

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

H.L. WATKINS AND COMPANY, INC.,)	
)	
PLAINTIFF,)	
)	CIVIL ACTION FILE NO.
v.)	
)	06-CV8980-3
THE HOT LEAD COMPANY, LLC,)	
ROBERT MICHAEL HORNE,)	JURY TRIAL DEMANDED
MICHAEL GREGORY HORNE,)	
and DOES 1-50 inclusive,)	
)	
DEFENDANTS.)	
_____)	

COMPLAINT

COMES NOW H.L. Watkins and Company, Inc. (hereinafter "Plaintiff" or "Watkins") and files this its Complaint against The Hot Lead Company, LLC (hereinafter "HLC"), Robert Michael Horne (hereinafter "R. Horne"), Michael Gregory Horne (hereinafter "M. Horne"), and Does 1-50, 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. Plaintiff's 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, and

Georgia law.

DEFENDANTS:

3.

Defendant HLC is an limited liability company organized under the laws of the State of Nevada and whose physical and mailing address is 16901 Dallas Parkway, Suite 126, Addison, Texas 75001. A true and correct copy of details from the Nevada Secretary of State's records concerning Defendant HLC is annexed hereto as Exhibit "A" and incorporated herein by reference. Upon information and belief, Defendant HLC's primary activities involve (i) advertising to persons and entities its 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 "HLC Clients"). Upon information and belief, Defendant HLC utilizes or has utilized a number of assumed names in its Sales Leads activities including, but not limited to, My Hot Leads. Upon information and belief, Defendant HLC extensively utilizes "Fax Blasting" activities, originated either directly or through others, both in advertising its Sales Leads Services and in fulfilling contracts with the HLC Clients to furnish them with Sales Leads. Defendant HLC's unlawful "Fax Blasting" activities involve the transmission of thousands of unsolicited facsimiles, throughout the country, including to telephone facsimile machines located in the State of Georgia, in an intentional and persistent course of conduct. Said facsimile transmission activities to Plaintiff and other telephone facsimile machines located in the State of Georgia have violated certain provisions of the TCPA, and *O.C.G.A. § 46-5-25*.

Said facsimile transmission activities also constitute the intentional tort of Conversion under Georgia law.

Defendant HLC (i) solicits business in Georgia (including through use of an Atlanta area telephone response number designated as (404-389-0209), (ii) does business with HLC Clients located in Georgia, and (iii) derives income from Georgia through its Sales Lead Services to HLC Clients located in Georgia, all through an unlawful persistent course of conduct. Therefore, Defendant HLC 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 HLC by serving its Registered Agent Millenium Corporate Services at 3914 Seaton Place, Las Vegas, Nevada 89121, pursuant to *O.C.G.A. § 9-10-94*.

4.

Whenever in this Complaint reference is made to Defendant HLC, such reference shall also be deemed to include the any assumed or trade names that Defendant HLC utilizes, including without limitation “My Hot Leads”.

5.

Upon information and belief, Defendant R. Horne is an Owner and Executive Officer of Defendant HLC. Upon information and belief, Defendant R. Horne also uses the name “Mike Horne”. In his capacity as an Owner and Executive Officer of Defendant HLC, Defendant R. Horne had knowledge of and an involvement with the unlawful conduct complained of herein. Consequently, personal liability for Defendant R. Horne arises pursuant to *47 U.S.C. § 217* and Georgia law which provides “a corporate officer who takes part in the commission of a tort by the corporation is personally liable

therefor...”. *Fussell v. Jones*, 198 Ga. App. 399 (1), 401 S.E.2d 593 (1991). Defendant R. Horne is subject to the jurisdiction and venue of the Court pursuant to *O.C.G.A.*

§§ 9-10-91(3) and 9-10-93. Due and legal process can be perfected upon Defendant R. Horne by service of process at 1616 Thistledown Drive, Plano, Texas 75093, pursuant to *O.C.G.A. § 9-10-94*.

6.

