UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STATE OF MISSOURI ex rel.	)	
JEREMIAH W. (JAY) NIXON,	)	
ATTORNEY GENERAL	)	
	)	**Case No.**
Plaintiff,	)	**Division**
v.	)	
	)	
AT&T CORPORATION	)	
a New York Corporation	)	
	)	
SERVE:	)	
REGISTERED AGENT:	)	
THE CORPORATION COMPANY	)	
120 SOUTH CENTRAL AVENUE	)	
CLAYTON, MISSOURI 63105	)	
	)	
Defendant.	)	

COMPLAINT

COMES NOW Plaintiff, the Attorney General of the State of Missouri, Jeremiah W. (Jay) Nixon, in his official capacity, by his Assistant Attorneys General, and states the following:

I. NATURE OF THE CASE

1. Defendant AT&T CORPORATION ("AT&T "), at least from July 1, 2001 to the present, has engaged in and continues to engage in a plan, program or campaign of

coercive or abusive conduct, involving unsolicited outbound telephone calls to Missouri consumers, in that:

A. AT&T uses manipulative, high pressure sales techniques to coerce Missouri consumers to purchase products, through repeated, continuous unsolicited telemarketing calls to Missouri consumers who have previously requested not to be called or who have previously stated no interest in the product or service being offered; and

B. AT&T denies or interferes with Missouri consumers' requests to be placed on a list of residential telephone numbers of persons who have stated their desire not to be called by or on behalf of AT&T; and

C. AT&T conducts outbound telephone calls to Missouri consumers who have previously requested AT&T to be placed on AT&T 's list of residential telephone numbers of persons who desire not to be called by or on behalf of AT&T; and

D. AT&T blocks, interferes, alters or circumvents the transmission of caller identification information or fails to provide required disclosures, including identification information while making outbound telephone calls to Missouri consumers.

2. There are two primary Federal Laws relating to outbound telephone solicitation sales:

a) The Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227,[1] ("TCPA"), which places restrictions on unsolicited outbound telephone solicitation calls. 47 U.S.C. 227(c)(2) required the Federal

[1]Unless otherwise indicated, all references are to 47 U.S.C. § 227 (1994).

Communications Commission ("FCC") to prescribe regulations to protect telephone subscribers' rights to avoid receiving telephone solicitations to which they object. In response to this requirement, 47 C.F.R. 64.1200,[2] and thereafter was promulgated.

b) The Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101through 15 U.S.C. § 6108[3], ("TCFAPA") which defines deceptive outbound telephone solicitation acts or practices. Prohibited outbound telephone solicitation acts are defined in 16 C.F.R. § 310.[4]

3. In addition, the laws of the State of Missouri, Section 407.020[5] prohibits the act, use or employment of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce.

4. The plan, program or campaign of conduct of AT&T violates portions of each of the Federal and State laws.

II. JURISDICTION

FEDERAL CLAIMS:

5. Plaintiff brings this action pursuant to 47 U.S.C. § 227:

(f) Actions by States

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[2]Unless otherwise indicated, all references are to 47 C.F.R. 64.1200 (1995).

[3]Unless otherwise indicated, all references are to 15 U.S.C. 6101 through 6108 (1994).

[4]Unless otherwise indicated, all references are to 16 C.F.R. § 310 (1995).

[5]Unless otherwise indicated, all statutory references are to Missouri Revised Statues (2000).

(1) Authority of States

Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

(2) Exclusive Jurisdiction of Federal Courts

The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

STATE CLAIMS

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1367 (a) and Chapters 27 and 407 of the Missouri Revised Statutes (as amended), and Article V of the Missouri Constitution.

7. Mo. Rev. Stat. Section 407.100.1-3 provides:

> 1. Whenever it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices or solicitations or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

8. This Court has personal jurisdiction over AT&T because it has registered to do business in the State of Missouri and does business in the State of Missouri

III. VENUE

9. Venue properly lies in this Court pursuant to Title 28 U.S.C. § 1391(b) and pursuant to 47 U.S.C. § 227(f)(4) since a substantial part of the events giving rise to these claims occurred in the Eastern District of Missouri.

