

IN THE CIRCUIT COURT  
FOR THE CITY OF ST. LOUIS, MISSOURI

State of Missouri ex rel. )  
JEREMIAH W. (JAY) NIXON, )  
Attorney General, )  
Plaintiff, )

vs. )

LUVVOO.COM, INC. )  
A Nevada Corporation )

Serve Registered Agent: )  
 )  
 Lourdes Y. VanHoek )  
 7209 Foothill Blvd )  
 Tujunga, CA. 91042 )

and )

TELEPHONE MANAGEMENT CORPORATION )  
An Oregon Corporation )

Serve Registered Agent: )  
 )  
 James A. Carpenteur )  
 Schwabe, Williamson & Wyatt )  
 1211 SW 5<sup>th</sup> )  
 Portland, OR. 97204 )

and )

Lourdes Y. VanHoek, individually )

Serve: )  
 )  
 7209 Foothill Blvd )  
 Tujunga, CA. 91042 )

Defendants. )

Case No:

Division:

**PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY  
AND PERMANENT INJUNCTIONS, CIVIL PENALTIES AND OTHER RELIEF**

Plaintiff states the following in support of this Petition for Temporary Restraining Order, Preliminary and Permanent Injunctions, Civil Penalties and Other Relief.

**INTRODUCTION**

1. Luvoo.com, Inc., Telephone Management Corporation, and Lourdes Y. Van Hoek (collectively known as “Defendants”) have violated or are violating Missouri's "Telemarketing No-Call List" law (Mo. Rev. Stat. §§ 407.1095 through 407.1110) by making or causing to be made telephone solicitations to the telephone lines of residential subscribers in the State of Missouri who have given notice to the Attorney General of the subscribers' objections to receiving telephone solicitations.

**PARTIES**

2. 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 pursuant to common law, constitutional, and statutory authority of the Office of the Attorney General, including but not limited to Chapters 27 and 407 of the Revised Statutes of Missouri (as amended), and regulations promulgated thereunder.<sup>1</sup>

3. On information and belief, Luvoo.com, Inc. is a Nevada Corporation with its principal place of business at 7203 Foothill, Tujunga, CA. 91042.

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<sup>1</sup> All statutory references are to Mo. Rev. Stat. (2000), as presently amended, unless otherwise indicated.

4. On information and belief, Telephone Management Corporation is an Oregon Corporation with its principal place of business at 2331 SW 5th, Portland, OR. 97201.

5. On information and belief, Lourdes Y. Van Hoek is a natural person who is a resident of California, and is the owner of Luvoo.com, Inc.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter in this action pursuant to Chapters 27 and 407 of the Revised Statutes of Missouri (as amended), and Article V of the Missouri Constitution. Specifically, this Court has jurisdiction over this action under Section 407.1107, which allows the Attorney General to seek injunctive relief and civil penalties for knowing violations or threatened knowing violations of Section 407.1098 or 407.1104.

7. This Court has personal jurisdiction over the Defendants pursuant to Sections 407.1107.6 and 506.500.

8. Venue lies in the Circuit Court of St. Louis City in that the violations of the Missouri Merchandising Practices Act and the Telemarketing No-Call List Act described below occurred, among other places, in St. Louis City, in the State of Missouri, and accordingly venue is proper in this circuit. Mo. Rev. Stat. § 407.100.7.

### **THE MISSOURI TELEMARKETING NO-CALL LIST ACT**

9. Section 407.1098<sup>2</sup> provides, in pertinent part:

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<sup>2</sup> This section, prohibiting telephone solicitations to consumers who have given notice to the attorney general of their objection to such telephone solicitations, became effective July 1, 2001. Mo. Rev. Stat. § 407.1098.2 (2000).

No person or entity shall make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the attorney general, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's objection to receiving telephone solicitations.

10. Section 407.1104 provides:

1. Any person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this state shall, at the beginning of such call, state clearly the identity of the person or entity initiating the call.

2. No person or entity who makes a telephone solicitation to the telephone line of a residential subscriber in this state shall knowingly use any method to block or otherwise circumvent such subscriber's use of a caller identification service.

11. Section 407.1107 provides, in pertinent part:

1. The attorney general may initiate proceedings relating to a knowing or threatened knowing violation of section 407.1098 or 407.1104. Such proceedings may include, without limitation, an injunction, a civil penalty up to a maximum of five thousand dollars for each knowing violation and additional relief in any court of competent jurisdiction.

...

2. In addition to the penalties provided in subsection 1 of this section, any person or entity that violates section 407.1104 shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130. The remedies available in this section are cumulative and in addition to any other remedies available by law.
12. A "residential subscriber" is defined as, "a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person." Mo. Rev. Stat. § 407.1095(2).
13. A "telephone solicitation" is defined as "any voice communication over a telephone line from a live operator, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services . . . ." Mo. Rev. Stat. § 407.1095(3).
14. ADAD equipment, also known as "automatic dialing and announcing device," is "any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purposes of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed." 15 CSR 60-13.010(2)(A) (2001)<sup>3</sup>.

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<sup>3</sup> The Attorney General is statutorily empowered to promulgate rules and regulations governing the establishment of the No-Call database as he deems necessary and appropriate to fully implement the provisions of Sections 407.1095 to 407.1110. Mo. Rev. Stat. § 407.1101.2.

**COUNT I**

**DEFENDANTS' TRADE PRACTICES**

15. Defendants have engaged in at least 140<sup>4</sup> violations of Missouri's Telemarketing No-Call List Act by making or causing to be made telephone solicitations to the telephone lines of residential subscribers in the State of Missouri who have given notice to the Attorney General of the subscribers' objections to receiving telephone solicitations. (Exhibit A).