Upon information and belief, Defendant M. Horne is an Owner and Executive Officer of Defendant HLC. Upon information and belief, Defendant M. Horne also uses the name “Greg Horne”. In his capacity as an Owner and Executive Officer of Defendant HLC, Defendant M. Horne had knowledge of and an involvement with the unlawful conduct complained of herein. Consequently, personal liability for Defendant M. Horne arises pursuant to *47 U.S.C. § 217* and Georgia law which provides “a corporate officer who takes part in the commission of a tort by the corporation is personally liable therefor...”. *Fussell v. Jones*, 198 Ga. App. 399 (1), 401 S.E.2d 593 (1991). Defendant M. Horne is subject to the jurisdiction and venue of the Court pursuant to *O.C.G.A. §§ 9-10-91(3) and 9-10-93*. Due and legal process can be perfected upon Defendant R. Horne by service of process at 5921 King William Drive, Plano, Texas 75093, pursuant to *O.C.G.A. § 9-10-94*.

7.

Upon information and belief, the Does Defendants 1 through 50 are past or present directors, officers, and/or other employees, agents, or clients of Defendant HLC 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 50 are subject to the jurisdiction and venue of this Court pursuant to *O.C.G.A. §§ 9-10-91(3) and 9-10-93*.

8.

Does Defendants 1 through 50 are hereinafter collectively referred to as the “Does Defendants”.

9.

Defendant HLC, Defendant R. Horne, Defendant M. Horne, and the Does Defendants are hereinafter collectively referred to as the “Defendants”.

10.

Whenever reference is made in this Complaint to any act or transaction of Defendant HLC, or any separate legal entity subsequently joined in this action as a DOES Defendant, such allegation shall be deemed to mean that the said Defendant(s) and its owners, officers, directors, agents, employees, or representatives did or authorized such unlawful acts while engaged in the management, direction, or control of the affairs of the Defendant(s) and while acting within the scope of their respective duties.

11.

Whenever in this Complaint reference is made to any act of any Defendant, such allegation shall be deemed to mean that said Defendant was acting (a) as a principal, (b) under express or implied agency, and/or (c) with actual or ostensible authority to perform the acts so alleged.

12.

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.

13.

Venue is proper in Dekalb County, Georgia.

FACTUAL BACKGROUND

14.

Upon information and belief, HLC advertised and marketed its Sales Leads Services throughout the United States including to citizens of the State of Georgia at all times relevant to this Complaint (hereinafter the “HLC Advertising”). Further, HLC used HLC Advertising to fulfill its contracts with HLC Clients located in the State of Georgia for the generation of Sales Leads for such clients. Upon information and belief, dissemination of the HLC Advertising included the transmission of facsimiles to telephone facsimile machines throughout the United States including to telephone facsimile machines located in the State of Georgia.

15.

On or about May 5, 2005, Defendant HLC was issued an official Citation (No. EB-06-TC-120) by the Federal Communications Commission (hereinafter the “FCC”) for its unlawful activities in transmitting unsolicited advertisements, advertising its products and services, to telephone facsimile machines. A true and correct copy of said Citation is annexed hereto as Exhibit “B” and incorporated herein by reference.

16.

Upon information and belief, Defendant R. Horne and Defendant M. Horne were principals of American Blast Fax, Inc. (hereinafter "ABF").

17.

On or about August 31, 2000, ABF was issued an official Citation (No. EB-00-TC-169) by the FCC for its unlawful activities in transmitting unsolicited advertisements to telephone facsimile machines. A true and correct copy of said Citation is annexed hereto as Exhibit "C" and incorporated herein by reference.

18.

On or about August 22, 2001, the Attorney General of Texas announced that U.S. District Court Judge Sam Sparks had found that ABF, Defendant R. Horne, and Defendant M. Horne had "violated the federal Telephone Consumer Protection Act (TCPA) and the Texas Deceptive Trade Practices Act." In addition to civil penalties of \$465,375, the Court also ordered that ABF, Defendant R. Horne, and Defendant M. Horne were prohibited from:

- Using any fax machine, computer, or other device to send advertisements without the express consent of the recipient;
- Failing to include information disclosing the identity of the fax sender and the time and date sent even if the recipient has given consent to receive fax advertisements;
- Using any fax machine, computer or other device to send fax advertisements if recipients have previously requested that such information not be sent to them;
- Sending or offering to send any fax advertisement on behalf of another person to a fax machine in Texas without disclosing the existence of the TCPA and the court's ruling;
- Misrepresenting their compliance with the TCPA;

- Representing, directly or by implication, that the court and the attorney general's office have approved the practice of sending unsolicited fax advertisements within Texas; and
- Entering into any partnership, corporation, sole proprietorship or any other legal structure for the purpose of avoiding compliance with the court's judgment.