IV. PARTIES

10. Plaintiff Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri and brings this action in his official capacity as the chief legal officer of Missouri, pursuant to his common law, constitutional, and statutory authority, including but not limited to Chapters 27 and 407 of the Missouri Revised Statutes (as amended), and regulations promulgated thereunder. Rex M. Burlison, Paul Wilson and Jake Zimmerman are duly appointed and qualified Assistant Attorneys General.

11. Defendant AT&T is a New York Corporation registered to do business in the State of Missouri and doing business in the State of Missouri under the name of "AT&T "and "AT&T Corporation".

V. FACTUAL ALLEGATIONS

12. Defendant AT&T, from at least July 1, 2001, to the present, made or caused to be made unsolicited outbound telephone calls to Missouri consumers, encouraging the purchase of goods or services which were offered by AT&T or on behalf of AT&T.

13. Defendant AT&T, in violation of 15 U.S.C. 6102.(a) and 16 C.F.R. § 310.4, engaged in a pattern of unsolicited telephone calls to Missouri consumers, using manipulative, high pressure sales techniques, through repeated, harassing, unsolicited telephone calls which a reasonable consumer would consider coercive or abusive of such consumers' right to privacy.

14. Defendant AT&T, in violation of 47 C.F.R. 64.1200(e)(2) and 16 C.F.R. 310.4, denied or interfered with the requests of Missouri consumers to be placed on a list of residential telephone numbers of persons who desire not to be called by or on behalf of AT&T .

15. Such outbound telephone calls, in violation of 16 C.F.R. § 310.4, were placed to Missouri consumers who had previously advised AT&T of their desire not to be called by or on behalf of AT&T and/or advised AT&T of their non-interest in the goods or services being offered by AT&T.

16. Such outbound telephone calls, in violation of 16 C.F.R. § 310.4, were placed to Missouri consumers who had previously requested AT&T to be placed on AT&T's do not call list of residential telephone numbers of consumers who desire not to be called by or on behalf of AT&T.

17. Defendant AT&T, in violation of 16 C.F.R. § 310.4 and 47 C.F.R. 64.1200 blocked, interfered with, altered or circumvented the transmission of caller identification information or failed to provide required disclosures, including identification information while making outbound telephone calls to Missouri consumers.

18. 47 C.F.R. 64.1200(e)(2) requires any entity placing unsolicited advertisements by telephone solicitation to keep "a list of persons who do not wish to receive telephone solicitations made by or on behalf of that person or entity." Such a list has come to be known as a "**do not call list**," and a request not to be called has come to be known as a "**do not call request**." 47 C.F.R. 64.1200(e)(2)(iii) requires such "do not call" requests to be recorded, and 47 C.F.R. 64.1200(e)(2)(vi) requires such "do not call" requests to be maintained and honored for 10 years.

19. 47 C.F.R. 64.1200(e)(2)(iv) requires that "a person or entity making a telephone solicitation must provide the called party with . . . a telephone number or address at which the person or entity may be contacted."

20. Defendant AT&T's conduct of engaging in a pattern of unsolicited telephone calls to Missouri consumers, using manipulative, high pressure techniques,

making repeated, harassing, unsolicited telephone calls, interfering with and ignoring consumers' requests not to be called and interfering with, blocking or circumventing the transmission of caller identification information, constitutes an unfair practice, in violation of Mo. Rev. Stat. Section 407.020.

VI. FEDERAL CLAIMS

COUNT I

21. The acts of AT&T, as aforesaid, violate 47 U.S.C. § 227 and 47 C.F.R. 64.1200, which states, in part:

§ 64.1200.

(e) No person or entity shall initiate any telephone solicitation to a residential telephone subscriber . . .

