or deceptive practices. See O.R.C. §1345.02 (B) and (C). The legislature enumerated only 10 *examples* of unfair or deceptive acts in the statute, See O.R.C. §1345.02 (B) (1)-(10), and 7 *examples* of unconscionable acts. See O.R.C. §1345.03 (B) (1)-(7). The Courts of Ohio were authorized to declare *additional* practices unfair or

deceptive in O.R.C. §1345.02 (B) - (C), and have done so hundreds of times. Each of those declarations created an unfair or deceptive act upon the final order of the Court in the instant case. An award of damages for the newly declared act is available in the instant case. See *Brown v. Spears*, *infra*, at Page Three. The illegal practice becomes actionable by the public at large, *without the need to seek the declaration*, upon the filing of the Court's final order and declaration in the Attorney General's CSPA Public Inspection File (hereafter "PIF"). A partial listing of such practices is available from the Attorney General's offices, and is now a volume of nearly two inches in thickness.

The Plaintiff advances his second claim under three *independent* legal theories:

1. In his first prong, that prior Ohio Court rulings have previously declared a failure by a supplier to honor a legal obligation to a consumer to be an unfair and/or deceptive act. Specifically, a supplier who "*avoids, or attempts to avoid those [legal] obligations*" or "*maintains a pattern of inefficiency, incompetency, or continually stalls or evades his legal obligations*" to be an unfair and deceptive act. Those findings of law exist in *Brown v. Lyons*, No. A-742156, Court of Common Pleas, Hamilton County, 1974, 43 O. Misc. 14, 72 O. O. 2nd 216, 332 NE 2nd 380, case #304 in the Ohio Attorney General's Public Inspection File.

The Plaintiff argues that the facts alleged by the Plaintiff constitute a failure of the Defendant to perform his legal obligations to the Plaintiff and that those same acts should be held to violate the CSPA pursuant to *Lyons*, *supra*. Specifically, *Lyons* declared that where a supplier has legal obligations to consumers, a supplier who avoids or attempts to avoid those obligations commits a deceptive act or practice *or* where a supplier stalls or evades performing those obligations. See *Lyons*, *supra* at 8. The TCPA has been in

effect for over 7 years. It is well settled that a business is obligated to familiarize itself with the laws that govern its business practices. The legal obligations imposed by the FCC's TCPA rules are obligations the Defendant owes to all consumers.

The Plaintiff argues that the failure(s) of the Defendant to volunteer the full name, not just the first name, of the solicitor demonstrates the Defendant's avoidance of that FCC requirement. He further argues that the multiple failures to volunteer a phone number or address of the Defendant during solicitations, and the Defendant's recall after a DNC demand, all demonstrate the avoidance and/or stalling and evasion by the Defendant to perform his obligations to the Plaintiff. The Plaintiff notes that the above violations occurred over a period of time that spanned months, even after the Plaintiff personally put the Defendant on notice of the existence of the TCPA. The Defendant's *ongoing* failure to send the Plaintiff the Defendant's DNC Policy was manifested not only in the solicitation calls, but continued when the Defendant still did not send the policy upon the Plaintiff's written request. This stalling continued even when the document was demanded in discovery. Such willful and ongoing attempts to stall and evade and/or avoid the Defendant's obligations are clearly in violation of the *Lyons* declarations. Plaintiff notes that the CSPA states that a deceptive or unconscionable act or practice is a violation "whether it occurs before, during, or *after* the transaction". See O.R.C. §1345.02 (A) and §1345.03 (A).

2. In his second ^{prong}, the Plaintiff relies on the same legal *theory of extension of the CSPA* held in *Thomas v. JEL Home Improvement Co., Inc.* Case No. 94-CV-03486, Municipal Court, Hamilton Co., 9-1-94, Case #1443 in the Ohio Attorney General's Public Inspection File, to extend the CSPA to new acts of suppliers. (See also, the use of

that same theory of extension of the CSPA in *Taylor v. Checkrite, Ltd.*, Case No. C-3-82-608, U.S. Dist. Ct., S.W. Ohio Dist., 1-13-86, PIF #743, *Ellis v. Hensley*, Case No. 39126, Eight Dist. Court of Appeals, Cuyahoga Co., 8-16-79, PIF #275, et. al.) That theory of extension notes that Ohio law at O.R.C. §1345.02 (C) directs this Court to give “due consideration and great weight to federal trade commission orders, and *trade regulation rules and guides...*” in construing “unfair and deceptive”. Within this second prong, the Plaintiff advances that the FCC’s TCPA regulations are *federal trade regulation rules and guides* that should be given the same level of consideration as the FTC regulations. Extension of the CSPA to include violation of other federal acts is well settled. See *Thomas* (Fair Debt Collection Practices Act), *Taylor* (Fair Credit Reporting Act), and *Ellis* (Truth-in-Lending Act), supra.

The Plaintiff argues that the facts alleged by the Plaintiff constitute violations of the TCPA rules by the Defendant, and that those same acts should be held to violate the CSPA.

3. In his third prong, that the Federal Trade Commission (hereafter “FTC”) has itself issued regulations to be found at 16 C.F.R. §310.4 and §310.5 (hereafter “TSR” rules) which impose restrictions of like intent and nearly identical wording to the FCC’s TCPA regulations. In this prong, the Plaintiff relies on the same legal *theory of extension of the CSPA* held in *Brown v. Spears*, No. 8897, Municipal Court of Franklin County, 1973, case #403 in the Ohio Attorney General’s Public Inspection File, to extend the CSPA to new acts of suppliers. (See also, the use of that same theory of extension of the CSPA in *Sonn v. Taylor*, Case No. 1527, Fourth Dist. Court of Appeals, Athens Co., 9-28-93, PIF #1280; *Celebrezze v. Hi-Lo Oil Company*, Case No. 85-CV-01-518, Court of Common

Pleas, Franklin Co., 7-31-85, PIF #730, et. al.) That *theory of extension* notes that State law at O.R.C. §1345.02 (C) directs this Court to give “due consideration and great weight to *federal trade commission* orders, and trade regulation rules and guides...” in construing “unfair and deceptive”. Extension of the CSPA to include violation of other FTC regulations is well settled. See *Brown, Sonn, and Celebrezze*, supra.

The Plaintiff argues that the facts alleged by the Plaintiff constitute violations of the FTC’s TSR rules by the Defendant and that those same acts should be held to violate the CSPA. The TSR rules at 16 C.F.R. §310.4-5 also require the Defendant to have written DNC procedures, to fully and uniquely identify the soliciting agent, to prevent calls to a consumer after a DNC request, and to record DNC requests on a list.

The Plaintiff’s third claim alleges failure to abide by O.A.C. regulation 109:4-3-11(A)(1) by not beginning each solicitation with a clear statement that the purpose of the call was to make a sale. Such a violation has been held to be unfair or deceptive previously in *State ex. Rel. Celebrezze v. National Church Pub.*, No. 85-548-C, Court of Common Pleas, Richland County, 1987, case #608 in the Ohio Attorney General’s Public Inspection File.

The Plaintiff fourth claim alleges violations of the TSSA, all of which are deemed by the TSSA to be violations of the CSPA. See O.R.C. §4719.14, *infra*. In this claim he also seeks statutory exemplary damages for the TSSA violations.

The parties hereto, believing it to be in the best interest of themselves, have agreed to settle and resolve the matters of alleged improper telephone solicitations pursuant to the TCPA; alleged unfair, deceptive, or unconscionable business practices pursuant to the CSPA; and alleged improper registration and solicitation pursuant to the TSSA. By

signing this entry, the Defendant submits to the personal jurisdiction of this Court and consents to the entry of this Consent Judgment. Without admitting or denying any allegations giving rise to a determination that violations of Federal or Ohio laws have occurred, and for settlement purposes only, the Defendant consents to the Court's finding of the following facts and conclusions of law and the imposition of the Order as follows:

FINDING OF FACTS

1. Defendant is and/or has been engaged in operating and maintaining a mortgage refinance business with a place of business at 2887 Johnstown Road, Columbus, Ohio 43219.
2. Defendant, in the course of operating his business, has contacted the Plaintiff via telephone and solicited him for his business.
3. Defendant, Continental Mortgage Services, Inc., is a corporation for profit, organized under the laws of the State of Ohio.
4. Defendant initiated solicitation calls received by the Plaintiff by telephone on three occasions during 1999.
5. On occasion(s), the agents making the calls failed to *volunteer* the full name of the agent, giving just the first name, to the Plaintiff.
6. On multiple occasions, the agents making the calls failed to *volunteer* the phone number or address of the Defendant's business to the Plaintiff without being asked.
7. On one occasion, the call was subsequent to the Plaintiff's demand that the Defendant cease calling the Plaintiff's residence.
8. On multiple occasions, the Plaintiff demanded, but was not sent, the Defendant's Do Not Call Policy.

9. On occasion(s), the agents failed to *begin* with a clear statement that the purpose of the call was to make a sale.

10. On multiple occasions, the agents initiated solicitations received by the Plaintiff without having previously registered with the Ohio Attorney General's office pursuant to the TSSA.

11. The telephone solicitations were the voluntary acts of the free will of the Defendant and/or his agents.

12. The Defendant continued to avoid his obligation to send his Do Not Call policy to the Plaintiff even after he became fully aware of his obligation to send the policy.

13. The Defendant was sent a copy of the Plaintiff's complaint in a demand letter prior to suit being filed.

14. Subsequently, the Defendant's counsel was served with a copy of the Plaintiff's complaint.

15. On at least one occasion, the Defendant's agent hung up on the Plaintiff as he was making requests of the Defendant pursuant to the TCPA.

16. The multiple occurrences of instances of the facts above constitute inefficiency.

17. The multiple occurrences of instances of the facts above constitute stalling.

18. The multiple occurrences of instances of the facts above constitute evasion.

19. The multiple occurrences of instances of the facts above constitute avoidance.

20. The multiple occurrences of instances of the facts above constitute incompetency.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter, issues, and parties to this Consent Judgment.
2. Title 47 U.S.C. §227, Ohio Revised Code §§1345.01 et. seq., Ohio Revised Code §§4719.01 et. seq., and the Ohio Administrative Code govern the business practices of the Defendant.
3. The telephone calls of the Defendant to the Plaintiff were telephone solicitations pursuant to the TCPA.
4. Pursuant to the Telecommunications Act of 1934, at 47 U.S.C. §312(f) and/or prior court rulings, the violations of the FCC rules by the Defendant were willful acts.
5. The Defendant, Continental Mortgage Services, Inc., was a "supplier" within the meaning of Ohio Revised Code §1345.01(C), in that the Defendant is and/or was engaged in the business of effecting or soliciting consumer transactions.
6. The Defendant, Continental Mortgage Services, Inc., was a "salesperson" within the meaning of Ohio Revised Code §§4719.01, in that the Defendant is and/or was engaged in the business of effecting "communications".
7. Pursuant to O.R.C. §2917.21 (A), a supplier is legally obligated to cease calling a consumer's residence upon a Do Not Call demand by a consumer.
8. The Court, having found violation of the FCC's TCPA regulations, finds that those same acts are unfair and/or deceptive acts in violation of O.R.C. §1345.02 (A) and/or §1345.03(A). The Court finds that the legislature encouraged the Courts to liberally interpret and construe the act in the manner advanced by the Plaintiff in his arguments. The Court holds that all three of Plaintiff's asserted prongs have merit and are well taken.

That is, *Lyons* and *Brown*, supra, have already made such regulations “legal obligations” of a supplier to a consumer. Indeed, O.R.C. §2917.21 (A) makes the violation of a Do Not Call request irrefutably a legal obligation. Further, the Court finds that the FCC’s TCPA regulations themselves are *federal trade regulation rules and guides* deserving “due consideration and great weight” and violation of an FCC TCPA regulation is a violation of the CSPA. Lastly, the requirements of the FTC TSR rules are in harmony with the FCC regulations. “It is duty of any court, when construing statute, to give effect to all pronouncements of the statute and to render statute compatible, to harmonize, with other and related enactments whenever and wherever possible.” See O.R.C. §001.52, FN 4. Harmonizing. Therefore, the Court determines and declares that it is an unfair or deceptive and/or unconscionable act or practice for a supplier to engage a consumer in a telephone solicitation transaction and violate any of the FCC’s TCPA regulations. The instant case therefore supports a finding of law that *each* of the following specific telephone solicitation practices are *separate* and *distinct* unfair and/or deceptive practices pursuant to the CSPA:

- a. It is an unfair or deceptive practice for a supplier to *initiate* a telephone call to a consumer and fail to *volunteer* the full name of the telephone agent, not just the first name, without being asked.
- b. It is an unfair or deceptive practice for a supplier to *initiate* a telephone call to a consumer and fail to *volunteer* the phone number or address of the business without being asked.
- c. It is an unfair or deceptive practice for a supplier to *initiate* a telephone call to a consumer and fail to honor a consumer’s prior Do Not Call demand by re-calling that

consumer's residence.

d. It is an unfair or deceptive practice for a supplier to *initiate* a telephone call to a consumer and fail to promptly mail the supplier's Do Not Call policy upon the consumer's demand.

e. It is an unfair or deceptive practice for a supplier to *initiate* a telephone call to a consumer and fail to immediately record a consumer's Do Not Call request on a supplier's Do Not Call list.