A true and correct copy of the Texas Attorney General's August 22, 2001 announcement is annexed hereto as Exhibit "D" and incorporated herein by reference.

FACTUAL ALLEGATIONS PERTINENT TO PLAINTIFF'S CLAIMS

COUNT 1
VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT

19.

Plaintiff realleges and incorporates Paragraphs 1 through 18 above as if fully set forth herein.

20.

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

21.

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 HLC, advertising and promoting its Sales Leads Services and/or for the purpose of generating Sales Leads in fulfillment of contracts with HLC Clients, were transmitted in an intentional and persistent course of conduct to a large number of telephone facsimile

machines located in the State of Georgia including Plaintiff's office telephone facsimile machine (dedicated telephone line number 404-373-1763). Said transmissions were made without the prior express invitation or permission of Plaintiff (hereinafter the "Unsolicited Facsimiles"). Further, Defendants did not have an Established Business Relationship, as that term is defined by the Federal Communications Commission 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 "E" and incorporated herein by reference.

22.

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.

23.

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).

24.

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.

25.

Pursuant to controlling FCC Rules and Regulations there is no duty on the part of Plaintiff to mitigate damages.

26.

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

27.

Plaintiff realleges and incorporates Paragraphs 1 through 26 above as if fully set forth herein.

28.

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

29.

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)*.

30.

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
CONVERSION

31.

Plaintiff realleges and incorporates Paragraphs 1 through 30 above as if fully set forth herein.

32.

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.

33.

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

34.

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

35.

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

36.

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 Plaintiff's attorney fees.

COUNT 4
INJUNCTIVE RELIEF

37.

Plaintiff realleges and incorporates Paragraphs 1 through 36 above as if fully set

forth herein.

38.

Defendant HLC, including its officers, employees, and/or its respective agents or independent contractors have possession, custody and control of the business records, databases, computer systems and other information necessary to identify telephone facsimile machines located in Georgia to which HLC Advertising was unlawfully transmitted. Unless immediate injunctive relief is ordered, Defendants will alter, erase, delete, destroy or otherwise dispose or remove such systems, records and equipment. For this reason, Plaintiff is entitled to an order prohibiting and enjoining Defendant HLC and its respective officers, employees and agents from altering, deleting or destroying or otherwise disposing of any documents, records, databases or computer systems which are necessary to identify telephone facsimile machines located in Georgia to which HLC Advertising were unlawfully transmitted.

39.

Defendants should be also enjoined from further violations of the Telephone Consumer Protection Act.

40.

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 it 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 for an amount of damages to be proven at trial;
- d. Pursuant to Count 3, 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;
- e. Pursuant to Count 4, that the Court enter a temporary restraining order, interlocutory injunction and permanent injunction enjoining Defendants from further violations of the Telephone Consumer Protection Act;
- f. Pursuant to Count 4, that the Court enter an appropriate order immediately enjoining and restraining Defendant HLC and its officers, employees and agents from altering, erasing, changing, deleting, destroying or otherwise disposing of any documents, records, databases, computer systems and the like currently in his possession or control, or in the possession or control of its agents and contractors which are used or useful in identifying all persons, corporations or other entities to whom facsimile advertisements promoting the products or services of Defendant HLC were transmitted by, or on behalf of, Defendant HLC at any time from August 1, 2005

through June 30, 2006 to telephone facsimile machines located in the State of Georgia;

- g. That all costs of this action, including reasonable attorney's fees, be assessed against Defendants;
- h. Trial by Jury as to all issues so triable;
- i. That the total award to Plaintiff shall under no circumstances exceed Seventy Five Thousand (\$75,000) Dollars; and
- j. That Plaintiff be granted such other and further relief as is just and equitable under the circumstances.

This the 1st day of August, 2006.

Respectfully submitted,

By: _____

Henry A. Turner
Georgia State Bar No. 719310

Attorney for Plaintiff
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