

STATE OF INDIANA)
)
COUNTY OF MARION)

IN THE MARION _____ COURT
CAUSE NO. _____

49D11 11 07 MI 02 5650

STATE OF INDIANA,)
)
Plaintiff,)

v.)

OKIE MILLER aka OLEN MILLER, individually)
and dba GREAT VACATIONS;)

TRAVELINK CORPORATION;)

PROVEN RESULTS DIRECT MARKETING)
INC.; and,)

TRAVEL AND VACATION MARKETING)
SERVICES, INC.,)

Defendants.)

FILED

202

JUL 05 2011

Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

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

The Plaintiff, State of Indiana, by Attorney General Gregory F. Zoeller and Deputy Attorney General Eliza K. Bradley, pursuant to the Indiana Telephone Solicitation of Consumers Act, Ind. Code 24-4.7 (the "TSCA"), the Indiana Regulation of Automatic Dialing Machines Act, Ind. Code 24-5-14 (the "Auto-Dialer Act"), the Indiana Deceptive Consumer Sales Act, Ind. Code 24-5-0.5 (the "DCSA"), and Ind. Code § 23-1-49-1(a), petitions the Court for injunctive relief, civil penalties, reasonable fees and costs, and all other appropriate 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, 24-5-14-13, 24-5-0.5-4(c), and 23-1-49-2(d).

2. OKIE MILLER aka Olen Miller (“Miller”) is an individual residing in the State of Florida. Upon information and belief, Miller is a principal officer in the other defendants, Travellink Corporation, Proven Results Direct Marketing, Inc., and Travel and Vacation Marketing Services, Inc.

3. Miller conducts or has conducted business in the State of Indiana.

4. TRAVELLINK CORPORATION (“Travellink”) is a for-profit corporation organized under the laws of the State of Florida. Travellink conducts or has conducted business in the State of Indiana.

5. PROVEN RESULTS DIRECT MARKETING INC. (“PRDM”) is a for-profit corporation organized under the laws of the State of Florida. PRDM conducts or has conducted business in the State of Indiana.

6. TRAVEL AND VACATION MARKETING SERVICES, INC. (“TVMS”) is a for-profit corporation organized under the laws of the State of Florida. TVMS conducts or has conducted business in the State of Indiana.

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

**DEFENDANTS VIOLATED THE INDIANA
REGULATION OF AUTOMATIC DIALING MACHINES ACT**

8. The Office of the Attorney General has received complaints from Indiana residents regarding approximately fifty-two (52) telephone calls made by Defendants to certain Indiana telephone numbers from March 2011 through and including at least May 2011.

9. Forty-six (46) of the 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.

10. By contacting or attempting to contact telephone subscribers in Indiana using a telephone or telephone line, Defendants are callers as defined in Ind. Code § 24-5-14-2.

11. The recipients of the prerecorded message described above were subscribers, as the term is defined in Ind. Code § 24-5-14-4.

12. The recipients of the prerecorded message described above did not knowingly or voluntarily request, consent, permit or authorize receipt of said message.

13. The prerecorded message disseminated by Defendants was not preceded by a live operator who obtained the recipient's consent before the message was delivered.

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

15. By committing violations of Ind. Code § 24-5-14-5(b), Defendants committed approximately forty-six (46) deceptive acts and are subject to the remedies and penalties provided under Ind. Code § 24-5-14-13.

**DEFENDANTS VIOLATED THE INDIANA
TELEPHONE SOLICITATION OF CONSUMERS ACT**

16. Pursuant to Ind. Code § 24-4.7-3-1, the Office of the Attorney General quarterly publishes a no telephone sales solicitation listing (the "Listing").

17. Of the fifty-two (52) telephone calls made by Defendants from March 2011 through and including at least May 2011, forty-four (44) of the calls were made to certain telephone numbers that were on the Listing at the time of the telephone calls.

18. The Office of the Attorney General has received complaints from Indiana subscribers whose telephone numbers are on the Listing and who received telephone calls from the Defendants.

19. Said telephone calls were made for the purpose of soliciting the sale of consumer goods or services or obtaining information to be used for the sale of consumer goods or services including, without limitation, vacation deals, free vacations, and free airline tickets.

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

21. By making or causing to be made telephone sales calls, Defendants are telephone solicitors, as defined by Ind. Code § 24-4.7-2-10.

22. By making or causing to be made telephone sales calls to telephone numbers on the Listing, Defendants committed approximately forty-four (44) violations of Ind. Code § 24-4.7-4-1.

23. By violating Ind. Code § 24-4.7-4-1, Defendants committed approximately forty-four (44) deceptive acts, as defined by Ind. Code § 24-4.7-5-1.

24. Plaintiff, through the Office of the Attorney General, has authority to seek an injunction for violations of the TSCA pursuant to Ind. Code § 24-4.7-5-2.

25. Under Indiana Trial Rule 65(C), Plaintiff the State of Indiana, as a government entity, need not post security to obtain injunctive relief.

DEFENDANTS VIOLATED
THE INDIANA DECEPTIVE CONSUMER SALES ACT

26. In the telephone sales calls, Defendants offered consumers certain goods and services, including, without limitation, vacation deals, free vacations in various locations, and free airline tickets.

27. Each transaction proposed the telephone sales calls constitutes a consumer transaction as defined in Ind. Code § 24-5-0.5-2(a)(1).

28. By engaging in or soliciting consumer transactions, Defendants are suppliers including as defined by Ind. Code § 24-5-0.5-2 (a)(3).

29. The telephone sales calls and/or auto-dialed prerecorded message calls contain one or more representations that the consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses or benefits it does not have, and which the Defendants knew or reasonably should have known it did not have.

