

Velva L. Price
District Clerk
Travis County
D-1-GN-15-001265

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Cause No. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
LIBERTY PUBLISHERS SERVICE, INC.,	§	345TH
EXPRESS PUBLISHERS SERVICE, INC.,	§	_____JUDICIAL DISTRICT
and ORBITAL PUBLISHING GROUP,	§	
INC.	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

Plaintiff, the State of Texas, acting by and through the Attorney General of Texas, Ken Paxton, complains of Liberty Publishers Service, Inc., Express Publishers Service, Inc., and Orbital Publishing Group, Inc., Defendants, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1.1 The discovery in this case is intended to be conducted under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

1.2 This case is not subject to the restrictions of expedited discovery under Rule 169 of the Texas Rules of Civil Procedure because the relief sought by Plaintiff includes non-monetary injunctive relief and Plaintiff's claims for monetary relief, including penalties, consumer redress, and attorneys' fees and costs, are in excess of \$100,000.

NATURE OF THIS SUIT

2.1 The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection Division against Defendants for

violations of the Texas Deceptive Trade Practices – Consumer Protection Act (“DTPA”).¹ The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions.²

DEFENDANTS

3.1 Defendant Liberty Publishers Service, Inc. (“Liberty”) is a foreign corporation doing business in Texas, as alleged specifically below. This proceeding arises out of such business done in this state. Defendant Liberty may be served with process by serving its president, Laura Lovrien, at its principal place of business located at 1750 Delta Waters Road #102-204, Medford, Oregon 97504.

3.2 Defendant Express Publishers Service, Inc. (“Express”) is a foreign corporation doing business in Texas, as alleged specifically below. This proceeding arises out of such business done in this state. Defendant Express may be served with process by serving its registered agent, David Lennon, at 3922 Bellinger Lane, Medford, Oregon 97501.

3.3 Defendant Orbital Publishing Group, Inc. (“Orbital”) is a foreign corporation doing business in Texas, as alleged specifically below. This proceeding arises out of such business done in this state. Defendant Orbital may be served with process by serving its president and registered agent, Laura Lovrien, at 1750 Delta Waters Road #102-204, Medford, Oregon 97504.

JURISDICTION

4.1 This enforcement action is brought by the Attorney General, Ken Paxton, through his Consumer Protection Division, in the name of the State of Texas and in the public interest under the authority granted by section 17.47 of the DTPA upon the ground that the Defendants have

¹ Tex. Bus. & Com. Code Ann. §§ 17.41-.63 (West).

² Tex. Bus. & Com Code Ann. § 17.47 (West).

engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by sections 17.46(a) and (b) of the DTPA. In enforcement suits filed under section 17.47 of the DTPA, the Plaintiff is further authorized to seek civil penalties, redress for consumers, and injunctive relief.

VENUE

5.1 Venue of this suit lies in Travis County, Texas, pursuant to section 17.47(b) of the DTPA because Defendants have done business in Travis County.

PUBLIC INTEREST

6.1 Plaintiff, the State of Texas, has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below; have caused and will continue to cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this state; and will cause damage to the State of Texas and to persons from whom monies or properties are unlawfully acquired by the Defendants. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7.1 Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by section 17.45(6) of the DTPA.

ACTS OF AGENTS

8.1 Whenever in this petition it is alleged that Defendants did any act, it is meant that the Defendants performed or participated in the act, or that the officers, agents or employees of Defendants performed or participated in the act on behalf of and under the authority of Defendants.

NOTICE BEFORE SUIT

9.1 Pursuant to section 17.47(a) of the DTPA, Defendants were contacted at least seven days before the filing of this suit and informed in general of the unlawful conduct alleged herein.

NATURE OF DEFENDANTS OPERATIONS

10.1 Defendants mail magazine and newspaper renewal notices to consumers nationwide, including consumers in Travis County, Texas. However, Defendants have no affiliation with the publications they offer to renew nor do they have any authority to sell or solicit renewals on behalf of such publications. Consumers are misled by the renewal notices, are charged 100-200% more for publications than they would be if they ordered directly through the publications, and/or never receive the publications after payment to Defendants.

