

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

H.L. WATKINS AND COMPANY, INC.,)	
)	
PLAINTIFF,)	
)	CIVIL ACTION FILE NO.
v.)	
)	05-CV-13433-7
LARRY KROUSE d/b/a)	
MY HOT LEADS,)	JURY TRIAL DEMANDED
and DOES 1-10 inclusive,)	
)	
DEFENDANTS.)	
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COMPLAINT

COMES NOW H.L. Watkins and Company, Inc. (hereinafter "Plaintiff" or "Watkins") and files this its Complaint against Larry Krouse d/b/a My Hot Leads (hereinafter "Krouse"), and Does 1-10, respectfully showing the following:

PARTIES, JURISDICTION, AND VENUE

PLAINTIFF:

1.

The Plaintiff, H.L. Watkins and Company, Inc., is a corporation organized and validly existing under the laws of the State of Georgia. Watkins' offices are located in Dekalb County, Georgia.

2.

The claims of Plaintiff arise pursuant to the provisions of the Telephone Consumer Protection Act, 47 U.S.C. §227 (the "TCPA"), 47 U.S.C. § 217, 47 C.F.R. 68.318(d), and Georgia law.

DEFENDANTS:

3.

Defendant Krouse is an individual whose physical and mailing address is 6009 West Parker Road, Suite 149, Plano, Texas 75093. Upon information and belief, Defendant Krouse's primary activities involve (i) advertising to persons and entities his ability to generate "Sales Leads" for them (hereinafter the "Sales Leads Services"), and (ii) contracting with persons and entities to actually generate and furnish such persons and entities with Sales Leads within certain industry segments including, but not limited to, Insurance, Mortgage Brokerage, and Home Remodeling (hereinafter the "Krouse Clients"). Upon information and belief, Defendant Krouse utilizes or has utilized a number of assumed names in his Sales Leads activities including, but not limited to, My Hot Leads. Upon information and belief, Defendant Krouse extensively utilizes "Fax Blasting" activities both in advertising his Sales Leads Services and in fulfilling contracts with the Krouse Clients to furnish them with Sales Leads. Defendant Krouse's unlawful "Fax Blasting" activities involve the transmission of thousands of unsolicited facsimiles, throughout the country, including to citizens of Georgia, in an intentional and persistent course of conduct. Said facsimile transmission activities to Plaintiff and other Georgia citizens have violated certain provisions of (i) the TCPA, (ii) *47 C.F.R. 68.318(d)*, and (iii) *O.C.G.A. § 46-5-25*. Said facsimile transmission activities also constitute the intentional tort of Conversion under Georgia law.

Defendant Krouse (i) solicits business in Georgia (including through use of a local telephone number 404-389-0209), (ii) does business with Krouse Clients in Georgia, and (iii) derives income from Georgia, all through an unlawful persistent course of conduct.

Therefore, Defendant Krouse is subject to the jurisdiction and venue of the Court pursuant to *O.C.G.A. § 9-10-91(1)*, *O.C.G.A. §§ 9-10-91(3)*, and *O.C.G.A. § 9-10-93*. Due and legal service can be perfected upon Defendant Krouse by serving him at 6009 West Parker Road, Suite 149, Plano, Texas 75093, pursuant to *O.C.G.A. § 9-10-94*.

4.

Whenever in this Complaint reference is made to Defendant Krouse, such reference shall also be deemed to include any assumed or trade names that Defendant Krouse utilizes including, but not limited to, My Hot Leads.

5.

Upon information and belief, the Does Defendants 1 through 10 are past or present employees or agents of Defendant Krouse, and/or are Krouse Clients, whose identities are currently unknown, but who committed, abetted, participated in, and/or furthered the unlawful acts set forth in this Complaint. Plaintiff will amend this Complaint, pursuant to *O.C.G.A. § 9-11-15*, with the identity of these Does by their proper names and capacities when that information is ascertained. Does Defendants 1 through 10 are subject to the jurisdiction and venue of this Court pursuant to *O.C.G.A. §§ 9-10-91(3)* and *9-10-93*.

6.

Does Defendants 1 through 10 are hereinafter collectively referred to as the “Does Defendants”.

7.

Defendant Krouse and the Does Defendants are hereinafter collectively referred to as the “Defendants”

8.

Pursuant to controlling legal authority in Georgia and the Federal 11th Circuit, subject matter jurisdiction for the TCPA claims lies exclusively with the state court system of Georgia. Subject matter jurisdiction for the Georgia law claim of Conversion also lies with the state court system of Georgia.

9.

Venue is proper in Dekalb County, Georgia.

FACTUAL ALLEGATIONS PERTINENT TO PLAINTIFF'S CLAIMS

COUNT 1
VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT

10.

Plaintiff realleges and incorporates Paragraphs 1 through 9 above as if fully set forth herein.

11.

Upon information and belief, telephone facsimile machines, computers or other devices are used to transmit unsolicited and unauthorized advertisements, promoting Defendant Krouse's Sales Leads Services and/or for the purpose of generating Sales Leads in fulfillment of contracts with Krouse Clients, to other telephone facsimile machines within the United States including the State of Georgia.

12.

Plaintiff's office is located in Dekalb County, Georgia. Commencing on or about August 10, 2005 and continuing through October 25, 2005 facsimiles from Defendant Krouse, advertising and promoting his Sales Leads Services and/or for the purpose of

generating Sales Leads in fulfillment of contracts with Krouse Clients, were transmitted in an intentional and persistent course of conduct to a large number of telephone facsimile machines including Plaintiff's office telephone facsimile machine. Said transmissions were made without the prior express invitation or permission Plaintiff (hereinafter the "Unsolicited Facsimiles"). Further, Defendants did not have an Established Business Relationship, as that term is defined by the Federal Communications Commission (hereinafter the "FCC") or in the Junk Fax Prevention Act of 2005, with Plaintiff. True and correct copies of the Unsolicited Facsimiles received by Plaintiff are annexed hereto as Exhibit "A" and incorporated herein by reference.

