

STATE OF INDIANA) IN THE MARION _____ COURT
)
COUNTY OF MARION) CAUSE NO.

STATE OF INDIANA,)

Plaintiff,)

v.)

DAMIAN KUTZNER, individually and)
d/b/a Liberty Management, Inc.,)

Defendant.)

4953)
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OCT 09 2008)
CLIFF CARTER)
ATTORNEY GENERAL)

COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES, REASONABLE ATTORNEYS FEES AND COSTS

The Plaintiff, State of Indiana, by Attorney General Stephen Carter and Deputy Attorney General Holly C. Newell, pursuant to the Indiana Telephone Solicitation of Consumers Act, Ind. Code § 24-4.7-5-1, *et seq.*, the Indiana Deceptive Consumer Sales Act and the Indiana Regulation of Automatic Dialing Machines Act, Ind. Code § 25-5-14-13, petitions the Court for injunctive relief, civil penalties, reasonable attorneys fees and costs, and other relief.

PARTIES

1. Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-4.7-5-1, *et seq.* and Ind. Code § 25-5-14-13.
2. Damian Kutzner is an individual residing in Orange County or Riverside County, California.
3. Damian Kutzner is doing or has done business in Indiana as Liberty Management, Inc., an entity located at 660 Newport Center Drive, Suite 200, Newport Beach, California 92660 and/or 511 Cliff Drive, Newport Beach, California 92663.

4. Liberty Management, Inc., is an entity whose corporate status is unknown at this time.

5. Reference in this Complaint to any act of Defendant shall mean the Defendant performed or authorized its agents, employees or sub-contractors to perform such act within the scope of their duties, employment, or agency.

6. Reference in this Complaint to "Listing" refers to the no telephone sales solicitation listing that is published quarterly by the Office of the Attorney General pursuant to Ind. Code 24-4.7-3-1.

VIOLATIONS OF THE INDIANA REGULATION OF
AUTOMATIC DIALING MACHINES ACT

7. From on or before May 11, 2007 and continuing to the present date, Defendant made or caused to be made telephone calls to certain telephone numbers in Indiana.

8. Said telephone calls were made via an automated dialing-announcing device, as defined by Ind. Code § 24-5-14-1, and disseminated a prerecorded voice message.

9. By contacting or attempting to contact telephone subscribers in Indiana using a telephone or telephone line, Defendant is a caller as defined in Ind. Code §24-5-14-2.

10. The recipients of the prerecorded message described in paragraph 8 were subscribers, as the term is defined in Ind. Code 24-5-14-4.

11. The recipients of the prerecorded message described in paragraph 8 did not knowingly or voluntarily request, consent, permit or authorize receipt of said message.

12. The prerecorded message described in paragraph 8 was not preceded by a live operator who obtained the recipient's consent before the message was delivered.

13. By using or connecting to one or more telephone lines in Indiana an automatic dialing-announcing device as described in paragraph 8, Defendant violated Ind. Code §24-5-14-5(b).

14. By committing violations of §24-5-14-5(b), Defendant committed one or more deceptive acts and is subject to the remedies and penalties provided under Ind. Code § 24-5-14-13.

15. One (1) of the telephone calls received by Indiana consumers came from telephone number 616-980-2400.

16. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2400.

17. Four (4) of the telephone calls received by Indiana consumers came from telephone number 616-980-2402.

18. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2402.

19. Four (4) of the telephone calls received by Indiana consumers came from telephone number 616-980-2403.

20. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2403.

21. One (1) of the telephone calls received by Indiana consumers came from telephone number 616-980-2404.

22. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2404.

23. Four (4) of the telephone calls received by Indiana consumers came from telephone number 616-980-2405.

24. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2405.

25. One (1) of the telephone calls received by Indiana consumers came from telephone number 616-980-2417.

26. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2417.

27. Nine (9) of the telephone calls received by Indiana consumers came from telephone number 616-980-2418.

28. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2418.

29. Seven (7) of the telephone calls received by Indiana consumers came from telephone number 616-980-2419.

30. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2419.