9. Exemplary damages for Knowing or Willful violations.

Plaintiff also alleges that Defendant's actions are "knowing and/or willful" within the meaning of the 1934 Communications Act, and prays for treble damages as provided for by the TCPA. In pertinent part, the TCPA provides:

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

47 U.S.C. 227(c)(5).

As with its established construction of the term "knowing," the FCC would apply its long-established definition of "willful" to TCPA actions. This court need not decide whether to adopt the FCC construction of "willful" codified in the Communications Act at 47 U.S.C. §312(f)(1), or a more restrictive standard, as the facts of the case show "willful" within the scope of either 47 U.S.C. §312(f)(1) or other prior court rulings.

Having found that Defendant's violation of the statute was willful and/or knowing, the amount of exemplary damages is entirely within the discretion of this Court.

However, the parties have come to an agreement regarding this matter. The Court is

mindful that there may be some manner of violative conduct more egregious than what this Defendant did and the full effect of the TCPA's trebled damages should be reserved for those most egregious violators. This Defendant's conduct deserves a measured response, however the parties have come to an agreement in this regard.

10. Ohio law pursuant to the CSPA is in agreement with the above Federal Standards with regard to the appropriate definition of "knowingly". The Ohio Supreme Court held that "knowingly" does *not* require that a plaintiff show a defendant knew he was violating the law.

The Consumer Sales Practices Act is a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed pursuant to R.C. 1.11.

* * *

Such an interpretation [that the supplier must know he is violating the law] takes the teeth out of the Consumer Sales Practices Act. Attorney fees would rarely be awarded. * * * many consumers would be persuaded not to sue under the Act. This is inapposite to the General Assembly's intention as expressed... "to provide strong and effective remedies, both public and private, to assure that consumers will recover any damages caused by such acts and practices, and to eliminate any monetary incentive for suppliers to engage in such acts and practices.

* * *

We find that the plain meaning of R.C. 1345.09(F)(2) dictates the *Brooks* result and comports with the legislative intent. The language "* * * knowingly committed an act or practice that violates this chapter" *requires that for liability to attach, a supplier must have committed a deceptive or unconscionable act or practice.* This conduct must violate the Consumer Sales Practices Act. The Statutory language does *not* state that the supplier must act with the knowledge that his acts violate the law, as appellee contends.

* * *

To find otherwise would deny attorney fees to consumers even though the supplier might have blatantly violated the Consumer Sales Practices Act. Such a conclusion flies in the face of the common-law maxim that ignorance of the law is no excuse. (emphasis added)

Einhorn v. Ford Motor Company, et. al., No 88-1621 Supreme Court of Ohio, 48

Ohio St. 3rd 27.

11. There is no settled case law regarding the definition of "knowingly" or "willfully"

pursuant to the TSSA, as it has to date never been contested. However, the TSSA provides that any violation of the TSSA is automatically a violation of the CSPA.

A violation of section 4719.02, 4719.05, or 4719.06; division (C), (D), or (E) of section 4719.07; section 4719.08; or division (A) of section 4719.09 of the Revised Code is an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code.

O.R.C. §4719.14.

The TSSA also provides for attorney fees when damages are awarded and exemplary damages for knowing acts.

(B) If a court awards damages under division (A) of this section, the court shall award damages in an amount that is not less than the amount that the purchaser paid to the telephone solicitor or salesperson and *shall order the telephone solicitor or salesperson to pay reasonable attorney's fees* and court costs to the purchaser.

(C) The court may award the purchaser punitive or exemplary damages upon the purchaser's showing that the telephone solicitor or salesperson *knowingly* committed an act or practice that violated a provision of sections 4719.01 to 4719.18 of the Revised Code." (emphasis added)

O.R.C. §4719.15.

To hold any standard of mens rea in conflict with the CSPA would be obvious error, so the Court adopts the definition of "knowingly" held in *Einhorn*, supra, to be applicable to the TSSA.

12. The failure of the Defendant to meet his obligation to send a DNC Policy after he became aware of such an obligation can not escape a finding of willfulness under any conceivable definition.

13. The Court notes that all the Acts germane to this action explicitly provide for cumulative remedies to a consumer damaged by an entity. See 47 U.S.C. §414 (TCPA), O.R.C. §1345.13 (CSPA), and O.R.C. §4719.16 (TSSA).

ORDER

For the purposes of effecting this Consent Judgment, it is therefore ORDERED, ADJUDGED, and DECREED that:

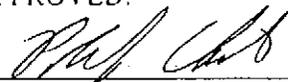
1. The Defendant is to pay the Plaintiff total statutory compensatory damages in his first claim in the amount of \$500.00 (Five Hundred dollars).
2. The Defendant is to pay the Plaintiff total statutory exemplary damages in his first claim in the amount of \$500.00 (Five Hundred dollars).
3. The Defendant is to pay the Plaintiff total statutory compensatory damages in his third claim in the amount of \$400.00 (Four Hundred dollars).
4. The Defendant is to pay the Plaintiff total statutory compensatory damages in his fourth claim in the amount of \$600.00 (Six Hundred dollars).
5. The Defendant is to pay all Court costs associated with this matter.

DATE

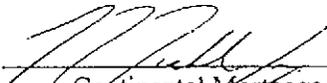


JUDGE

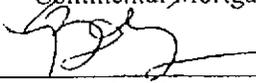
APPROVED:



Philip J. Charvat
636 Colony Drive
Westerville, Ohio 43081-3616
(614) 895-1351
Plaintiff in Pro Per



Continental Mortgage Services, Inc.



Mr. Brian Green (0063921)
Zeiger, Metzger, & Miller LLP
925 Euclid Avenue
Suite 2020
Cleveland, Ohio 44115-1441
ATTORNEY FOR DEFENDANT

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

PHILIP J. CHARVAT)
 636 Colony Drive)
 Westerville, Ohio 43081-3616)
 (614) 895-1351)
 Plaintiff,)
 v.)
 CONTINENTAL MORTGAGE)
 SERVICES, INC.)
 c/o Mr. Brian Green)
 Zeiger, Metzger & Miller LLP)
 925 Euclid Avenue, Suite 2020)
 Cleveland, Ohio 44115-1441)
)
 AND)
)
 JOHN DOE / JANE DOE,)
 Unidentified director/officer of)
 Continental Mortgage Services, Inc.)
 Defendants.)

Case No.

Classification: H—Other Civil

JUDGE:

COMPLAINT

Case No. 10225

FILED
 10-01-11
 10:00 AM
 CLERK OF COURT
 FRANKLIN COUNTY, OHIO

Jurisdiction

1. This cause is before this Court pursuant to the Communications Act of 1934 as amended at 47 U.S.C. §227, the Telephone Consumer Sales Practices Act (“TCPA”); O.R.C §1345, the Ohio Consumer Sales Protection Act (“CSPA”); O.R.C. §4719, the Ohio Telephone Solicitation Sales Act (“TSSA”); 47 C.F.R. §64.1200, the FCC’s TCPA regulations, and the Ohio Administrative Code, §109:4-3-11 (A) (1). This Court has Jurisdiction over the subject matter pursuant to the above cited statutes. The parties either reside or have minimum contacts in Franklin County, Ohio, and are not suffering under any legal disabilities. All pertinent activities took place within this Court’s Jurisdiction. This Court has personal Jurisdiction over the Defendant(s). Pursuant to Ohio Civil Rule 3 this Court is of proper venue. This is an action seeking less than \$50,000.00 (fifty thousand dollars) in damages but more than \$25,000.00 (twenty five thousand dollars) in damages.

Parties

2. The Plaintiff, Philip J. Charvat, hereinafter "Plaintiff", is a resident of Westerville, Franklin County, Ohio where he is provided with local telephone services.

3. The Defendants, Continental Mortgage Services, Inc., unidentified directors/officers, named and unnamed affiliates, and marketing services, hereinafter "Defendant", and named and unnamed agents of any of them, promote and/or provide goods and/or services in Franklin County, Ohio for personal, family, or household purposes, and engaged in those activities, for a profit, via the telephone.

Facts

4. On or about 2/24/1999, 4/28/99, and possibly other dates to be determined in discovery, the Defendant's agent(s) called the Plaintiff by telephone for the purpose of selling residential mortgage refinance services, and/or other goods and services.

5. The call(s) consisted of either a live agent speaking to the Plaintiff or were 'hang up' call(s).

6. The Defendant called the Plaintiff's residence twice on 2/24/99, first about 7:26pm and also about 7 minutes later.

7. The Defendant's agent did not provide her last name in the first call of 2/24/99.

8. The Defendant's agent did not voluntarily provide a phone number or address of the Defendant in the first call of 2/24/99.

9. The Defendant's agent did not begin the first call of 2/24/99 with a clear statement that the purpose of the call was to make a sale of services.

10. The Defendant's agent prematurely hung up the phone on the Plaintiff in the first call of 2/24/99.

11. The Defendant's agent did not voluntarily provide her last name in the second call of 2/24/99.

12. The Defendant's agent did not voluntarily provide a phone number or address of the Defendant in the second call of 2/24/99.
13. The Defendant's agent did not begin the second call of 2/24/99 with a clear statement that the purpose of the call was to make a sale of services.
14. The Plaintiff asked the Defendant's agent to place the Plaintiff's name and phone numbers 895-1351 and 895-8940 on the Defendant's Do Not Call list during the second call of 2/24/99.
15. The Plaintiff asked the Defendant's agent to send the Plaintiff a copy of the Defendant's Do Not Call Maintenance Policy during the second call of 2/24/99.
16. The Defendant's agent(s) failed to record Plaintiff's Do Not Call request on Defendant's Do Not Call list pursuant to the request of 2/24/99.
17. The Defendant's agent(s) called the Plaintiff on 4/28/99.
18. The Defendant's agent did not voluntarily provide her last name in the call of 4/28/99.
19. The Defendant's agent did not voluntarily provide a phone number or address of the Defendant in the second call of 4/28/99.
20. The Defendant's agent did not begin the call of 4/28/99 with a clear statement that the purpose of the call was to make a sale of services.
21. The Plaintiff asked the Defendant's agent to place the Plaintiff's name and phone numbers 895-1351 and 895-8940 on the Defendant's Do Not Call list during the call of 4/28/99.
22. The Plaintiff asked the Defendant's agent to send the Plaintiff a copy of the Defendant's Do Not Call Maintenance Policy during the call of 4/28/99.
23. The Defendant's agent hung up on the Plaintiff when the Plaintiff requested the Defendant's Do Not Call Policy be sent during the call on 4/28/99.
24. The Defendant's agent intentionally ignored the Plaintiff's request(s) made during the call on 4/28/99.

25. The Defendant's agent knowingly ignored the Plaintiff's request(s) made during the call on 4/28/99.

26. The Defendant's agent purposely ignored the Plaintiff's request(s) made during the call on 4/28/99.

27. The Plaintiff has not received a copy of the Defendant's Do Not Call Policy.

28. The Defendant continues to refuse to provide a copy of his Do Not Call Policy to the Plaintiff.

29. The Defendant's agent(s) were not adequately trained in the use of a Do Not Call list.

30. The Defendant's agent(s) failed, at the beginning of the call(s), to include the salesperson's true name.

31. The Defendant's agent(s) failed, at the beginning of the call(s) and before providing any other substantive information, to include the name of the business.

32. The Defendant's agent(s) failed, at the beginning of the call(s) and before providing any other substantive information, to make a clear statement that the purpose of the call was to make a sale.

33. The Defendant's agent(s) failed, at the beginning of the call(s) and before providing any other substantive information, to identify the goods or services being sold.

