



PRIVACY IS NOT FOR SALE IN TEXAS

by Texas Attorney General Greg Abbott

THE TEXAS ATTORNEY GENERAL'S OFFICE WORKS constantly to protect Texans' privacy. Two bankruptcy cases we recently intervened in are illustrative of that effort. Most Texans are unaware that the personal information they provide during their interactions with a business may one day have potential value in a bankruptcy asset sale. Fortunately, the skilled lawyers at the Attorney General's Office are familiar with this reality – and know how to spot a potential problem before it's too late.

Within the last few months, the Attorney General's Office successfully thwarted an online dating site's plan to sell its customers' sensitive personal information as part of its bankruptcy asset sale.

TRUE Love?

Millions of Americans have ventured into the world of online dating websites that typically offer subscribers the ability to be connected with persons with whom the site determined they are compatible. In order to provide these services, dating websites often ask subscribers to provide a variety of personal information – including their age, education, profession, financial information, income, and personal interests, among other categories of information.

As of October 2013, 43 million individuals – including about two million Texans – had shared exactly that type of sensitive personal information with True.com, an online dating service owned by Plano-based True Beginnings. Despite its huge market share, TRUE found itself seeking Chapter

11 bankruptcy protection and had proposed to sell its database of 43 million customers' information to a third party – a Canadian-based online dating service. In negotiating this proposed sale, neither TRUE nor its proposed purchaser recognized the rights of TRUE's customers to decide whether – or how – their private information could – or could not – be shared.

The proposed purchase price was \$750,000 – so ultimately, the Canadian-based dating service was proposing to pay a penny-and-a-half for each customer's information. The Attorney General's Office recognizes that customers' sensitive data is priceless and immediately launched an investigation.

Some quick research revealed that under the terms of TRUE's published privacy policies, its customers had a legal right to notice that their private information was about to be sold to a third party. Perhaps more importantly, customers had a legal right to object to the sale of their personal information.

At a time when privacy is an issue of grave concern to so many, the Attorney General's Office filed an enforcement action against TRUE to prevent it from selling customers' personal information without their consent. Our legal action asked the bankruptcy court to require TRUE and its bankruptcy trustee to seek customers' permission to sell their private information to a third party – and not allow the sale of that information to proceed until TRUE fulfilled the court's order.

Privacy and Safety

In addition to privacy concerns, our legal team explained to the court that TRUE was in violation of the Texas Internet Dating Act. In the interest of consumer safety, the State's Internet Dating Act requires dating services either to conduct full criminal background checks on members or disclose to customers that they do not conduct such checks.

TRUE made misleading representations to customers that the company conducted criminal background screenings. In reality, the Office of the Attorney General's investigation found that TRUE's "screenings" did not comply with requirements for criminal background checks. TRUE was in fact doing the bare minimum and conducting only limited sex offender screenings and did not screen for other types of felonies. TRUE's failure to run full criminal background checks violated the Texas Internet Dating Act.

Our legal team also found language on TRUE's website stating the company shared members' billing information (debit and credit cards) with post-transaction third-party sellers – a practice that violates the federal Restore Online Shoppers' Confidence Act.

In the face of the State's objections to TRUE's proposal to sell its customer lists and data, the Canadian-based dating service withdrew its offer, and TRUE agreed to settlement terms that addressed the State's concerns and protected the privacy rights

of millions of Texans. TRUE and the State of Texas formalized the terms in a court agreement filed in December 2013. As a result, TRUE's Texas customers' sensitive data was protected during the company's bankruptcy asset sale.

Precious Currency

Our privacy protection team was again called into quick action in February 2014 on a privacy issue in a Dallas-based bankruptcy case involving Mulligan Mint, a production and manufacturing mint that offers privately minted medallions in silver, copper, and gold to customers. The bankruptcy trustee sought to sell all of the company's assets – which included business records, customer lists and sensitive data customers had provided to the mint. As with the case against TRUE, investigators with the Attorney General's Office found that Mulligan Mint's published privacy policy clearly stated it would not sell customers' data without the customer's express consent.

The growth of the Internet has greatly facilitated the unprecedented collection of massive amounts of information about customers. Recognizing that all Texans are concerned about their privacy rights, the Attorney General's Office stands ready to ensure that consumer protection and identity theft prevention laws are strictly enforced. In Texas, privacy is not for sale.

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