FACTUAL ALLEGATIONS

11.1 Defendant Liberty, a New York corporation, has its principal place of business in Medford, Oregon. Defendant Liberty has registered seventy-seven (77) assumed names with the Oregon Secretary of State.³ Defendant Liberty conducts business in Texas under several assumed names, including Platinum Network Services, Magazine Billing Services, National Magazine Services, Publishers Periodical Services, Readers Payment Service, Subscription Billing Service,

³ The assumed names include: Allied Publishing Services, American Consumer Publishers Association, Associated Publishers Services, Billing Services of America, Bradford Publishing Service, Circulation Billing Services, Global Publishers Center, Lake Shore Publishers Service, Magazine Billing Services, Magazine Distribution Service, Magazine Payment Services, Magazine Subscriber Services, Magazine Subscriptions Center, National Magazine Services, Periodical Billing Services, Platinum Subscription Service, Publication Service Networks, Publishers Access Services, Publishers Billing Services, Publishers Billing Exchange, Publishers Consolidated Subscription Services, Publishers Distribution Center, Publishers Education Services, Publishers Magazine Billing, Publishers Magazine Payment, Publishers Marketplace Services, Publishers Network Exchange, Publishers Payment Services, Publishers Periodical Service, Publishers Processing Service, Publishers Services Exchange, Readers Billing Services, Readers Payment Service, Seascope Publishers Network, Slo Call Center, Subscription Billing Service, Subscription Payment Exchange, Subscription Payment Services, and United Publishers Services.

and United Publishers Service. It has, however, failed to register with the Texas Secretary of State's Office to do business in Texas.

11.2 Defendant Express, an Oregon corporation, has its principal place of business in Medford, Oregon. Defendant Express recorded thirty-four (34) assumed names with the Oregon Secretary of State.⁴ Defendant Express also conducts business in Texas under several assumed names, including Magazine Billing Network, and it has also failed to register to do business in Texas.

11.3 Defendant Orbital, a New York corporation, has its principal place of business in Oregon. Orbital has sent solicitations to Texas consumers that list the sender as "United Publishers Services" and then on the reverse side includes the name Orbital, along with a Nevada address. United Publishers Services is listed as one of Defendant Liberty's assumed names.

11.4 Although Liberty, Express, and Orbital have been established as separate corporate entities, it appears that the same small group of individuals runs all three. For instance, in Oregon Secretary of State filings, Laura Lovrien is listed as the president of both Orbital and Liberty. Additionally, solicitations for both Liberty and Express instruct consumers to mail payment to the same post office box in White City, Oregon. In fact, Laura Lovrien has stated that all three Defendants use the same site to process the mail each receives in the same way.

⁴ Assumed names include: Associated Billing Service, Associated Billing Service, Associated Periodical Network, Associated Publishers Readership, Billing Services of Circulation, Billing Services of Circulation, Circulation Billing Marketplace, Circulation Network Services, Circulation Network Services, Global Billing Service, Global Billing Service, Lakeshore Publishers Billing, Lakeshore Publishers Billing, Magazine Billing Network, Magazine Billing Network, Magazine Distribution Marketplace, Magazine Payment Processing, National Magazine Marketplace, National Magazine Network, Publication Network Services, Publication Network Services, Publishers Billing Marketplace, Publishers Distribution Network, Publishers Magazine Service, Publishers Magazine Service, Readers Magazine Services, Readers Magazine Services, Readers Payment Network, Subscription Billing Agency, Subscription Billing Network, Subscription Billing Network, United Billing Service, United Billing Service, and United Publishers Agency.

11.5 Defendants sent millions of postcards to consumers nationwide, including in Travis County, Texas, offering to renew or accept new subscriptions to a named magazine. However, the publication's publisher or its agent have not authorized Defendants to renew or accept subscriptions on its behalf. In fact, some publishers demanded Defendants cease sending out renewal notices for the publisher's publication.