34. The Defendant's agent(s) were acting of free will in the call(s).

35. The Defendant's agent(s) intended to call the Plaintiff's residence.

36. The Defendant's agent(s) knowingly called the Plaintiff's residence.

37. The Defendant's agent(s) purposely called the Plaintiff's residence.

COUNT ONE

38. Count one includes the allegations in paragraphs 1. through 37. as if rewritten here.

39. The Defendant's calls to the Plaintiff were "telephone solicitations" as defined in the TCPA.

40. The Defendant is a user of public telephonic services.

41. The Plaintiff has been statutorily damaged by \$500.00 for each instance of the Defendant calling the Plaintiff after his first DNC request.

42. The Plaintiff has been additionally statutorily damaged by \$1000.00 for each instance of Defendant calling the Plaintiff after his first DNC request because the calls were knowingly or willfully made to the Plaintiff.

43. The Plaintiff has been statutorily damaged by \$500.00 for each instance of the Defendant failing to send the Defendant's DNC policy to the Plaintiff.

44. The Plaintiff has been additionally statutorily damaged by \$1000.00 for each instance of Defendant failing to send the Defendant's DNC policy to the Plaintiff because the failures were knowing or willful acts.

45. The Plaintiff has been statutorily damaged by \$500.00 for each instance of the Defendant failing to ensure its agents voluntarily provided a phone number or address in each call.

46. The Plaintiff has been additionally statutorily damaged by \$1000.00 for each instance of Defendant failing to ensure its agents voluntarily provided a phone number or address in each call because the failures were knowing or willful acts.

47. The Plaintiff has been statutorily damaged by \$500.00 for each instance of the Defendant failing to record the Plaintiff's DNC request.

48. The Plaintiff has been additionally statutorily damaged by \$1000.00 for each instance of Defendant failing to record the Plaintiff's DNC request because the failures were knowing or willful acts.

49. The Plaintiff has been statutorily damaged by \$500.00 for each instance of the Defendant failing to adequately train the Defendant's agents.

50. The Plaintiff has been additionally statutorily damaged by \$1000.00 for each instance of Defendant failing to adequately train the Defendant's agents because the failures were knowing or willful acts.

COUNT TWO

51. Count two includes the allegations in paragraphs 1. through 50. as if rewritten here.

52. The Defendant's calls are "consumer transactions" as defined in the CSPA.

53. The Defendant is a "supplier" as defined in the CSPA.

54. The Plaintiff is a "consumer" as defined in the CSPA.

55. The Defendant's business has made at least two interstate telephone calls.

56. The Defendant agent(s) made factually incorrect statement(s) in their call(s) to the Plaintiff.

57. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendant calling the Plaintiff's residence after the Plaintiff's first DNC request.

58. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendant failing to send the Defendant's DNC policy to the Plaintiff.

59. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendant failing to ensure its agents voluntarily provided a phone number or address in each call.

60. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendant failing to record the Plaintiff's DNC request.

61. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendant failing to adequately train the Defendant's agents.

62. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendant allowing his agent(s) to convey factually incorrect information in their call(s).

COUNT THREE

63. Count three includes the allegations in paragraphs 1. through 62. as if rewritten here.

64. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendant's failure to state, at the beginning of a solicitation, that the purpose of the call was to make a sale.

COUNT FOUR

65. Count four includes the allegations in paragraphs 1. through 64. as if rewritten here.

66. The Defendant is not registered with the Ohio Attorney General pursuant to the TSSA.

67. The Defendant's calls were "telephone solicitations" as defined in the TSSA.

68. The Defendant's calls were "communications" as defined in the TSSA.

69. The Plaintiff is a "purchaser" as defined in the TSSA.

70. The Defendant is a "telephone solicitor" as defined in the TSSA.

71. The Plaintiff has been statutorily damaged by \$200.00 for each incident of calling and failing, at the beginning, to provide the sales person's true name.

72. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of calling and failing, at the beginning, to provide the sales person's true name because the failure was a knowingly committed act.

73. The Plaintiff has been statutorily damaged by \$200.00 for each incident of calling and failing, at the beginning, to provide the name of the business.

74. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of calling and failing, at the beginning, to provide the name of the business because the failure was a knowingly committed act.

75. The Plaintiff has been statutorily damaged by \$200.00 for each incident of calling and failing, at the beginning, to state that the purpose of the call was to effect a sale.

76. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of

calling and failing, at the beginning, to state that the purpose of the call was to effect a sale because the failure was a knowingly committed act.

77. The Plaintiff has been statutorily damaged by \$200.00 for each incident of calling and failing, at the beginning, to identify the goods or services being sold.

78. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of calling and failing, at the beginning, to identify the goods or services being sold because the failure was a knowingly committed act.

79. The Plaintiff has been statutorily damaged by \$200.00 for each incident of the Defendant calling the Plaintiff without having been previously registered pursuant to the TSSA.

80. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of the Defendant calling the Plaintiff without having been previously registered pursuant to the TSSA because the failure was a knowingly committed act.

WHEREFORE, the Plaintiff demands:

Damages pursuant to the Federal TCPA (Count One)

1) that the Court order the Defendant to make payment to the Plaintiff of \$500.00 for each incident of the calling the Plaintiff after his first DNC request.

2) that the Court order the Defendant to make payment to the Plaintiff of \$1000.00 in exemplary liquidated damage for each incident of the Defendant calling the Plaintiff after his first DNC request because the call(s) were knowing or willful acts.

3) that the Court order the Defendant to make payment to the Plaintiff of \$500.00 for each incident of the Defendant failing to send the Defendant's DNC policy to the Plaintiff.

4) that the Court order the Defendant to make payment to the Plaintiff of \$1000.00 in exemplary liquidated damage for each incident of the Defendant failing to send the Defendant's DNC policy to the Plaintiff because the failure(s) were knowing or willful acts.

5) that the Court order the Defendant to make payment to the Plaintiff of \$500.00 for each incident of the Defendant failing to ensure its agents voluntarily provided a phone number or address in each call.

6) that the Court order the Defendant to make payment to the Plaintiff of \$1000.00 in exemplary liquidated damage for each incident of the Defendant failing to ensure its agents voluntarily provided a phone number or address in each call because the failure(s) were knowing or willful acts.

7) that the Court order the Defendant to make payment to the Plaintiff of \$500.00 for each incident of the Defendant failing to record the Plaintiff's DNC request.

8) that the Court order the Defendant to make payment to the Plaintiff of \$1000.00 in exemplary liquidated damage for each incident of the Defendant failing to record the Plaintiff's DNC request because the failure(s) were knowing or willful acts.

9) that the Court order the Defendant to make payment to the Plaintiff of \$500.00 for each incident of the Defendant failing to adequately train the Defendant's agents.

10) that the Court order the Defendant to make payment to the Plaintiff of \$1000.00 in exemplary liquidated damage for each incident of the Defendant failing to adequately train the Defendant's agents because the failure(s) were knowing or willful acts.

Damages pursuant to the Ohio CSPA (Count Two)

11) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 for each incident of the Defendant calling the Plaintiff and/or the Plaintiff's residence after the Plaintiff's first DNC request

12) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 for each incident of the Defendant failing to send the Defendant's DNC policy to the Plaintiff.

13) that the Court order the Defendant to make payment to the Plaintiff in the amount of

\$200.00 for each incident of the Defendant failing to ensure its agents voluntarily provided a phone number or address in each call.

14) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 for each incident of the Defendant failing to record the Plaintiff's DNC request.

15) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 for each incident of the Defendant failing to adequately train the Defendant's agents.

16) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 for each incident of the Defendant allowing his agent(s) to convey factually incorrect information in their call(s).

Damages pursuant to the Ohio CSPA (Count Three)

17) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 for each incident of calling the Plaintiff and not beginning the message with a clear statement that the purpose of the call(s) was to make a sale.

Damages pursuant to the Ohio TSSA (Count Four)

18) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for each incident of failing to provide the salesperson's true name in the call.

19) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$400.00 in exemplary liquidated damages for each incident of failing, at the beginning, to provide the salesperson's true name in the call because the failures were knowingly committed acts.

20) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for each incident of failing, at the beginning, to state the name of the business in the call.

21) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$400.00 in exemplary liquidated damages for each incident of failing, at the beginning, to state the

name of the business in the call because the failures were knowingly committed acts.

22) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for each incident of failing, at the beginning, to state that the purpose of the call was to effect a sale.

23) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$400.00 in exemplary liquidated damages for each incident of failing, at the beginning, to state that the purpose of the call was to effect a sale because the failures were knowingly committed acts.

24) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for each incident of failing, at the beginning, to identify the goods or services being sold.

25) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$400.00 in exemplary liquidated damages for each incident of failing, at the beginning, to identify the goods or services being sold because the failures were knowingly committed acts.

26) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for calling without having registered as a telephone solicitor pursuant to the TSSA.

27) that the Court order the Defendant to make payment to the Plaintiff in the amount of \$400.00 in statutory exemplary damages for calling without having registered as a telephone solicitor pursuant to the TSSA because the failures were knowingly committed acts.

Declarations requested pursuant to the Ohio CSPA (Count Two)

28) that the Court determine and declare *explicitly*, as a matter of law, pursuant to O.R.C. §1345.02 (C) or O.R.C. §1345.03 (B) that it is an unfair, unconscionable, and deceptive business practice in Ohio in violation of O.R.C. §1345.02 (A) and/or O.R.C. §1345.03 (A) for a supplier to initiate a transaction to a consumer via a telephone call within which the supplier calls the consumer's home after a Do Not Call request has been previously made to that supplier.

29) that the Court determine and declare *explicitly*, as a matter of law, pursuant to O.R.C. §1345.02 (C) or O.R.C. §1345.03 (B) that it is an unfair, unconscionable, and deceptive business practice in Ohio in violation of O.R.C. §1345.02 (A) and/or O.R.C. §1345.03 (A) for a supplier to initiate a transaction to a consumer via a telephone call within which the supplier fails to record a consumer's Do Not Call demand on the suppliers Do Not Call list.

30) that the Court determine and declare *explicitly*, as a matter of law, pursuant to O.R.C. §1345.02 (C) or O.R.C. §1345.03 (B) that it is an unfair, unconscionable, and deceptive business practice in Ohio in violation of O.R.C. §1345.02 (A) and/or O.R.C. §1345.03 (A) for a supplier to initiate a transaction to a consumer via a telephone call within which the supplier fails to *voluntarily* provide the telephone number or address of the business making the call.

31) that the Court determine and declare *explicitly*, as a matter of law, pursuant to O.R.C. §1345.02 (C) or O.R.C. §1345.03 (B) that it is an unfair, unconscionable, and deceptive business practice in Ohio in violation of O.R.C. §1345.02 (A) and/or O.R.C. §1345.03 (A) for a supplier to initiate a transaction to a consumer via a telephone call within which the supplier fails to *voluntarily* provide the *full* name of the agent making the call.

32) that the Court determine and declare *explicitly*, as a matter of law, pursuant to O.R.C. §1345.02 (C) or O.R.C. §1345.03 (B) that it is an unfair, unconscionable, and deceptive business practice in Ohio in violation of O.R.C. §1345.02 (A) and/or O.R.C. §1345.03 (A) for a supplier to initiate a transaction to a consumer via a telephone call within which the supplier fails to promptly send the supplier's Do Not Call policy to the consumer upon the consumer's demand to do so.

33) that the Court determine and declare *explicitly*, as a matter of law, pursuant to O.R.C. §1345.02 (C) or O.R.C. §1345.03 (B) that it is an unfair, unconscionable, and deceptive business practice in Ohio in violation of O.R.C. §1345.02 (A) and/or O.R.C. §1345.03 (A) for a supplier to initiate a transaction to a consumer via a telephone call within which the supplier fails to adequately train the supplier's calling agent in any aspect of relevant Federal or State telemarketing

laws.

Final requests of relief from the Court

34) that the Court order cumulative damage awards pursuant to the Telecommunications Act of 1934, the CSPA, and the TSSA.

35) that the Court order the Defendant(s) to pay reasonable attorney fees in this action pursuant to the Telecommunications Act of 1934, the CSPA and/or the TSSA.

36) that the Court issue a permanent injunction against the Defendant prohibiting him from soliciting any consumer via a telephonic prerecorded message in violation of any of the FCC's TCPA regulations.

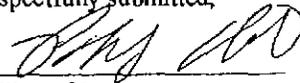
37) that the Court issue a permanent injunction against the Defendant prohibiting him from soliciting any consumer via telephone in violation of any act or practice in violation of the CSPA.

38) that the Court issue a permanent injunction against the Defendant prohibiting him from soliciting any consumer via telephone in violation of any act or practice in violation of the TSSA.

39) that the Court order the Defendant to pay the costs of this action.