(2) Unless such person or entity has instituted procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards . . .

(iii) Recording, disclosure of do-not-call requests. If a person or entity making a telephone solicitation (or on whose behalf a solicitation is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name and telephone number on the do-not-call list at the time the request is made. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the solicitation is made, the person or entity on whose behalf the solicitation is made will be liable for any failures to honor the do-not-call requests. In order to protect the consumer's privacy, persons or entities must obtain a consumer's prior express consent to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a solicitation is made or an affiliated entity.

(iv) Identification of telephone solicitor. A person or entity making a telephone solicitation must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. If a person or entity makes a solicitation using an artificial or prerecorded voice message transmitted by an autodialer, the person or entity must provide a telephone number other than that of the autodialer or prerecorded message player which placed the call. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges . . .

(vi) Maintenance of do-not-call lists. A person or entity making telephone solicitations must maintain a record of a caller's request not to receive further telephone solicitations. A do not call request must be honored for 10 years from the time the request is made . . .

(5) (f) The term unsolicited advertisement means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

COUNT II

22. The acts of AT&T, as aforesaid, violate 15 U.S.C. § 6101 through 6108 and 16 C.F.R. § 310.4, which states in part:

15 U.S.C. § 6102

Telemarketing rules

(a) In general

(1) The Commission shall prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

(2) The commission shall include in such rules respecting deceptive telemarketing acts or practices a definition of deceptive telemarketing acts or practices which shall include fraudulent

charitable solicitations, and which may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.

(3) The Commission shall include in such rules respecting other abusive telemarketing acts or practices.

(A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy,

(B) restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers,

(C) a requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services . . .

16 C.F.R. § 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally*. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language . . .

(b) *Pattern of calls*. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; . . .

(iii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered . . .

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call . . . to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; . . .

COUNT III

23. The acts of AT&T , as aforesaid, violate Section 407.010 through 407.130, which provides, in part:

Section 407.020 provides, in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

* * *

Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

Section 407.100.1-3 provides:

1. Whenever it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts uses, practices or solicitations or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from this state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person form employing or continuing to employ or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

Section 407.010(6) defines "sale" as "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit."

Section 407.010(1) defines "advertisement" as " the attempt by publication, dissemination, solicitation, or circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise."

Section 407.010(4) defines "merchandise" as any "objects, wares, goods, commodities, intangibles, real estate or services."

Section 407.010(7) defines "trade" or "commerce" as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state."

VII. RELIEF REQUESTED

WHEREFORE, Plaintiff prays the Court, under one or all of the aforedescribed counts, issue the following:

a. A preliminary injunction, pursuant to 47 U.S.C. § 227 (f) (1), 15 U.S.C. § 6103 (a); and Section 407.100, enjoining Defendant AT&T from engaging in a pattern or practice or outbound telephone calls or transmissions to residents of the State of Missouri, made in violation of law; and

b. A permanent injunction, pursuant to 47 U.S.C. § 227 (f) (1), 15 U.S.C. § 6103 (a); and Section 407.100, enjoining Defendant AT&T from engaging in a pattern or practice of outbound telephone calls or transmission to residents of the State of Missouri, made in violation of law; and

c. An order for recovery of restitution for actual monetary loss per violation, pursuant to 47 § U.S.C. 227 (f) (1); and

d. An order for recovery of restitution of three (3) times the actual monetary loss for each of Defendant AT&T's willful or knowing violation, pursuant to 47 § U.S.C. 227 (f) (i); and

e. An order for recovery to the State of Missouri for civil penalty of one thousand dollars ($1,000.00) per violation, pursuant to Mo. Rev. Stat. § 407.100.6; and

f. An order for recovery of Court costs, investigative costs, expert fees and attorney fees, pursuant to 15 U.S.C. § 6104 (d) and Mo. Rev. Stat. Section 407.130; and

g. Any further Order the Court may deem proper.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

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