11.6 The unauthorized solicitations typically display one of the Defendants' assumed names in the upper left hand corner and the name of the publication in the same size and font below the assumed name. Along with the name of a magazine or newspaper publication, the mail solicitation lists a control number, an amount, and a return by date. *See* Exhibit 1.

11.7 In order to complete the transaction, Texas consumers are given the option to mail a check or money order along with the solicitation to a post office box in Oregon or Nevada. Much like legitimate subscription cards, there is even an option on the solicitation to "Bill Me Later," although it appears that if this option is selected consumers will not receive the publication until they pay in full. The solicitation also has a phone number that consumers can call to place an order over the telephone. Defendants Liberty and Express give Texas consumers the option to make a credit card payment online via the website www.publisherspayment.com.

11.8 Several Texas consumers who received these solicitations complained that they were under the impression that the solicitation was from the actual publisher of the publication or authorized by the publication. This impression is formed partly because of the use of the term "renewal," the control number, the return by date, the use of the publication's name, and the statement that the customer is "receiving one of the lowest available rates we can offer for your regular subscription." In fact, Defendants normally charge 100-200% more for the subscription than the actual publisher.

11.9 Some Texas consumers who responded to the solicitation paid for subscriptions but did not receive the publications. Most consumers called the publisher to ask about their account only to discover that the consumer had mailed the money to a third party not affiliated with the publisher and not authorized to sell or solicit on its behalf. Texas consumers often learned that they paid more than they would have been charged if they had renewed using an authorized sales agent of the publisher. For instance, one entity that appears to be an unfiled assumed name of Defendant Liberty sent Texas consumers renewal notices for *Texas Fish & Game*.⁵ Although a consumer can purchase a 1-year (12 issues) subscription directly from *Texas Fish & Game* for \$17.95, the company charged the consumer \$39.95 for a 1-year subscription.

11.10 Defendant Liberty's deceptive solicitations also affected subscribers to *Texas Parks & Wildlife Magazine*. One Texas subscriber received a renewal notice from Platinum Publishing Service for his *Texas Parks & Wildlife* subscription. Although the consumer could have purchased a 3-year subscription to *Texas Parks & Wildlife* for \$30.00, Platinum was charging him \$51.67 for the renewal. Fortunately, for the consumer, he was aware that his real subscription was active until May of 2018 and did not send Platinum money to renew his subscription. Other consumers have not been so lucky; some have not realized that there was a problem until they received two copies of the same publication.

11.11 Defendant Express's deceptive solicitations have also affected Texas consumers. One complainant to our office stated that her 80-year old mother was deceived by the renewal notice and sent a check to Defendant Express's assumed name for \$249.48 to renew her subscription to the *Fort Worth Star-Telegram*.

⁵ We believe this entity, Platinum Publishing Service, is affiliated with Liberty because the solicitation instructs consumers to mail checks to the same post office box that Liberty's assumed names also use. However, Platinum Publishing Service is not listed as an assumed name of Liberty on the Oregon Secretary of State's website.

11.12 Defendant Orbital’s deceptive solicitations targeted subscribers to large publications. One complainant to our office provided a solicitation his business received to renew its order for *The Wall Street Journal*. The solicitation offered the business a 1-year subscription for \$599.95, although the subscription can be renewed for \$347.88 directly with the publisher.

11.13 Because of the deceptive nature of the solicitation, many consumers believe the publication sent or authorized them. This is evident by the fact that some consumers make checks payable to the publication—not to the Defendants or their assumed names. Remarkably, checks that are filled out payable to the publisher are still deposited into the Defendants’ bank account.

11.14 Consumers who have fallen victim to this scam range from the elderly to businesses. One complainant—a small business—mistook the solicitation for an actual offer from the *Houston Business Journal*. It did not realize it was not an unauthorized solicitation until after its accounting department had sent a check to the Defendants.