40) that the Court order such further relief as justice requires.

Respectfully submitted,



Philip J. Charvat
636 Colony Drive
Westerville, Ohio 43081-3616
(614) 895-1351
Plaintiff in Pro Per

RECEIVED
ATTORNEY GENERAL OF OHIO

JUL 15 2002

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION



JOSEPH R. COMPOLL, JR.	)	CASE NO. 446780
)	
Plaintiff	)	JUDGE: CAROLYN B. FRIEDLAND
)	
-vs-)	
	)	<u>CONSENT JUDGMENT</u>
)	
EIP LIMITED)	
)	
Defendant)	
)	
)	
)	

This matter came to be heard upon the filing of a Complaint by Joseph R. Compoli Jr., alleging that the defendant EIP Limited engaged in acts or practices which violated the federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. 227, and the Ohio Consumer Sales Practices Act (CSPA), Section 1345.02(A), by sending unsolicited advertisements by fax. The TCPA prohibits the transmittal of fax advertisements without first obtaining the "prior express invitation or permission of the recipient". 47 U.S.C. 227(a)(4) and 227(b)(1)(C).

A violation of the TCPA is also a breach of Section 1345.02(A) of the CSPA. See, e.g., *Chambers v. R & C Delivery Inc.*, Case No. 437887 (Cuyahoga, Com. Pl., AG PIF #2070); *Charvat v. Continental Mortgage Services*, Case No. 99CVH12-10225 (Franklin, Com. Pl., OAG PIF# 1882, 2000). Each unsolicited fax advertisement constitutes a separate violation.

VOL 2771 PG 0294

The courts of Ohio are authorized to declare practices unfair or deceptive by R.C. 1345.02 (B)-(C), and have done so many times. Each of those declarations created an unfair or deceptive act upon the final order of the court. An award of statutory damages is available for any act or practice which the court declares to be unfair or deceptive. The illegal practice becomes actionable by the public at large, upon the filing of the court's final order and declaration in the Attorney General's CSPA Public Inspection File (hereafter "PIF").

As noted above, prior Ohio Court rulings have previously declared a violation of the TCPA to be a breach of the CSPA. Furthermore, the legal obligations imposed by the TCPA are obligations the Defendant owes to all consumers.

In the instant case, it is undisputed that the Defendant transmitted three (3) unsolicited fax advertisements to plaintiff Compoli during the year 2000. It is also undisputed that the sending of unsolicited fax advertisements constitutes a violation of the TCPA and CSPA.

The TCPA provides for minimum statutory damages of \$500 per violation, and treble damages (\$1,500) if the fax advertisements were sent "wilfully". 47 U.S.C. 227(b)(3). The definition of the term "wilfully" is merely that the defendant acted voluntarily, and under its own free will, and irrespective of whether the defendant knew that it was acting in violation of the statute. *See, e.g.,* 47 U.S.C. 312(f)(1). In the instant case, it is undisputed that the Defendant acted voluntarily and under its own free will.

The CSPA provides for minimum statutory damages of \$200 per violation. R.C. 1345.09(B). In addition, the CSPA further authorizes an award of reasonable attorneys fees to a prevailing plaintiff. R.C. 1345.02(F). *See, e.g., Einhorn v. Ford Motor Co.,* 48

VOL 2771 PG0295

Ohio St.3d 27 (1990).

The parties hereto, believing it to be in the best interest of themselves, have agreed to settle and resolve the matters of alleged unsolicited fax advertisements pursuant to the TCPA and alleged unfair or deceptive business practices pursuant to the CSPA. By signing this judgment entry, the parties both submit to the personal jurisdiction of this Court and agree to the entry of this Consent Judgment. Without admitting or denying any allegations giving rise to a determination that violations of Federal or Ohio laws have occurred, the Defendant consents to the above findings of facts and conclusions of law, and the imposition of damages, as follows:

1. Plaintiff received three (3) unsolicited fax advertisements from Defendant.

2. Plaintiff is therefore entitled to judgment in the sum of \$4,500 under the federal TCPA (3 x \$1,500) and a judgment in the sum of \$600 under the Ohio CSPA (3 x \$200). This is a total judgment of \$5,100.

3. Plaintiff is further entitled to an award of reasonable attorneys fees under the CSPA. The parties agree to a judgment of reasonable attorneys fees for plaintiff in the sum of \$3,000.

4. The costs of this case shall be assessed to Defendant.

012771 080296

For the purposes of effecting this Consent Judgment, the foregoing is hereby ORDERED, ADJUDGED, and DECREED.

Carolyn B. Friedland
CAROLYN B. FRIEDLAND

July 1, 2002
DATE

James R. Goodluck
JAMES R. GOODLUCK
Attorney for Plaintiff

6/6/02
DATE

RECEIVED FOR FILING

JUL 02 2002

GERALD E. FUERST, CLERK
BY *J. Portas* DEP

Andrea Nelson
ATTORNEY FOR DEFENDANT

6/6/02
DATE

Anthony Huff President S129100
EIP LIMITED

5/29/02
DATE

THE STATE OF OHIO } I. GERALD E. FUERST, CLERK OF
Cuyahoga County } SS. THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL Vol 2771
pg 294 July 2, 2002
NOW ON FILE IN MY OFFICE. 10
WITNESS MY HAND AND SEAL OF SAID COURT THIS
DAY OF July A.D. 2002
GERALD E. FUERST, Clerk
By *[Signature]* Deputy

VOL 2771 PG 297

IN THE COURT OF COMMON PLEAS
 CUYAHOGA COUNTY, OHIO
 CIVIL DIVISION

(F)

KENNY CHAMBERS, et al.	)	CASE NO. 437887
)	
Plaintiffs	)	JUDGE: EILEEN A. GALLAGHER
)	
-vs-	)	<u>JUDGMENT AND ORDER</u> CV01437887
)	
R & C DELIVERY, INC.)	
)	
Defendant	)	13512748

This matter was heard by the court without a jury on the basis of the pleadings and evidence presented. The plaintiffs Kenny Chambers and Nemy Lapurga allege that the defendant R & C Delivery engaged in conduct which violated the federal Telephone Consumer Protection Act (TCPA) and the Ohio Consumer Sales Practices Act (CSPA), Section 1345.02 (A).

The TCPA prohibits the sending of unsolicited advertisements by fax. 47 U.S.C. 227(a)(4) and 227(b)(1)(C). A violation of the TCPA is also a breach of Section 1345.02(A) of the CSPA. See, e.g., *Charvat v. Continental Mortgage Services*, Case No. 99CVH12-10225 (Franklin, Com. Pl., OAG PIP# 1882, 2000). Each unsolicited fax advertisement constitutes a separate violation.

It is the finding of the Court, on the basis of the evidence presented, that the Defendant R & C Delivery violated the TCPA and the CSPA by transmitting two (2) unsolicited fax advertisements to plaintiff Lapurga and six (6) unsolicited faxes to plaintiff Chambers, on various dates during the year 2001. The TCPA provides for minimum damages of \$500 per violation. 47 U.S.C. 227 (b)(3). The CSPA provides for minimum damages of \$200 per violation. R.C. 1345.09(B). In addition, the CSPA further authorizes an award of reasonable attorney's fees to a prevailing plaintiff. R.C. 1345.02(F).

WHEREFORE, on the basis of the aforesaid evidence and findings, the Court hereby grants Judgment to plaintiff Nemy Lapurga in the sum of \$1,200^{LAV} and to plaintiff Kenny Chambers in the sum of \$3,200^{LAV}. The plaintiffs are further granted ~~\$2,000~~^{1500.00 LAV} in reasonable attorney's fees, along with the costs of this action.

IT IS SO ORDERED ADJUDGED AND DECREED.

RECEIVED FOR FILING

MAY 02 2002

GERALD E. FUERST
 By: *[Signature]* Dep.

[Signature]
 JUDGE EILEEN A. GALLAGHER

DATE

5/1/02

VOL 274 || PGO 239

RECEIVED
 ATTORNEY GENERAL OF OHIO

MAY 16 2002

CONSUMER PROTECTION SECTION
 PUBLIC INSPECTION FILE

THE STATE OF OHIO }
 Cuyahoga County } SS. I GERALD E. FUERST, CLERK OF
 THE COURT OF COMMON PLEAS
 WITHIN AND FOR SAID COUNTY
 HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
 TAKEN AND COPIED FROM THE ORIGINAL
 NOW ON FILE IN MY OFFICE
 WITNESS MY HAND AND SEAL OF SAID COURT THIS 9
 DAY OF May A.D. 2002
 GERALD E. FUERST, Clerk
 By: *[Signature]* Deputy

9/3/02

PHILIP J. CHARVAT)
Plaintiff,)
v.)
AMY MOBLEY, et al.)
Defendants.)

Case No. 02 CVH 01-01
Classification: H—Other Civil
JUDGE: J. BESSEY
DECISION AND DEFAULT
JUDGMENT ENTRY

This matter came to be heard upon the filing of a Complaint by Philip J. Charvat charging the Defendants with having violated various provisions of the Telecommunications Act of 1934, as amended by the Telephone Consumer Protection Act 47 U.S.C. §227 ("TCPA"), Ohio's Consumer Sales Practices Act, Ohio Revised Code §1345.01 et seq. ("CSPA"), and Ohio's Telephone Sales Solicitation Act, Ohio Revised Code §4719.01 et seq. ("TSSA"). Defendant Amy Mobley, having failed to answer or otherwise defend as to said complaint; Plaintiff having applied to this Court in writing by Motion for Default Judgment as provided for in Rule 55 (A) of the Ohio Rules of Civil Procedure; this Court having duly considered the Complaint and Motion for Default Judgment and GRANTED said motion does hereby render the following Default Judgment Entry:

FINDING OF FACTS

1. Defendant Mobley is and/or has been engaged in operating and maintaining a business with its principle place of business at 5524 Buenos Aires Blvd, Westerville, Ohio 43081.
2. Defendant Mobley, in the course of operating her business, has contacted the Plaintiff via telephone and solicited him for his business via the use of a pre-recorded message.
3. Defendant Mobley solicited the Plaintiff by telephone during 2001 with a pre-recorded message without having the Plaintiff's prior expressed consent to receive such calls.
4. The recording used in the call failed to state the full and true name of the salesperson.
5. The recording used in the call failed to state the name of the business.
6. The recording used in the call failed to state the phone number or address of the business.
7. The recording used in the call failed to *begin* with a clear statement that the purpose of the call was to make a sale.
8. The Defendant Mobley solicited the Plaintiff without having previously registered with the Ohio Attorney General's office pursuant to the TSSA.
9. The telephone solicitations were the voluntary acts of the free will of the Defendant Mobley and/or her agents.
10. The recording did not make disclosures as required by the TSSA.

RECEIVED
SEP 11 11:00 AM
CONSUMER PROTECTION SECTION

RECEIVED
ATTORNEY GENERAL OF OHIO

SEP 09 2002

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter, issues, and parties to this action.
2. Title 47 U.S.C. §227, Ohio Revised Code §1345.01 et seq., Ohio Revised Code §4719.01 et seq., and the Ohio Administrative Code govern the business practices of Defendant Mobley.
3. Pursuant to the Telecommunications Act of 1934, at 47 U.S.C. §312(f), the violations of the FCC rules by the Defendant were willful acts.
4. Defendant Mobley was a "supplier" within the meaning of Ohio Revised Code §1345.01(C), in that Defendant Mobley is and/or was engaged in the business of effecting or soliciting consumer transactions.
5. Defendant Mobley was a "salesperson" within the meaning of Ohio Revised Code §4719.01, in that Defendant Mobley is and/or was engaged in the business of effecting "communications."
6. The Court, having found violation of the FCC's TCPA regulations, finds that those same acts are unfair and/or deceptive acts in violation of O.R.C. §1345.02 (A) and/or §1345.03(A). Therefore, the Court determines and declares that it is an unfair or deceptive and/or unconscionable act or practice for a supplier to engage a consumer in a telephone solicitation transaction and violate any of the FCC's TCPA regulations. The instant case therefore supports a finding of law that each of the following specific telephone solicitation practices are separate and distinct unfair and/or deceptive practices pursuant to the CSPA:
 - a. It is an unfair or deceptive practice for a supplier to initiate a telephone call to a consumer and use a pre-recorded message to solicit a consumer without that consumer's *prior* expressed consent.
 - b. It is an unfair or deceptive practice for a supplier to initiate a telephone call to a consumer and use a pre-recorded message to solicit a consumer and fail to state the name of the of the business within the pre-recorded message.
 - c. It is an unfair or deceptive practice for a supplier to initiate a telephone call to a consumer and use a pre-recorded message to solicit a consumer via the telephone and fail to state the phone number or address of the business within the pre-recorded message.
7. Defendant has failed to disclose in the first sixty seconds of her telephone solicitation the true name of the solicitor, that its purpose was to effect a sale, and to identify the service being sold in violation of R.C. §4719.01 (A) of the TSSA and R.C. §1345.02 of the CSPA.