30. Such representations are deceptive acts within the meaning of Ind. Code § 24-5-0.5-3, and subject Defendants to the remedies and penalties under Ind. Code § 24-5-0.5-4(c).

31. Plaintiff, through the Office of the Attorney General, has authority to seek an injunction for violations of the Deceptive Consumer Sales Act pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-4.7-5-2.

32. Plaintiff, through the Office of the Attorney General, has authority to request that any and all contracts obtained by Defendants, through the commission of a deceptive act, be voided pursuant to Ind. Code § 24-5-0.5-4(d) and Ind. Code § 24-4.7-5-3.

33. Any and all contracts obtained by Defendants through their telephone sales calls and/or auto-dialed prerecorded message calls should be voided. Any and all money obtained by Defendants as payment for such contracts must be refunded to the Indiana residents.

34. Pursuant to Indiana Trial Rule 65(C), Plaintiff, the State of Indiana, as a government entity, need not post security to obtain injunctive relief.

**DEFENDANTS VIOLATED INDIANA LAW BY
CONDUCTING BUSINESS IN INDIANA WITHOUT PROPER AUTHORITY**

35. Pursuant to Ind. Code § 23-1-49-1(a), a foreign corporation may not transact business in Indiana until it obtains a Certificate of Authority from the Indiana Secretary of State.

36. By making or causing to be made telephone sales calls into the State of Indiana, Travellink is transacting business in Indiana.

37. Travellink is a foreign corporation, as that term is defined in Ind. Code § 23-1-20-11.

38. To date, Travellink has not obtained a Certificate of Authority from the Indiana Secretary of State to transact business in Indiana.

39. Travellink has violated and continues to violate Ind. Code § 23-1-49-1(a).

40. By making or causing to be made telephone sales calls into the State of Indiana, PRDM is transacting business in Indiana.

41. PRDM is a foreign corporation, as that term is defined in Ind. Code § 23-1-20-11.

42. To date, PRDM has not obtained a Certificate of Authority from the Indiana Secretary of State to transact business in Indiana.

43. PRDM has violated and continues to violate Ind. Code § 23-1-49-1(a).

44. By making or causing to be made telephone sales calls into the State of Indiana, TVMS is transacting business in Indiana.

45. TVMS is a foreign corporation, as that term is defined in Ind. Code § 23-1-20-11.

46. To date, TVMS has not obtained a Certificate of Authority from the Indiana Secretary of State to transact business in Indiana.

47. TVMS has violated and continues to violate Ind. Code § 23-1-49-1(a).

48. By transacting business in Indiana without a certificate of authority, a foreign corporation is liable for a civil penalty of not more than \$10,000. The Indiana Attorney General is authorized to collect penalties under this statute. Ind. Code § 23-1-49-2(d).

49. Due to their violations of Ind. Code § 23-1-49-1(a), Travellink, PRDM, and TVMS are each liable for a civil penalty of not more than \$10,000.

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

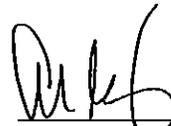
- a. Permanently enjoining the Defendants, their agents, representatives, employees, successors, assigns and any other person acting on behalf of the Defendants from engaging in deceptive acts, specifically, making or causing to be made telephone sales calls in violation of Ind. Code § 24-4.7-4, pursuant to Ind. Code § 24-4.7-5-2(1);
- b. Permanently enjoining the Defendants, their agents, representatives, employees, successors, assigns and any other person acting on behalf of the Defendants, from engaging in deceptive acts, specifically, making or causing to be made telephone calls in violation of Ind. Code § 24-5-14-5, pursuant to Ind. Code § 24-5-14-13;
- c. Imposing upon the Defendants jointly and severally a civil penalty up to \$10,000 for the first violation of Ind. Code § 24-4.7-4, and up to \$25,000 for each for the subsequent forty-three (43) violations, for a sum of \$1,085,000, pursuant to Ind. Code § 24-4.7-5-2(2);
- d. Imposing upon the Defendants jointly and severally a civil penalty up to \$5,000 for each of the forty-six (46) violations of Ind. Code § 24-5-14-5, for a sum of \$230,000;
- e. Ordering Defendants to pay to the Attorney General all the money Defendants obtained or received from aggrieved consumers through violations of Ind. Code § 24-4.7-4, pursuant to Ind. Code § 24-4.7-5-2(3) to be held in escrow for distribution to said aggrieved consumers pursuant to Ind. Code § 24-4.7-5-3;

- f. Imposing upon Defendants a civil penalty of up to five thousand dollars (\$5,000.00) for each violation of Ind. Code § 24-5-0.5-3, if any, pursuant to Ind. Code § 24-5-0.5-4(g);
- g. Ordering that any and all contracts obtained by Defendants resulting from any deceptive acts are voidable pursuant to Ind. Code § 24-4.7-5-3;
- h. Awarding the Office of the Attorney General the maximum civil penalty of \$10,000 against Travellink Corporation, Proven Results Direct Marketing, Inc., and Travel and Vacation Marketing Services, Inc., each for a total of \$30,000 for their violations of Ind. Code § 23-1-49-1(a), pursuant to Ind. Code § 23-1-49-2(d);
- i. 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(4)-(6); and Ind. Code § 24-5-14-13; and,
- j. For all other just and proper relief.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Atty. No. 1958-98

By:



Eliza K. Bradley
Deputy Attorney General
Atty. No. 22284-20

OFFICE OF THE ATTORNEY GENERAL
302 West Washington Street
Government Center South, 5th Floor
Indianapolis, Indiana 46204
E-mail: Eliza.Bradley@atg.in.gov
Telephone: (317) 232-2301
Facsimile: (317) 232-7979