

STATE OF INDIANA )  
 )  
COUNTY OF MARION )

IN THE MARION \_\_\_\_\_ COURT  
CAUSE NO.

STATE OF INDIANA, )  
 )  
Plaintiff, )

v. )

OTIS THOMAS, )  
 )  
Defendant. )  
 )  
 )  
 )  
 )  
 )

49D11 10 09 MI 0 409 49

**FILED**

201 SEP 17 2010

*Elizabeth R. White*  
CLERK OF THE MARION CIRCUIT COURT

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

The Plaintiff, State of Indiana, by Attorney General Gregory F. Zoeller and Deputy Attorney General Holly C. Newell, pursuant to Ind. Code §24-4.7-5-1, *et seq.*, and the Indiana Regulation of Automatic Dialing Machines Act, Ind. Code § 24-5-14-13, 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.*, Ind. Code § 24-5-14-13, and Ind. Code §23-1-49-2(d).

2. 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.

3. Otis Thomas is an Indiana resident who lives at 3011 North Gladstone Avenue, Indianapolis, Indiana.

4. Defendant Otis Thomas transacts or has transacted business with Indiana consumers.

5. Reference in this Complaint to any act of the 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.

**VIOLATIONS OF THE TELEPHONE PRIVACY ACT**

6. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 5.

7. From on or before April 6, 2010, 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.

8. Said telephone calls were made for the purpose of soliciting the sale of consumer goods or services, specifically, prepaid legal plans and services.

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

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

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

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

13. Since April 2010, the Office of the Attorney General has received at least twelve (12) complaints regarding Defendant's telephone sales calls from Indiana consumers whose telephone numbers were on the Listing at the time of the calls.

**VIOLATIONS OF THE INDIANA REGULATION OF  
AUTOMATIC DIALING MACHINES ACT**

14. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 13.

15. From on or before April 6, 2010 to and including the present date, Defendant made or caused to be made telephone calls to certain telephone numbers in Indiana.

16. 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.

17. By contacting or attempting to contact telephone subscribers in Indiana using a telephone or telephone line, Defendants are caller(s) as defined in Ind. Code §24-5-14-2.

18. The recipients of the prerecorded message described in paragraphs 15 and 16 were subscribers, as the term is defined in Ind. Code 24-5-14-4.

19. The recipients of the prerecorded message described in paragraphs 15 and 16 did not knowingly or voluntarily request, consent, permit or authorize receipt of said message.

20. The prerecorded message described in paragraphs 15 and 16 was not preceded by a live operator who obtained the recipient's consent before the message was delivered.

21. By using or connecting to one or more telephone lines in Indiana an automatic dialing-announcing device as described in paragraph 16, Defendant violated Ind. Code §24-5-14-5(b).

22. 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.

23. The Office of the Attorney General has received at least twelve (12) complaints from Indiana subscribers regarding the telephone calls described in paragraphs 15 and 16.


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, 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 § 24-5-14-5, pursuant to Ind. Code § 24-5-14-13;
- c. Imposing upon the Defendant a civil penalty up to \$10,000.00 for the first violation of Ind. Code §24-4.7-4, and up to \$25,000.00 for each subsequent violation, pursuant to Ind. Code §24-4.7-5-2(2);
- d. Imposing upon the Defendant a civil penalty up to five thousand dollars (\$5,000.00) for each violation of Ind. Code §24-5-14-5;
- e. Ordering Defendants to pay to the Attorney General all the money Defendants 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) and Ind. Code §24-5-0.5-4(c)(3); and
- g. For all other proper relief.

I hereby swear and affirm under the penalties for perjury that the foregoing statements are true and correct.

Respectfully submitted,

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

By:   
Holly C. Newell  
Deputy Attorney General  
Atty. No. 25029-29

OFFICE OF THE ATTORNEY GENERAL  
302 West Washington Street  
Indiana Government Center South – 5<sup>th</sup> Floor  
Indianapolis, Indiana 46204  
Telephone: (317) 234-2265  
Facsimile: (317) 232-7979