DECISION AND ORDER

The Court finds that in the course of her regularly conducted business, Defendant Mobley has engaged in unfair and deceptive business practices in violation of R.C. §1345.01 et seq.; violated R.C. §4719.01 et seq.; and violated 47 U.S.C §227(b) and its FCC regulations. Accordingly, a default judgment is granted in favor of Plaintiff on the issues of violation of the aforementioned Acts.

Plaintiff, upon appearance before this Court, has shown himself to have been statutorily damaged to the extent and in the amounts awarded below.

THEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that:

1. The Court hereby awards a judgment against Defendant Mobley in the amount of \$8,500.00 (Eight Thousand Five Hundred Dollars), together with costs and interest, at the statutory rate of 10 percent per annum from the date of this judgment.
2. It is DECLARED that the acts or practices complained of in Plaintiff's complaint violate Ohio's Consumer Sales Practices Act in the manner set forth above.
3. Defendant, her agents, servants, representatives, salespersons, employees, and all other persons acting directly or indirectly in concert with her, are permanently enjoined from engaging in any unfair, deceptive and unconscionable act or practice in violation of the CSPA, the TSSA, and the TCPA.
4. Defendant Mobley shall pay all costs of this action.

09-01-02
DATE

J. Bessey
JUDGE J. BESSEY

APPROVED:

Philip J. Charvat
Plaintiff Pro Se

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

PHILIP J. CHARVAT
636 Colony Drive
Westerville, Ohio 43081-3616
(614) 895-1351
Plaintiff,

v.

AMY MOBLEY
5524 Buenos Aires Blvd.
Westerville, Ohio 43081
dba JEB Technology
AND

JEB TECHNOLOGY, INC.
c/o Statutory Agent
Address to be determined
AND

"JOHN DOE"
Unidentified director/officer of
JEB TECHNOLOGY, INC.
Address to be determined
AND

"JOHN SMITH"
Address to be determined
Defendants.

Case No.

Classification: H—Other Civil

JUDGE:

COMPLAINT

Jury Demand Endorsed Hereon

FILED
2002 JAN -2 AM 8:04
CLERK OF COURTS-CV

Jurisdiction

1. This cause is before this Court pursuant to the Communications Act of 1934 as amended at 47 U.S.C. §227 (b) and U.S.C. §227 (c), the Telephone Consumer Sales Practices Act ("TCPA"); O.R.C §1345, the Ohio Consumer Sales Protection Act ("CSPA"); O.R.C. §4719, the Ohio Telephone Solicitation Sales Act ("TSSA"); 47 C.F.R. §64.1200, the FCC's TCPA regulations, and the Ohio Administrative Code, §109:4-3-11 (A) (1).
2. This Court has subject matter jurisdiction pursuant to the above cited statutes.
3. The parties either reside or have minimum contacts in Franklin County, Ohio.
4. The parties are not suffering under any legal disabilities.
5. All pertinent activities took place within this Court's Jurisdiction.
6. This Court has personal Jurisdiction over the Defendant(s).
7. Pursuant to Ohio Civil Rule 3 this Court is of proper venue.

Parties

8. The Plaintiff, Philip J. Charvat, hereinafter "Plaintiff", is a resident of Westerville, Franklin County, Ohio where he is provided with local telephone services.
9. The Defendants are Amy Mobley, JEB Technology, Inc., "John Doe", and "John-Smith", and other named and/or unnamed officers, named and unnamed affiliates, and marketing services, hereinafter "Defendants", and named and unnamed agents of any of them.
10. The Defendants "John Doe" and "John Smith" were and/or are persons or entities engaged in business with the named Defendants, but whose true names and addresses are unknown to the Plaintiff. All allegations made against Defendant JEB Technology, Inc. and/or Defendant Amy Mobley in this Complaint are hereby re-alleged, in full, against Defendants John Doe and John Smith.
11. The Defendants promote and/or provide goods and/or services in Franklin County, Ohio for personal, family, or household purposes.
12. The Defendants engage in the above activities, for a profit.

Acts of Agents

13. Whenever it is alleged in this complaint that Defendants did any act, it is meant that Defendants performed or participated in the act; or that Defendants' agents or employees performed or participated in the act on behalf of and/or under the authority of Defendants; or the Defendants ratified and/or accepted the benefit of an act.

Facts

14. Prior to the date of all of the calls that give rise to this case, all of the following cases were on file in the Ohio Attorney General's office in its Public Inspection File (hereafter "PIF"):

- PIF #5, *State ex rel. Celebrezze v. Lloyd; Lloyd's Sports Car Body Shop*, 1983;
(Re: Liability for failure to register fictitious names prior to doing business)
- PIF #304, *Brown v. Lyons*, 1974;
(Re: Liability for failure to perform legal obligations to consumers)
- PIF #322, *Quality Carpet v. Brown*, 1977;
(Re: Liability of Corporate Officers)
- PIF #483, *State ex rel. Brown v. C. Phillip Wells*, 1982;
(Re: Liability for breach of contract)
- PIF #604, *State ex rel. Celebrezze v. WRG Enterprises, Inc.*, 1986;
(Re: Liability for factually incorrect statements or fraudulent misrepresentation)
- PIF #608, *State ex rel. Celebrezze v. National Church Pub.*, 1987;
(Re: Liability for failure to reveal the purpose of a contact is to make a sale)
(Re: Liability for failure to register fictitious names prior to doing business)
- PIF #868, *State ex rel. Celebrezze v. Mosley; Nationwide Promotions.*, 1987;
(Re: Liability for failure to reveal the purpose of a contact is to make a sale)
- ✓ 1727 PIF #1882, *Charvat v. Continental Mortgage Services, Inc.*, June 2, 2000.
(Re: Liability for violation of TCPA regulations)

15. On or about 9/24/2001 (and possibly other dates to be determined in discovery), the Defendants called the Plaintiff's residence by telephone for the purpose of selling their goods and/or services.

16. On or about 9/24/2001 (and possibly other dates to be determined in discovery), the Defendants called the Plaintiff's residence by telephone for the purpose of offering a business opportunity.

17. On or about 9/24/2001 (and possibly other dates to be determined in discovery), the Defendants called the Plaintiff's residence by telephone for the purpose of offering information about how to earn a monthly income.

18. The Defendants use the phone to make telephone solicitations.

19. The Defendants use the phone to make telephone advertisements.
20. The Defendants' telephone calls consisted, at least partially, of a prerecorded message.
21. The Defendants' telephone calls were initiated by automated equipment that caused the Plaintiff's phone to be rung.
22. The Defendants' prerecorded message did not clearly state the true name of the calling entities at the beginning of the message.
23. The Defendants' message implied the caller was associated with "JEB Technology."
24. "JEB Technology" is not registered with the Ohio Secretary of State as a name, or registered fictitious business name, on and before 9/25/2001.
25. The Defendants' message indicated the call was placed from "Clearwater Beach."
26. The Defendants' called from Franklin County, Ohio.
27. The Defendants' prerecorded message did not provide the salesperson's true name.
28. The Defendants' prerecorded message communicated the availability of the Defendants' products and/or services.
29. The Defendants' prerecorded message communicated that the Defendants' services could show Plaintiff how to invest to make money.
30. The Defendants' prerecorded message communicated that the Defendants' services could inform Plaintiff about how to invest in an ATM opportunity.
31. The Defendants' prerecorded message communicated that the Defendants' were available to show the Plaintiff about an investment opportunity.
32. The Defendants' recording(s) failed to begin with a clear statement that the purpose of the call was to make a sale.
33. The Defendants' recording failed, at the beginning, to include the salesperson's true name.
34. The Defendants' recording failed, at the beginning and before providing any other substantive information, to include the true name of the calling entities.

35. The Defendants' recording failed to provide a phone number or address of the caller.
36. The Defendants' recording failed, at the beginning, to identify the goods or services being sold.
37. The Defendants acted of free will to use automated equipment to place the prerecorded call(s).
38. The Defendants intended that their equipment call the Plaintiff's residence.
39. The Defendants knowingly called the Plaintiff's residence with the prerecorded message(s).
40. The Defendants purposely called the Plaintiff's residence with the prerecorded message(s).
41. On or about September 27, 2001 the Plaintiff send a letter to Defendant Mobley and requested that she send her Do Not Call Policy by return mail.
42. Defendant Mobley never sent her Do Not Call Policy by return mail to the Plaintiff.
43. The facts of this case constitute a pattern of inefficiency in performance of Defendants' legal obligations.
44. The facts of this case constitute a pattern of stalling in performance of Defendants' legal obligations.
45. The facts of this case constitute a pattern of evasion in performance of Defendants' legal obligations.
46. The facts of this case constitute a pattern of avoidance in performance of Defendants' legal obligations.
47. The facts of this case constitute a pattern of incompetency in performance of Defendants' legal obligations.

COUNT ONE

48. Count one includes the allegations in paragraphs 1. through 47. as if rewritten here.
49. The Defendants' call(s) to the Plaintiff were "telephone solicitations" as defined in the TCPA.
50. The Defendants' message was an "unsolicited advertisement" as defined in the TCPA.
51. The Defendants are users of public telephonic services.
52. The Plaintiff has been statutorily damaged by \$500.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without his prior expressed consent.

53. The Plaintiff has been additionally statutorily damaged by \$1000.00 for each instance of Defendants calling the Plaintiff with a prerecorded message without his prior expressed consent because the call(s) were knowingly or willfully made to the Plaintiff.

54. The Plaintiff has been statutorily damaged by \$500.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without stating the true name of the entities making the call.

55. The Plaintiff has been additionally statutorily damaged by \$1000.00 for each instance of Defendants calling the Plaintiff with a prerecorded message which did not state the true name of the entities making the call(s) because the call(s) were knowingly or willfully made to the Plaintiff.

56. The Plaintiff has been statutorily damaged by \$500.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without stating a phone number or address of the entities making the call.

57. The Plaintiff has been additionally statutorily damaged by \$1000.00 for each instance of Defendants calling the Plaintiff with a prerecorded message which did not state a phone number or address of the entities making the call(s) because the calls were knowingly or willfully made to the Plaintiff.

58. The Plaintiff has been statutorily damaged by \$500.00 for each instance of the Defendants failing to send their Do Not Call Policy to Plaintiff.

59. The Plaintiff has been additionally statutorily damaged by \$1000.00 for each instance of Defendants failing to send their Do Not Call Policy to Plaintiff because the failure to send it was a knowing or willful act.

COUNT TWO

60. Count two includes the allegations in paragraphs 1. through 59. as if rewritten here.

61. The Defendants' calls are "consumer transactions" as defined in the CSPA.

62. The Defendants are "suppliers" as defined in the CSPA.

63. The Plaintiff is a "consumer" as defined in the CSPA.

64. The Defendants' business has made at least two interstate telephone calls.

65. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendants calling the Plaintiff and/or the Plaintiff's residence with a prerecorded message without the Plaintiff's prior expressed consent.

66. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without stating the true name of the entities making the call.

67. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without stating the phone number or address of the entities making the call.

68. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message and using an unregistered fictitious business name.

69. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message that made a factually incorrect statement.

70. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendants failing to send their Do Not Call Policy to the Plaintiff.

COUNT THREE

71. Count three includes the allegations in paragraphs 1. through 70. as if rewritten here.

72. The Plaintiff has been statutorily damaged by \$200.00 for each instance of the Defendants' failure to state, at the beginning of a solicitation, that the purpose of the call was to make a sale.

COUNT FOUR

73. Count four includes the allegations in paragraphs 1. through 72. as if rewritten here.

74. The Defendants is not registered with the Ohio Attorney General pursuant to the TSSA.

75. The Defendants' calls were "telephone solicitations" as defined in the TSSA.

76. The Defendants' calls were "communications" as defined in the TSSA.

77. The Plaintiff is a "purchaser" as defined in the TSSA.

78. The Defendants are "telephone solicitors" as defined in the TSSA.

79. The Plaintiff has been statutorily damaged by \$200.00 for each incident of calling and failing, at the beginning, to provide the sales person's true name.

80. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of calling and failing, at the beginning, to provide the sales person's true name because the failure was a knowingly committed act.