13.

47 U.S.C. § 227(b)(1)(B) makes it unlawful for Defendants to use any telephone facsimile machine, computer or other device to send an unsolicited advertisement to another telephone facsimile machine in the United States.

14.

FCC Rules and Regulations are controlling authority for the interpretation and implementation of the facsimile provisions of the TCPA. *Carnett's, Inc. v. Hammond*, 279 Ga. 125 (2005).

15.

Under the TCPA, and controlling legal authority in Georgia, the person(s) or entity(ies) on whose behalf facsimiles are transmitted are ultimately liable for compliance with the TCPA provision banning unsolicited facsimile advertisements.

16.

Pursuant to controlling FCC Rules and Regulations there is no duty on the part of

Plaintiff or the proposed Class to mitigate damages.

17.

As a result of the foregoing, Plaintiff is entitled to \$500.00 in damages for each TCPA violation pursuant to *47 U.S.C. § 227(b)(3)(B)*.

COUNT 2
TREBLE DAMAGES

18.

Plaintiff realleges and incorporates Paragraphs 1 through 17 above as if fully set forth herein.

19.

Defendants' actions, and/or those of their agents, have shown that the Defendants willfully or knowingly violated the Telephone Consumer Protection Act.

20.

As a result of the foregoing, the Court may, in its discretion, increase the amount of the statutory damages up to an amount equal to \$1,500.00 per TCPA violation pursuant to *47 U.S.C. § 227(b)(3)(C)*.

21.

The Court should use its discretion to increase the amount of statutory damages to an amount equal to \$1,500.00 per TCPA violation due to the Defendants willful and knowing conduct.

COUNT 3
FACSIMILE HEADER VIOLATIONS

22.

Plaintiff realleges and incorporates Paragraphs 1 through 21 above as if fully set

forth herein.

23.

47 C.F.R. 68.318(d) holds that it is unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such message clearly contains, in a margin at the top or bottom of each transmitted page or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. Each of the forgoing requirements is hereinafter referred to as a “Header Requirement”.

24.

The Unsolicited Facsimiles transmitted to Plaintiff fail to identify in a margin at the top or bottom of each transmitted page or on the first page of the transmission the telephone number of the sending machine or of such business, other entity, or individual in direct violation of *47 C.F.R. 68.318(d)*.

25.

As a result of the foregoing, Plaintiff is entitled to \$500.00 in damages for each Header Requirement violation pursuant to *47 C.F.R. 68.318(d)*.

COUNT 4
CONVERSION

26.

Plaintiff realleges and incorporates Paragraphs 1 through 25 above as if fully set forth herein.

27.

Each Unsolicited Facsimile, transmitted by Defendants to Plaintiff's telephone facsimile machine, constitute willful and intentional conversion and unlawful taking by Defendants of Plaintiff's personal property (paper, toner, facsimile receipt capacity, etc.), for the purpose of furthering Defendants' unlawful conduct.

28.

Pursuant to Georgia law the claim of conversion sounds in tort. Further, under Georgia law conversion is considered a "Positive Tort" and therefore there is no duty on the part of Plaintiff or the proposed Class to mitigate damages.

29.

As a direct and proximate result of Defendants' conduct, Plaintiff has sustained economic damages.

30.

Plaintiff is entitled to recover damages in an amount to be proved in a trial before this Court.

31.

Because the conduct of the Defendants has been willful, intentional and reckless, Plaintiff is entitled to an award of punitive damages against the Defendants in an amount of at least \$25,000 or such greater amount as to be awarded in the enlightened conscience of this Court, along with the costs of this litigation, including Plaintiffs' attorney fees.

32.

Under no circumstances will an aggregate amount of all damages greater than Seventy Five Thousand (\$75,000) Dollars be sought by Plaintiff or accepted by her in

this action.

WHEREFORE, Plaintiff respectfully prays for the following relief:

- a. Pursuant to Count 1, that the Court enter judgment in favor of Plaintiff against Defendants, in an amount of \$500.00 for each and every violation of the Telephone Consumer Protection Act;
- b. Pursuant to Count 2, that the Court find that Defendants willfully or knowingly violated the Telephone Consumer Protection Act and increase the statutory damages against the Defendants to a total of \$1,500.00 for each and every violation of the Telephone Consumer Protection Act;
- c. Pursuant to Count 3, that the Court enter judgment in favor of Plaintiff against Defendants, in an amount of \$500.00 for each and every violation of *47 C.F.R. 68.318(d)*;
- d. Pursuant to Count 4, that the Court enter judgment in favor of Plaintiff against Defendants for an amount of damages to be proven at trial;
- e. Pursuant to Count 4, that the Court enter judgment in favor of Plaintiff against Defendants for punitive damages in an amount of at least \$25,000 or such greater amount as to be awarded in the enlightened conscience of the Court;
- f. That all costs of this action, including reasonable attorney's fees, be assessed against Defendants;
- g. Trial by Jury as to all issues so triable;
- h. That the total award to Plaintiff shall under no circumstances exceed Seventy Five Thousand (\$75,000) Dollars.

- i. That Plaintiff be granted such other and further relief as is just and equitable under the circumstances.

This the 8th day of December, 2005.

Respectfully submitted,

By: _____
Henry A. Turner
Georgia State Bar No. 719310

Attorney for Plaintiff
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