31. Four (4) of the telephone calls received by Indiana consumers came from telephone number 616-980-2420.

32. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2420.

33. Four (1) of the telephone calls received by Indiana consumers came from telephone number 616-980-2421.

34. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2421.

35. Two (2) of the telephone calls received by Indiana consumers came from telephone number 616-980-2422.

36. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2422.

37. One (1) of the telephone calls received by Indiana consumers came from telephone number 616-980-2426.

38. At all times relevant to the allegations in this complaint, Liberty Management, Inc., was the subscriber of telephone number 616-980-2426.

39. The Office of the Attorney General has received at least forty-seven (47) complaints from Indiana subscribers regarding the telephone calls described in paragraphs 7 and 8.

VIOLATIONS OF THE TELEPHONE SOLICITATION OF CONSUMERS ACT

40. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 39 above.

41. From on or before May 11, 2007 to and including the present date, Defendant made or caused to be made telephone calls to certain telephone numbers which, at the time of the calls, were on the most recently published Listing.

42. Said telephone calls were made for the purpose of soliciting the sale of consumer goods or services, specifically, debt consolidation, credit cards and/or satellite television service.

43. Said telephone calls were telephone sales calls, as defined by Ind. Code §24-4.7-2-9.

44. By making or causing to be made telephone sales calls, Defendant is a telephone solicitor, as defined by Ind. Code §24-4.7-2-10.

45. By making or causing to be made telephone sales calls to telephone numbers on the Listing, Defendant committed one or more violations of Ind. Code §24-4.7-4-1.

46. By violating Ind. Code §24-4.7-4-1, Defendant committed one or more deceptive acts, as defined by Ind. Code §24-4.7-5-1.

47. The Office of the Attorney General has received at least fifty (50) complaints regarding Defendant's telephone sales calls from Indiana consumers whose telephone numbers were on the Listing at the time of the calls.

WHEREFORE, the Plaintiff, State of Indiana, requests that the Court enter Judgment against the Defendant, as follows:

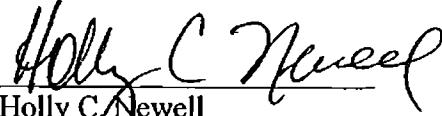
- a. Permanently enjoining the Defendant, his agents, representatives, employees, successors, assigns and any other person acting on behalf of the Defendant from engaging in deceptive acts, specifically, making or causing to be made telephone sales calls in violation of Ind. Code §24-4.7-4, pursuant to Ind. Code §24-4.7-5(1);
- b. Permanently enjoining the Defendant, its agents, representatives, employees, successors, assigns and any other person acting on behalf of the Defendant, from engaging in deceptive acts, specifically, making or causing to be made telephone sales calls in violation of Ind. Code § 24-5-14-5, pursuant to Ind. Code § 24-5-14-13;

- c. Imposing upon the Defendant a civil penalty up to ten thousand dollars (\$10,000.00) for the first violation of Ind. Code §24-4.7-4, and up to twenty-five thousand dollars (\$25,000.00) for each subsequent violation, pursuant to Ind. Code §24-4.7-5-2(2);
- d. Imposing upon the Defendants a civil penalty up to five thousand dollars (\$5,000.00) for each violation of Ind. Code § 24-5-14-5;
- e. Ordering Defendant to pay to the Attorney General all the money Defendant obtained through violation of Ind. Code 24-4.7-4, pursuant to Ind. Code 24-4.7-5-2(3);
- f. Awarding the Office of Attorney General its reasonable costs and attorney fees incurred in the investigation and prosecution of this matter pursuant to Ind. Code §24-4.7-5-2(3), (4) and (5); Ind. Code § 24-5-14-13; and Ind. Code § 24-5-0.5-4(c); and
- g. For all other proper relief.

Respectfully submitted,

STEPHEN CARTER
Attorney General of Indiana
Atty. No. 4150-64

By:


Holly C. Newell
Deputy Attorney General
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