81. The Plaintiff has been statutorily damaged by \$200.00 for each incident of calling and failing, at the beginning, to provide the true name of the calling entities.

82. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of calling and failing, at the beginning, to provide the true name of the calling entities because the failure was a knowingly committed act.

83. The Plaintiff has been statutorily damaged by \$200.00 for each incident of calling and failing, at the beginning, to state that the purpose of the call was to effect a sale.

84. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of calling and failing, at the beginning, to state that the purpose of the call was to effect a sale because the failure was a knowingly committed act.

85. The Plaintiff has been statutorily damaged by \$200.00 for each incident of calling and failing, at the beginning, to identify the goods or services being sold.

86. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of calling and failing, at the beginning, to identify the goods or services being sold because the failures were a knowing acts.

87. The Plaintiff has been statutorily damaged by \$200.00 for each incident of the Defendants calling the Plaintiff without having been previously registered pursuant to the TSSA.

88. The Plaintiff has been additionally statutorily damaged by \$400.00 for each incident of the Defendants calling the Plaintiff without having been previously registered pursuant to the TSSA because the failure was a knowingly committed act.

WHEREFORE, the Plaintiff demands:

Damages pursuant to the Federal TCPA (Count One)

- 1) that the Court order the Defendants to make payment to the Plaintiff of \$500.00 for each incident of the Defendants calling the Plaintiff with a prerecorded message without his consent.
- 2) that the Court order the Defendants to make payment to the Plaintiff of \$1000.00 in exemplary liquidated damage for each incident of the Defendants calling the Plaintiff with a prerecorded message without his consent because the call(s) were knowing or willful acts.
- 3) that the Court order the Defendants to make payment to the Plaintiff of \$500.00 for each incident of the Defendants calling the Plaintiff with a prerecorded message which did not identify the calling entities at the beginning of the message.
- 4) that the Court order the Defendants to make payment to the Plaintiff of \$1000.00 in exemplary liquidated damage for each incident of the Defendants calling the Plaintiff with a prerecorded message which did not identify the calling entities at the beginning of the message because the call(s) were knowing or willful acts.
- 5) that the Court order the Defendants to make payment to the Plaintiff of \$500.00 for each incident of the Defendants calling the Plaintiff with a prerecorded message which did provide a phone number or address of the entities making the call.
- 6) that the Court order the Defendants to make payment to the Plaintiff of \$1000.00 in exemplary liquidated damage for each incident of the Defendants calling the Plaintiff with a prerecorded message which did not provide a phone number or address of the entities making the call because the call(s) were knowing or willful acts.
- 7) that the Court order the Defendants to make payment to the Plaintiff of \$500.00 for each incident of the Defendants failing to send their Do Not Call Policy to the Plaintiff.

8) that the Court order the Defendants to make payment to the Plaintiff of \$1000.00 in exemplary liquidated damage for each incident of the Defendants failing to send their Do Not Call Policy to the Plaintiff because the failures were knowing or willful acts.

Damages pursuant to the Ohio CSPA (Count Two)

9) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 for each incident of calling the Plaintiff with a prerecorded message without his expressed consent to do so.

10) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 for each incident of calling the Plaintiff with a prerecorded message without stating the true name of the entities making the call at the beginning of the message.

11) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 for each incident of calling the Plaintiff with a prerecorded message without stating a phone number or address of the business making the call.

12) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 for each incident of calling the Plaintiff's residence and using an unregistered fictitious business name.

13) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 for each incident of calling the Plaintiff's residence and making factually incorrect statements.

14) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 for each incident of the Defendant failing to send their Do Not Call Policy to the Plaintiff.

Damages pursuant to the Ohio CSPA (Count Three)

15) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 for each incident of calling the Plaintiff and not beginning the message with a clear statement that the purpose of the call(s) was to make a sale.

Damages pursuant to the Ohio TSSA (Count Four)

16) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for each incident of failing to provide the salesperson's true name in the call.

17) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$400.00 in exemplary liquidated damages for each incident of failing, at the beginning, to provide the salesperson's true name in the call because the failures were knowingly committed acts.

18) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for each incident of failing, at the beginning, to state the name of the calling entities in the call.

19) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$400.00 in exemplary liquidated damages for each incident of failing, at the beginning, to state the name of the calling entities in the call because the failures were knowingly committed acts.

20) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for each incident of failing, at the beginning, to state that the purpose of the call was to effect a sale.

21) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$400.00 in exemplary liquidated damages for each incident of failing, at the beginning, to state that the purpose of the call was to effect a sale because the failures were knowingly committed acts.

22) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for each incident of failing, at the beginning, to identify the goods or services being sold.

23) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$400.00 in exemplary liquidated damages for each incident of failing, at the beginning, to identify the goods or services being sold because the failures were knowingly committed acts.

24) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$200.00 in statutory liquidated damages for calling without having registered as a telephone solicitor pursuant to the TSSA.

25) that the Court order the Defendants to make payment to the Plaintiff in the amount of \$400.00 in statutory exemplary damages for calling without having registered as a telephone solicitor pursuant to the TSSA because the failures were knowingly committed acts.

Declarations requested pursuant to the Ohio CSPA (Count Two)

26) that the Court determine and declare explicitly, as a matter of law, pursuant to O.R.C. §1345.02 (C) or O.R.C. §1345.03 (B) that it is an unfair, unconscionable, and deceptive business practice in Ohio in violation of O.R.C. §1345.02 (A) and/or O.R.C. §1345.03 (A) for a supplier to initiate a transaction to a consumer via a telephone call within which the supplier plays a pre-recorded message to the consumer without the consumer's prior expressed consent.

27) that the Court determine and declare explicitly, as a matter of law, pursuant to O.R.C. §1345.02 (C) or O.R.C. §1345.03 (B) that it is an unfair, unconscionable, and deceptive business practice in Ohio in violation of O.R.C. §1345.02 (A) and/or O.R.C. §1345.03 (A) for a supplier to initiate a transaction to a consumer via a telephone call within which the supplier fails to clearly and fully identify the true name of the business at the beginning of the call.

28) that the Court determine and declare explicitly, as a matter of law, pursuant to O.R.C. §1345.02 (C) or O.R.C. §1345.03 (B) that it is an unfair, unconscionable, and deceptive business practice in Ohio in violation of O.R.C. §1345.02 (A) and/or O.R.C. §1345.03 (A) for a supplier to initiate a transaction to a consumer via a telephone call within which the supplier fails to provide a phone number or address of the business making the call.

Final requests of relief from the Court

29) that the Court order cumulative damage awards pursuant to the Telecommunications Act of 1934, the CSPA, and the TSSA.

30) that the Court order the Defendants to pay reasonable attorney fees in this action pursuant to the CSPA and the TSSA.

31) that the Court issue a permanent injunction against the Defendants prohibiting them from soliciting any consumer via a telephonic prerecorded message in violation of any of the FCC's TCPA regulations.

32) that the Court issue a permanent injunction against the Defendants prohibiting them from soliciting any consumer via telephone in violation of any act or practice in violation of the CSPA.

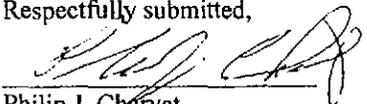
33) that the Court issue a permanent injunction against the Defendants prohibiting them from soliciting any consumer via telephone in violation of any act or practice in violation of the TSSA.

34) that the Court order the Defendants to pay the costs of this action.

35) that the Court order such further relief as justice requires.

Plaintiff Demands a jury trial on all issues.

Respectfully submitted,


Philip J. Charvat
636 Colony Drive
Westerville, Ohio 43081-3616
(614) 895-1351
Plaintiff in Pro Per

RECEIVED
ATTORNEY GENERAL OF OHIO

MAR 11 2003



15352195

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION**

FRANCIS X. GRADY, et al)	CASE NO. 484945	
)		
Plaintiffs	)	JUDGE: RONALD SUSTER
)		
-vs-	)	<u>ORDER AND JUDGMENT</u>
)		
ST. CLOUD MORTGAGE)		
)		
Defendant)		

This matter is before the Court on complaint and evidence submitted by plaintiffs Francis X. Grady and Michael Abel against St. Cloud Mortgage under the federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. 227, and the Ohio Consumer Sales Practices Act (CSPA), R.C. Sec. 1345.02(A) and 1345.09. The TCPA prohibits the sending of advertisements by fax without obtaining the "prior express invitation or permission" of the recipient, 47 U.S.C. 227 (a)(4). Plaintiff, Francis Grady alleges that he received an unsolicited fax advertisement on or about September 26, 2001, and Plaintiff Michael Abel alleges that he received an unsolicited fax advertisement on or about May 20, 2002, advertising goods or services on behalf of the defendant.

The TCPA provides for minimum damages of \$500 per violation. It further provides for treble (\$1500) damages if the unsolicited fax advertisement was sent knowingly or willfully by the defendant.

A defendant has the burden of proof regarding the **affirmative** defense of “prior express invitation or permission.” See, 42 Ohio Jurisprudence 3d, Evidence & Witnesses, Sec. 111. The defendant has submitted no evidence of prior express consent by any recipient, including plaintiffs.

In addition, under Ohio case law, a violation of the TCPA is also a breach of Section 1345.02(A) of the Ohio Consumer Sales Practices Act. See, *Charvat v. Continental Mortgage Services, Inc.*, Case No. 99CVH12-10255 (Franklin County, Com. Pl., OAG PIF #1882, 2000); *Chambers v. R & C Delivery*, Case No. 437887 (Cuyahoga Com Pl., OAG PIF #2070, 2002); *Compoli v. EIP Limited*, Case no. 446780, (Cuyahoga Com Pl., OAG PIF #2073, 2002) . The CSPA provides for **minimum** damages of \$200 against any defendant who commits an act or practice which has been held to previously violate the CSPA. Sec., R.C. 1345.09(B). Furthermore, a plaintiff is entitled to an award of reasonable attorneys fees against any defendant who knowingly engages in such wrongful conduct. See, R.C. 1345.09(F). See also, *Einhorn v. Ford Motor Co.*, 48 Ohio St. 3d 27 (1990). The defendant obviously knew that it was sending the unsolicited fax advertisements at issue in this case, and did what it intended to do.

The amount of damages requested by plaintiffs is uncontested by defendant.

Hence, the Defendant is liable to the plaintiffs under the Ohio CSPA for \$400 damages, together with \$3,000 damages under the TCPA and reasonable attorneys fees in the amount of \$1,122.

WHEREFORE, it is **DECLARED, DECREED and ADJUDGED** that the defendant St. Cloud Mortgage is liable to plaintiffs in the total sum of \$3,400, together with reasonable attorneys fees in the sum of \$1,122 and costs,

IT IS SO ORDERED.

RECEIVED
ATTORNEY GENERAL OF OHIO

MAR 11 2003

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION ALE

Ronald Suster
JUDGE RONALD SUSTER

2.27.03

Date

THE STATE OF OHIO } Cuyahoga County	SS. I. GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <i>Vol 2888</i>	
<i>Case No. 570 Suster filed 2/28/03</i>	
NOW ON FILE IN MY OFFICE.	
WITNESS MY HAND AND SEAL OF SAID COURT THIS <i>7</i>	
DAY OF <i>March</i> A.D. 20 <i>03</i>	
GERALD E. FUERST, Clerk	
By <i>[Signature]</i>	Deputy

RECEIVED FOR FILING

FEB 28 2003

GERALD E. FUERST
BY *[Signature]* 800

VOL 2888 PG 550

2

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION

FILED

2007 OCT 25 A 10: 22

FRANCIS X. GRADY
20950 Center Ridge Rd., Suite 100
Rocky River, Ohio 44116

Plaintiff

-vs-

ST. CLOUD MORTGAGE
983 Mission Del Oro, Suite G
Redding, CA 96003

Defendant

) CASE NO.:
) JUDGE:
) COMPLAINT FOR
) MONEY DAMAGES
) AND INJUNCTIVE RELIEF,
) WITH CLASS ACTION STATUS
)
) JURY DEMAND
) ENDORSED HEREON
)

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

Now comes plaintiff, Francis X. *Grady*, by and through Counsel, who alleges and says as follows:

PRELIMINARY STATEMENT

1. This matter is a civil action for damages and injunctive relief against the defendant, under the federal **Telephone Consumer Protection Act (TCPA)**, Title 47, United States Code, Section 227. This court has jurisdiction and authority to hear and decide the plaintiff's claim, pursuant to Section 227(b)(3), United States Code, Title 47, which grants **exclusive** jurisdiction to State courts.