11.15 Businesses whose publications are listed on the postcards Defendants send out renewal notices and solicitations for have also been negatively affected. Consumers either think that the publication is trying to take advantage by renewing years before the subscriptions expire or the publication is accepting the money and failing to fulfill the subscriptions.

11.16 Defendants have sent out unauthorized renewal or subscription offers for a number of Texas publications, including the *Austin American Statesman*, *Austin Business Journal*, *Dallas Business Journal*, *Dallas Morning News*, *Fort Worth Star-Telegram*, *Houston Business Journal*, *Houston Chronicle*, *San Antonio Express News*, *Texas Fish & Game*, *Texas Monthly*, and *Texas Parks & Wildlife Magazine*.

11.17 National publications for which the Defendants have sent unauthorized renewal or subscription offers include *The American Spectator Magazine, Barron's Magazine, Catholic Digest, Consumer Reports, Forbes, Harper's Magazine, Mother Earth News, National Enquirer Magazine, National Geographic, National Review Magazine, The New York Times, Reader's Digest, Science News, Southern Living, The Economist, The Word Among Us, Time Magazine, TV Guide, U.S. News & World Report, Utne Reader, and The Wall Street Journal.*

11.18 Some publications, such as *The New York Times, Austin American Statesman* and the *Star-Telegram*, have published warnings to their subscribers letting them know that the renewal offers are a scam and are not sent or authorized by the publishers.

FALSE, MISLEADING, OR DECEPTIVE ACTS

12.1 As a result of the actions alleged above, Defendants have, in the course and conduct of trade and commerce, engaged in false, misleading and deceptive acts and practices declared unlawful by sections 17.46 of the DTPA. Tex. Bus. & Com Code Ann. § 17.46 (West). Such acts include the following:

12.1.1 Defendants have engaged in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. *Id.* at (a).

12.1.2 Defendants have passed off goods or services as those of another. *Id.* at (b)(1).

12.1.3 Defendants have caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of their goods and services. *Id.* at (b)(2).

12.1.4 Defendants have caused confusion or misunderstanding as to affiliation, connection, or association with, or certification by another. *Id.* at (b)(3).

12.1.5 Defendants have misrepresented that their goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have

or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have. *Id.* at (b)(5).

12.1.6 Defendants have misrepresented that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law. *Id.* at (b)(12).

12.1.7 Defendants have misrepresented the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction. *Id.* at (b)(14).

RESTITUTION TO IDENTIFIABLE PERSONS

13.1 The Defendants have, by means of the unlawful acts and practices alleged herein, obtained money or other property from identifiable persons residing in Texas to whom such money or other property should be restored.

RELIEF REQUESTED AND PRAYER

14.1 Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued; and upon final hearing a permanent injunction be issued, restraining and enjoining the Defendants, the Defendants' officers, agents, successors, assigns, servants, employees, subcontractors, corporations and any other persons in active concert or participation with the Defendants who receive actual notice of the temporary or permanent injunction, from engaging in the following acts or practices:

14.1.1 Mailing out or causing to mail out solicitation letters for publications for which it does not have express written authorization to solicit on behalf of;

14.1.2 Accepting payment for the renewal or new order of a publication for which it does not have express written authorization to solicit on behalf of;

14.1.3 Accepting payment for the renewal or new order of a publication when they cannot fulfill the renewal or subscription;

14.1.4 Transferring, concealing, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause; and

14.1.5 Destroying, altering, mutilating or otherwise disposing of or changing any records related to the Defendants or any entity in which the Defendants has an ownership interest.

14.2 Further, Plaintiff respectfully prays that this Court will:

14.2.1 Adjudge against the Defendants civil penalties in favor of Plaintiff in an amount up to \$20,000 per violation, pursuant to section 17.47(c)(1) of the Texas Business and Commerce Code;

14.2.2 Order Defendants to pay Plaintiff's attorneys' fees and costs of court pursuant to Texas Government Code section 4002.006(c); and

14.2.3 Grant all other relief to which the Plaintiff may show itself entitled.

Respectfully submitted,

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