16. Specifically, Defendants have made telephone solicitations to residential subscribers in the State of Missouri to encourage the purchase of memberships to an online dating service.

17. Residential subscribers making complaints that they had received telephone solicitations to their residential telephone lines from the Defendants encouraging the purchase of memberships to their online dating service after having given notice to the Attorney General of their objections to receiving telephone solicitations have captured the telephone numbers of 818-951-5755 and 702-835-0198 on their call identification. (Exhibit A).

18. Upon information and belief the telephone numbers of 818-951-5755 and 702-835-0198 are owned by the Defendants.

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<sup>4</sup> The 140 violations by the Defendants have all been received in the month of June, 2006. (Exhibit A).

19. The telephone solicitations referred to in preceding paragraphs were made to natural persons who have subscribed to residential telephone service from a local exchange company.

20. Defendants' telephone solicitations were made to residential subscribers who have given notice to the Attorney General that they objected to receiving telephone solicitations.

21. At no time did the individuals who gave notice to the Attorney General that they objected to receiving telephone solicitations, revoke their objection.

22. A copy of the No-Call Database was available to the Defendants.

23. Defendants have failed to request a complete copy of Missouri's No-Call Database.

24. The telephone solicitations referenced in the preceding paragraphs were voice communications over a telephone line, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase of memberships to an online dating service.

25. Defendants did not have prior express invitation or permission to make the telephone solicitation referenced above.

26. No person living or residing at the residential addresses of the telephone lines contacted by any of the Defendants, had a business contact within the 180 days prior to the telephone solicitation referred to above or a business or personal relationship at the time of the telephone solicitation with any of the Defendants.

27. None of the Defendants are entities organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code.

28. None of the Defendants are entities over which a federal agency has regulatory authority to the extent that (a) subject to that authority, the entity is required to maintain a license, permit or certificate to sell or provide merchandise being offered through telemarketing and (b) that entity is required by law or rule to develop and maintain a no-call list.

29. When making the telephone solicitations described above, Defendants were not responding to a referral from a third party who had previously contacted a particular individual which indicated that person would welcome a call to their residential telephone number.

30. Defendants' agent (the person making the telephone solicitations) was not working from his or her primary residence primary residence.

31. Defendants' agent (the person making the telephone solicitations) is not a person licensed by the State of Missouri to carry out a trade, occupation or profession. who has subscribed to residential telephone service from a local exchange company.

**BASIS FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY**

**INJUNCTION**

32. Section 407.100 and Section 407.1107.1 provide this Court with the authority to issue a temporary restraining order and to fashion appropriate remedies necessary to grant relief in actions brought under the Merchandising Practices Act and the Telemarketing No-Call List Act.

33. The Attorney General has investigated and is continuing to investigate the above described violations of Sections 407.1098 and/or 407.1104 and now seeks an immediate temporary restraining order to protect the public and to carry out the mandate of Chapter 407.



34. Once the Court finds that a defendant has engaged in, is engaging in, or is about to engage in a practice unlawful pursuant to Chapter 407, potential harm to the public is presumed for purposes of injunctive relief under Chapter 407.

35. Upon information and belief, Defendants presently retain the ability to commit further violations of the Merchandising Practices Act and the Telemarketing No-Call List Act.

36. Plaintiff seeks a Temporary Restraining Order and a Preliminary Injunction during the pendency of this action, and until a final judgment on the merits, to protect the public from these ongoing unlawful practices.

37. Although not a prerequisite for the issuance of a Temporary Restraining Order pursuant to Chapter 407, Plaintiff, State of Missouri, and the public will suffer immediate and irreparable injury, loss, and/or damage, if the State's Petition for Temporary Restraining Order is not granted in that Defendant will continue to engage in the unlawful practices alleged above.

38. Although not a prerequisite for the issuance of a Temporary Restraining Order pursuant to Chapter 407, Plaintiff has no adequate remedy at law.

39. Notice of this Petition for Temporary Restraining Order and Permanent Injunction was given to Defendants.

40. Suits instituted by the state are exempt from bond requirements pursuant to Rule 92.02(d) of the Missouri Rules of Civil Procedure. Plaintiff, therefore, is not required to post a bond.

### **RELIEF**

Plaintiff, the State of Missouri, respectfully asks this Court to issue its Order:

1. Finding that Defendants have violated the provisions of § 407.1098 and/or § 407.1104;
2. Finding that Plaintiff, State of Missouri, and the public will suffer irreparable injury, loss, and/or damage in the absence of this Order;
3. Prohibiting and enjoining Defendants from making or causing to be made telephone solicitations to the telephone lines of residential subscribers in the State of Missouri who have given notice to the Attorney General of the subscribers' objections to receiving telephone solicitations..
4. Requiring Defendants to pay, as a civil penalty, to the order of the State of Missouri, five thousand dollars (\$5,000.00) for each and every violation of § 407.1098 and/or § 407.1104, pursuant to § 407.1107;
5. Requiring Defendants to pay to Plaintiff an amount equal to the cost of investigation and prosecution of this action, including reasonable attorneys' fees and the costs of administering the restitution fund for payments to consumers as requested above, as provided for by § 407.130;
6. Requiring Defendants to pay all court costs incurred in this cause of action, as provided for by § 407.130; and
7. Any and all such additional and further orders as this Court deems just or otherwise appropriate

Respectfully submitted,

JEREMIAH W. (JAY) NIXON  
Attorney General

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