2. This matter is also a claim for damages and injunctive relief against the defendant, under the Ohio **Consumer Sales Practices Act (CSPA)**, Section 1345.02(A), Ohio Revised Code. This court has jurisdiction and authority to hear and decide the plaintiff's claim, pursuant to Section 1345.04 of the Ohio Revised Code.

FACTS

3. Defendant engaged in acts or practices which violated the federal TCPA and the Ohio CSPA, to the detriment of plaintiff, as herein described in this Complaint.

4. The federal TCPA and Ohio CSPA are both remedial statutes. Section 1.11 of the Ohio Revised Code requires that "Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice."

5. The federal Telephone Consumer Protection Act (TCPA) provides that it is unlawful for any person within the United States to use any telephone facsimile machine to send an unsolicited advertisement to a telephone facsimile machine. See. Section 227(b)(1)(C), United States Code, Title 47.

6. **An** "unsolicited advertisement" is defined by Section 227(a)(4), United States Code, Title 47, to mean "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission."

7. The plaintiff received **an** unsolicited facsimile ("**fax**") advertisement transmitted by or on behalf of the defendant **St.** Cloud Mortgage, advertising the commercial availability or quality of its goods or services, **as** follows:

8. On or about September 26, 2001, the plaintiff Francis **X.** Grady received an unsolicited facsimile ("**fax**") advertisement on his facsimile machine.

9. The aforementioned unsolicited fax **advertisement** was transmitted by or on

behalf of defendant St. Cloud Mortgage, advertising the commercial availability and quality of goods or services.

10. Defendant **did not** obtain "prior express invitation or permission" before sending its fax advertisement.

11. The defendant transacts business in Ohio through solicitation and/or sales of **goods** or services.

12. The defendant **has** committed tortious injury in Ohio, through acts and practices in violation of the federal Telephone Consumer Protection Act and the Ohio Consumer Sales Practices Act, as described in **this** Complaint.

FIRST CLAIM

13. Plaintiff re-alleges paragraphs One (1) through Twelve (12) of **this** Complaint, as if fully rewritten herein.

14. Defendant's aforementioned unsolicited fax advertisement was transmitted in violation of the federal Telephone Consumer Protection Act (TCPA), Section 227(a)(4) and 227(b)(1)(C), United States Code, Title 47.

15. Defendant's transmission of unsolicited fax advertisements constitutes an **unlawful taking** of Plaintiff's fax paper, toner ink and electricity, as well as an unauthorized **use** of Plaintiff's fax machine. The TCPA provides a statutory remedy against Defendant's implicit acts of theft, trespass and invasion of privacy. See, 47 U.S.C. 227(a)(4) and 227(b)(1)(C).

16. The plaintiff is entitled, under Section 227(b)(3), United States Code, Title 47, to bring an action in **this court** to enjoin **further** violations, and to receive **damages**

in the sum of **Five Hundred Dollars (\$500)** for each separate violation, or **Triple Damages (\$1,500)**, if the fax advertisements were transmitted willfully.

17. A defendant acts "willfully" if it acts voluntarily, and under its own free will, regardless of whether the defendant knew ~~that~~ it was acting in violation of the statute.

18. The defendant, **St. Cloud Mortgage**, acted voluntarily, and under its own free will, and therefore **willfully** sent, or caused to be sent, its unsolicited advertisements by fax.

19. The Defendant ~~knew~~ that it was sending, or causing to be sent, unsolicited advertisements by fax.

20. Defendant is therefore liable for the sum of \$1,500 in damages, for each unsolicited fax advertisement, pursuant to Section 227(b)(3)(B), United States Code, Title 47.

CONCLUSION

21. Plaintiff re-alleges paragraphs One (1) through Twenty (20) of this Complaint, as if fully re-written herein.

22. The Defendant's fax advertisements are a "solicitation to supply" goods or services for a "consumer transaction" within the meaning of the Ohio Consumer Sales Practices Act (CSPA), Sections 1345.01(A) and 1345.02(A) of the Ohio Revised Code.

23. Ohio courts have declared that a violation of the federal Telephone Consumer Protection Act (Section 227, United States Code, Title 47) constitutes a

breach of the Ohio Consumer Sales Practices Act, Section 1345.02(A) of the Ohio Revised Code.

24. It is a violation of the federal Telephone Consumer Protection Act, 47 U.S.C. 227 (a)(4), to transmit faxes advertising the availability or quality of **goods** or services, without obtaining the "prior express invitation or permission" of the recipient.

25. Ohio courts have declared that the sending of unsolicited **fax** advertisements, in violation of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. 227(a)(4), is a breach of Section 1345.02(A) of the Ohio Consumer Sales Practices Act, and ~~that~~ each unsolicited fax advertisement is a separate violation

26. Defendant's acts or practices of sending uninvited and unrequested commercial fax advertisements is an **inherent** & deceptive solicitation, within the meaning of R.C. 1345.01(A) and 1345.02(A), since the solicitation is made through the **unlawful taking** of plaintiffs fax paper, toner ~~ink~~ and electricity, as well as an **unauthorized use** of Plaintiffs fax machine.

27. Defendant has engaged in acts or practices, as described in this Complaint, which have been declared by Ohio courts to violate the Ohio Consumer Sales Practices Act (CSPA), Section 1345.02(A) of the Ohio Revised Code, and these court decisions are on file in the Public Inspection File (PIF) of the Attorney General of the State of Ohio, pursuant to R.C. Sections 1345.05 and **1345.09(B)** of the Ohio Revised Code.

28. Defendant has engaged in acts or practices, as described in this Complaint,

which constitute a failure to comply **with** its legal obligations under federal and state law.

29. Plaintiff is entitled, under Section 1345.09 of the Ohio Revised Code, to bring an action in this court to enjoin further violations, and to receive Two Hundred Dollars (\$200) damages for each separate violation, as well as attorneys fees.

30. Defendant **knew** it was sending unsolicited fax advertisements, and thus the Defendant knowingly committed an act or practice that violated Section 1345.02(A) of the Ohio Revised Code, and therefore the Defendant is liable for plaintiff's attorneys fees, pursuant to Section 1345.09(F) of the Ohio Revised Code, for all **time** expended in connection **with** this matter.

THIRD CLAIM

31. Plaintiff re-alleges paragraphs One (1) through Thirty (30) of this Complaint, as if fully rewritten herein.

32. Plaintiff herein sues individually, and also as a member and representative of a class, pursuant to Ohio Civil Rule 23.

33. The aforesaid class includes at least **fifty (50)** or more persons and entities who received Defendant's unsolicited fax advertisements, without Defendant obtaining the prior express invitation or permission of the recipient.

34. The aforesaid class is hereby defined as:

All **persons** and entities, within the **216** and **440** telephone area codes, who received one or more unsolicited fax advertisements on any facsimile machine, transmitted by or on **behalf** of the defendant St. Cloud Mortgage, **at** any time **during**

the years 2000 through 2002. This definition excludes all persons and entities who affirmatively gave prior express permission or invitation to be sent fax advertisements by the defendant.

35. The class is so numerous that joinder of all members is impracticable.

36. Questions of law and fact are common to the class.

37. The claims of the representative plaintiff are typical of the claims of the class.

38. Plaintiff will fairly and adequately protect the interests of the class.

39. This claim is filed, in this court, pursuant to Section 227(b)(3), United States Code, Title 47, to enjoin violations of the federal Telephone Consumer Protection Act (Section 227, United States Code, Title 47), and also for the plaintiff to be awarded Five Hundred Dollars (\$500) for each separate violation, or Triple Damages (\$1,500) if the Defendant's fax advertisements were sent willfully.

40. The Defendant knew that it was sending, or causing to be sent, unsolicited advertisements by fax.

41. The defendant, St. Cloud Mortgage, acted voluntarily, and under its own free will, and therefore willfully sent, or caused to be sent, its unsolicited advertisements by fax.

42. Defendant is therefore liable for the sum of \$1,500 in damages, for each separate unsolicited fax advertisement, pursuant to Section 227(b)(3)(B), United States Code, Title 47.

DEMAND FOR JUDGMENT

WHEREFORE, plaintiff prays for judgment of this Court against Defendant, for all damages allowed by law, for themselves, and the Class plaintiffs. The plaintiff further prays for an award of reasonable Attorneys Fees, and costs of this action, along with an Order enjoining Defendant from transmitting any further unsolicited advertisements by fax to Plaintiffs or to anyone else.

Respectfully submitted,


JOSEPH R. COMPOLI, JR.
(Reg. No. 0031193)

JAMES R. GOODLUCK
(Reg. No. 0041346)
612 East 185th Street
Cleveland, Ohio 44119
(216) 481-6700
Fax: (216) 481-1047
Attorneys for Plaintiff

AND FOR TRIAL BY JURY

Plaintiff hereby demands trial by the number of jurors by law on all issues raised by the plaintiff's pleadings, pursuant to Civil Rule 38.


JOSEPH R. COMPOLI, JR.
JAMES R. GOODLUCK
Attorneys for Plaintiff

47 U.S.C. 227

Chapter 5

227. Restrictions on the use of telephone equipment

a) Definitions

As used in this section-

(1) The term "automatic telephone dialing system" means equipment which has the capacity-

(A) to store or produce telephone numbers to be called, using a random of sequential number generator; and

(B) to dial such numbers.

(2) The term "telephone facsimile machine" means equipment which has the capacity (A) to transcribe text or images or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over regular telephone line onto paper.

(3) The term "telemarketing solicitation" means the initiation of a telephone call or message of the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

(4) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

(b) Restrictions on the use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States--

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice--

(i) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);

(C) to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine; or

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(2) Regulations; exemptions and other provisions

The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the commission--

(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent;

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe--

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines--

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement;

and

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect.

(3) Private right of action

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State--

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount under subparagraph (B) of this paragraph.

OHIO REVISED CODE,

SECTION 1345.01 Definitions

As used in sections 1345.01 to 1345.13 of the Revised Code:

(A) "Consumer transaction" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things.

SECTION 1345.02 (A) Unfair or deceptive consumer sales practices prohibited

(A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this division whether it occurs before, during, or after the transaction. --

SECTION 1345.09 Private remedies

For a violation of Chapter 1345. Of the Revised Code, a consumer has a cause of action and is entitled to relief as follows:

(A) Where the violation was an act prohibited by section 1345.02 or 1345.03 of the Revised Code, the consumer may, in an individual action, rescind the transaction or recover his damages.

(B) Where the violation was an act or practice declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, or an act or practice determined by a court of this state to violate section 1345.02 or 1345.03 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code, the

consumer may rescind the transaction or recover, but not in a class action, three times the amount of this actual damages or two hundred dollars, whichever is greater, or recover damages or other appropriate relief in a class action under Civil Rule 23, as amended.

(C) In any action for rescission, revocation of the consumer transaction must occur within a reasonable time after the consumer discovers or should have discovered the ground for it and before any substantial change in condition of the subject of the consumer transaction.

(D) Any consumer may seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that violates this chapter.

(E) When a consumer commences an individual action for a declaratory judgment or an injunction or a class action under this section, the clerk or court shall immediately mail a copy of the complaint to the attorney general. Upon timely application, the attorney general may be permitted to intervene in a private action or appeal pending under this section. When a judgment under this section becomes final, the clerk of court shall mail a copy of attorney general for inclusion in the public file maintained under division (A)(3) of section 1345.05 of the Revised Code.

(F) The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if either of the following apply:

(1) The consumer complaining of the act or practice that violated this chapter has brought or maintained an action that is groundless, and the consumer filed or maintained the action in bad faith;

(2) The supplier has knowingly committed an act or practice that violates this chapter.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 681, Eff 8-11-78.

RAW LAND

ST. CLOUD MORTGAGE

3106 B. MAIN ST. SUITE 6A
SANTA ANA, CA 92707

**FARM AND RURAL
LOAN CENTER**

May 24, 2002

AGRICULTURAL OR RURAL ONLY - 5 ACRES MINIMUM

- 90% LTV - Purchase
 - 60% LTV - Cashout, Rate, and Term
 - 10% of Own Money Down
-
- Tri-merge Credit Report - 620 Minimum Middle Score - No more than 1x 30 days late on revolving or installment debt.
 - 40% Debt Service Maximum - No farm income considered in DTI loan amounts:
 - \$20,000 to \$50,000 at 7 Years Amortization
 - \$50,000 to \$100,000 at 15 Years Amortization
 - \$100,000 to \$1,000,000 at 25 Years Amortization
 - Fixed Rate - No Pre Pay

FNMA LAND APPRAISAL

- Comparables can be up to 2 years old and 30 miles in radius
- No sub-division or commercial land
- Appraisal comparables have to bracket subject
 - ◊ Example; Subject 100 acres - comparable above and below subject
- Appraisal no more than 6 months old
- No more than 20% of appraised value for improvements

Minimum fee to St. Cloud Mortgage - 2 points or \$2,000 plus closing costs

VICTOR SAUCEDO

OFFICE (714) 988-8384
FAX (714) 686-2112

<http://www.farmerloan.com>

E-mail saucedov@farmerloan.com

**WE LEND IN 45 STATES
WHOLESALE ONLY**

RATES SUBJECT TO CHANGE, Licensed California Department of Real Estate Broker. For use by the lender program only. Equal Housing Lender.

If you would like to be removed from this list, please call 800-927-6721. Thank You

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CIVIL DIVISION

CV02485881



15962444

DONALD HIRZ	)	CASE NO. 485881
)	
Plaintiff	)	JUDGE: BURT W. GRIFFIN
)	
-vs.-	)	<u>CONSENT JUDGMENT</u>
)	
AA AUTO INSURANCE)	
)	
Defendant)	

(F)

This matter arises from a Complaint filed by plaintiff Donald Hirz under the federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 and the Ohio Consumer Sales Practices Act (CSPA), R.C. §§ 1345.02(A) and 1345.09. This complaint is brought against defendants AA Auto Insurance a.k.a. Ledsky Insurance and Warren H. Ledsky.

The TCPA prohibits the transmittal of advertisements by facsimile ("fax") without first obtaining the "prior express invitation or permission of the recipient". 47 U.S.C. 227 §§ (a)(4) and 227(b)(1)(C). In addition, the sending of unsolicited fax advertisements is an unfair and deceptive practice under R.C. § 1345.02(A) of the Ohio CSPA.

Plaintiff alleges that, on or about November 14, 2000, he received an unsolicited fax advertisement promoting the availability of auto insurance from the defendants. It is undisputed that Plaintiff did not ever give "prior express invitation or permission" to be sent this advertisement. It is also undisputed that the Defendants were aware that, on various dates in the year 2000, unsolicited fax advertisements

VOL 2939 REG 220

RECEIVED
ATTORNEY GENERAL OF OHIO
JUL 21 2003
CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

were sent on Defendants' behalf.

Plaintiff was the recipient of one of these unsolicited fax advertisements. Plaintiff alleges that this transmittal was a violation of the TCPA, 47 U.S.C. §§ 227(a)(4) and 227(b)(1)(C). Plaintiff also seeks to pursue a class action, under the TCPA, on behalf of all recipients of the aforesaid fax advertisements.

Plaintiff further alleges that the sending of this unsolicited fax advertisement constitutes the commandeering and use of Plaintiff's fax machine, paper and supplies without prior authorization, and also an invasion of privacy. Plaintiff alleges that this therefore constituted an unfair and deceptive act or practice, in violation of R.C. § 1345.02(A) of the Ohio CSPA and common law. Plaintiff also alleges that it was an unfair or deceptive act or practice, under R.C. § 1345.02(A), for the aforesaid fax advertisement to be sent without a header containing the identity and telephone number of the sender.

A business has a legal obligation to comply with all laws which pertain to it. *See, e.g., Brown v. Lyons*, 72 Ohio Ops. 2d 216, PIF# 304 (1974); *see also, Daniels v. True Acme Heating & Construction*, 47 Ohio Misc.2d 8, PIF# 1171 (1988). Failure to comply with the TCPA or CSPA is a violation of a legal obligation owed to all consumers and the general public.

The TCPA and CSPA are remedial statutes, enacted for the public benefit, and therefore must be liberally interpreted. A recipient of an unsolicited fax advertisement has a cause of action under the TCPA and CSPA for statutory damages and injunctive relief. *See*, 47 U.S.C. § 227(b)(3); R.C. § 1345.09(B) and (D).

YOL 2939 REC 0221

The TCPA provides for minimum statutory damages of \$500 per violation, and treble damages (\$1,500) if the fax advertisements were sent "willfully". 47 U.S.C. 227(b)(3). The definition of the term "willfully" is merely that the defendant acted voluntarily, and under its own free will, and regardless of whether the defendant knew that it was acting in violation of the statute. See, e.g., 47 U.S.C. 312(f)(1); *Smith v. Wade*, 461 U.S. 30, 41 (1983). In the instant case, it is undisputed that the Defendants acted voluntarily and under their own free will.

The Ohio CSPA provides for triple actual damages or mandatory minimum statutory damages of \$200 per violation. R.C. § 1345.09. In addition, the CSPA further authorizes an award of reasonable attorneys fees to a prevailing plaintiff. R.C. § 1345.02(F). See, e.g., *Einhorn v. Ford Motor Co.*, 48 Ohio St.3d 27 (1990).

This court has jurisdiction and authority to hear Plaintiff's claims under the TCPA and CSPA. 47 U.S.C. § 227(b)(3); R.C. § 1345.04; see also, *Compoli v. AVT Corp.*, 116 F.Supp.2d 926, 928 (ND.Ohio. 2000)(state courts have exclusive jurisdiction to hear TCPA claims); *International Science & Tech. Ins. Inc. v. Inacom. Comm. Inc.*, 106 F.3d 1146, 1156 (1997)(no special enabling legislation is necessary for state courts to hear TCPA claims).

The parties hereto, believing it to be in the best interest of themselves, have agreed to resolve the matters at issue in this case. By signing this judgment entry, the parties both submit to the personal jurisdiction of this Court and agree to the entry of this Judgment, including the following findings of fact and conclusions of law.

VOL 2939 PG 222

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. On or about November 14, 2000, the plaintiff Donald Hirz received an unsolicited fax advertisements, transmitted on behalf of AA Auto Insurance a.k.a. Ledsky Insurance and/or Warren H. Ledsky which was sent to Plaintiff without his prior express invitation or permission, during the year 2000.

2. The transmission of a commercial fax advertisement is a violation of 47 U.S.C. § 227(b)(1)(C) of the federal TCPA, if it is sent without the prior express invitation or permission of the recipient. The sending of an unsolicited commercial fax advertisement is also an unfair or deceptive act or practice in violation of R.C. § 1345.02(A) of Ohio CSPA and constitutes an invasion of privacy of the recipient, as protected by those statutes and common law. In addition, it is an unfair and deceptive act or practice, in violation of R.C. § 1345.02(A), for a fax advertisement to be transmitted without a header containing the identity and telephone number of the sender. Each of these acts is an independently actionable and compensable tort.

3. The aforementioned fax advertisements were transmitted "willfully" and as defined by statute and caselaw. The defendants acted voluntarily and under their own free will. It is not a defense, under the TCPA or CSPA, that the Defendants may not have known that their acts violated the law.

4. The defendants, including all owners, officers, agents and employees of the Defendants, are hereby enjoined and prohibited, under 47 U.S.C. § 227(b)(3) and R.C. § 1345.09(D), from transmitting commercial advertisements by fax without first obtaining the prior express invitation or permission of the recipients, and keeping

VOL 2939 PG 223

written records of all such consent. It is an unfair or deceptive practice for unsolicited commercial fax advertisements to be transmitted without the prior express invitation of the recipient, and unless written records of such consent are kept.

5. Plaintiff hereby withdraws and dismisses, with prejudice, all claims for class certification.

6. Plaintiff Donald Hirz is hereby granted Judgment against the Defendants, jointly and separately, in the sum of \$15,000, collectively, on all of his federal, state and common law claims. Plaintiffs are further granted a Judgment against the Defendants, jointly and separately, for reasonable attorneys fees arising from those claims, pursuant to R.C. 1345.09(F) of the CSPA, in the sum of \$20,000 for attorney Joseph R. Compoli Jr., and \$20,000 for attorney James R. Goodluck.

7. All pending Motions by Defendant are hereby withdrawn.

8. The costs of this case shall be assessed against Defendant.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Burt W. Griffin
JUDGE BURT W. GRIFFIN

DATE
Donald Hirz
DONALD HIRZ
for himself

5-29-03
DATE

VOL 2939 PG 0224

FINAL APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS TERMINATION NO. _____
FRANKLIN COUNTY, OHIO BY: _____

STATE OF OHIO, *ex rel.*)
JIM PETRO)
ATTORNEY GENERAL OF OHIO)

Plaintiff)

v.)

LOGIC MORTGAGE)
~~d/b/a Boss Construction, et al~~)

Defendants.)

CASE NO. 04CVH- 10-11378

JUDGE CAIN

**DECISION AND DEFAULT
JUDGMENT ENTRY**

RECEIVED
ATTORNEY GENERAL OF OHIO

MAP, 04 2005

CLERK OF COURTS
2005 FEB 1 11:00 AM
100 - 1001

CONSUMER PROTECTION SECTION
PUBLIC AFFAIRS UNIT

This cause came to be heard upon the Plaintiffs Motion for Default Judgment.

Defendant Logic Mortgage (Defendant) was properly served in this matter and has failed to file an answer to Plaintiffs Complaint, to defend against this motion, or appear before the Court in any manner. The Court finds the motion well taken and hereby grants and sustains Plaintiffs Motion for Default Judgment. The court, based on that motion, Plaintiffs Complaint, and Plaintiffs Memorandum in Support of Requested Relief, hereby renders the following Default Judgment Entry.

FINDINGS OF FACT

1. Defendant is a Canadian company that does business in Franklin County and the State of Ohio, with its office located at 1345 Sherbrooke, Montreal, Quebec H3G1J1.
2. Defendant has placed telemarketing calls to telephone numbers in Franklin County and the State of Ohio listed on the National Do Not Call Registry (Registry) maintained by the Federal Trade Commission.

3. Defendant has placed telemarketing calls in Franklin County and the State of Ohio to the telephone numbers of persons who have previously stated to and requested from the Defendant to not receive telemarketing calls made by or on behalf of the Defendant.

CONCLUSIONS OF LAW

- 1) The action was brought pursuant to Ohio's Do-Not-Call law, R.C. 109.87 and the Consumer Sales Practices Act, R.C. 1345.01 et seq.
- 2) The Attorney General of the State of Ohio is a proper party to bring this action in the public interest pursuant to R.C. 109.87 and R.C. 1345.07.
- 3) The Court has personal jurisdiction over the Defendant.
- 4) Defendant was a "supplier" as that term is defined in R.C. 1345.01(C), since Defendant was engaging in the business of effecting consumer transactions, either directly or indirectly, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) of the Consumer Sales Practices Act.
- 5) Defendant engages in "telephone solicitations" as that term is defined in 47 U.S.C. 227(a)(3) of the Telephone Consumer Protection Act.
- 6) Defendant has violated R.C. 109.87(B)(1), R.C. 1345.02(A) and R.C. 1345.03(A) by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers, including subscribers in Franklin County and elsewhere in the State of Ohio, whose telephone numbers were listed on the Registry. Defendant's conduct is prohibited by 47 U.S.C. 227 and 47 C.F.R. 64.1200(c)(2).
- 7) Defendant has violated R.C. 109.87(B)(1), R.C. 1345.02(A) and R.C. 1345.03(A) by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers who have stated to and requested from Defendant not to receive

telemarketing calls made by or on behalf of the Defendant. Defendant's conduct is prohibited by 47 U.S.C. 227 and 47 C.F.R. 64.1200(d).

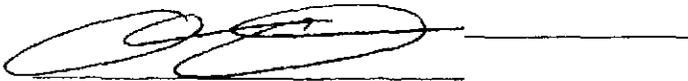
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Defendant, its agents, servants, employees, successors or assigns, and all persons acting in concert and participation with it, directly or indirectly, through any corporate device, partnership, or other association, under this or any other name, are hereby permanently enjoined from engaging in any acts or practices in violation of the Do-Not-Call law, R.C. 109.87 and the Consumer Sales Practices Act, R.C. 1345.01 et seq.
2. Defendant is assessed a civil penalty in the amount of Twenty Five Thousand Dollars (\$25,000.00), to be paid by certified check or money order to the Attorney General of Ohio within fourteen (14) days of the filing of this Entry.
3. Defendant is assessed all court costs of this action.

JUDGE DAVID E. CAIN

APPROVED:

JIM PETRO
Attorney General



DAVID M. DEMBINSKI
Ohio Sup. Ct. Atty. No. 0006978
Assistant Attorney General
Consumer Protection Section
30 East Broad Street – 14th Floor
Columbus, Ohio 43215-3428
614/644-9618
ddembinski@ag.state.oh.us

Counsel for Plaintiff