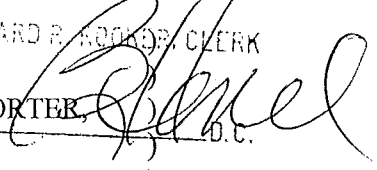


FILED  
IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

2011 MAR 24 AM 9:39

STATE OF TENNESSEE, *ex rel.* RICHARD B. COOPER, CLERK  
ROBERT E. COOPER, JR.,  
ATTORNEY GENERAL and REPORTER, )  
D.C. )



Plaintiff, )

v. )

Docket No. 11C-1160

ACTION INTEGRATED MARKETING, )  
INC.; and JAY D. MURPHREE, )  
Individually, and as President, Chief )  
Executive Officer and Owner of Action )  
Integrated Marketing, Inc., )

Defendants. )

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

1. This civil law enforcement proceeding is brought in the name of the State of Tennessee (herein referred to as the "State" or "Plaintiff"), by and through Robert E. Cooper, Jr., the Attorney General and Reporter, at the request of the Division of Consumer Affairs, pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114 of the Tennessee Consumer Protection Act, ("Consumer Act"), which authorizes the State to bring an action to restrain, by temporary and/or permanent injunction, unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce.

2. The director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Director") has requested that the State commence law enforcement proceedings for violations of the Consumer Act.

3. The State has reason to believe that the above named Defendants have violated the Consumer Act and that this action is in the public interest.

Upon information and belief, the State of Tennessee alleges the following:

**GENERAL OVERVIEW**

4. The Attorney General brings this civil law enforcement proceeding against the Defendants because they have engaged in unfair and deceptive acts and practices by misleading consumers during the course of marketing automobile sales. Defendants enter into agreements with motor vehicle dealers to provide promotional materials for "sale events." Defendants' promotional materials represent directly or by implication that the vehicles included in sale events are from some source other than the dealers' normal used vehicle inventory by using such terms as, "The Repo Joe Sale," "Bought from Independent Appraisers," "National Vehicle Disposal," "Government Vehicle Disposal," "Police Seized Vehicle Selloff" and "Company Car Fleet Disposal," and/or further represent directly or by implication that the vehicles advertised are not usually available to the public for sale. In fact, the vehicles offered in conjunction with sale events are part of dealers' normal used vehicle inventories and are not obtained from unconventional sources.

**JURISDICTION AND VENUE**

5. This Court exercises jurisdiction pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County because it is a county in which the Defendants conduct or have conducted business. *See* Tenn. Code Ann. § 47-18-108 (a)(3).

**PARTIES**

6. Plaintiff, the State of Tennessee, acting through Attorney General Robert E. Cooper, Jr., is charged with enforcing the Consumer Act, which prohibits unfair or deceptive acts or practices affecting the conduct of trade or commerce. Under Tenn. Code Ann. § 47-18-108 (a) (1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA and to secure such equitable and other relief as may be

appropriate in each case. The Attorney General is authorized to seek a judgment which enjoins fraudulent or illegal business acts or practices.

7. Defendant Action Integrated Marketing, Inc., (hereinafter "AIM"), is a for-profit Georgia corporation with its principal place of business located at 3160 Campus Drive, #200, Norcross, Georgia 30071.

8. Defendant Jay D. Murphree is an adult Georgia resident, residing at 642 Park Drive NE, Atlanta, Georgia, 30306-3614, and is the president, chief executive officer and owner of AIM.

Upon information and belief, the State alleges as follows:

#### **BACKGROUND**

9. Defendant Jay D. Murphree is being sued in his individual capacity as well as in his capacity as an officer and owner of Defendant AIM.

10. The State is informed, believes, and therefore avers that Defendant Jay D. Murphree directed, supervised, approved, formulated, authorized, ratified, benefited from, and/or otherwise participated in the acts and practices hereinafter alleged.

11. The State has reason to believe that the Defendants are using, have used, or are about to use methods, acts, or practices declared unlawful by Tenn. Code Ann. § 47-18-104.

12. The State believes that the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts, and practices of the Defendants as hereinafter set forth. The State further requests injunctive relief, civil penalties, costs, and other appropriate equitable relief as redress for violations of the Tennessee Consumer Protection Act.

13. Defendant Jay D. Murphree has or had substantial control over the operations of Defendant AIM.

14. At all times relevant and material hereto, the unfair and deceptive methods, acts and practices complained of have been willfully used by Defendants.

### **DEFENDANTS' BUSINESS PRACTICES**

15. At all times material and relevant hereto, Defendants engaged in trade and commerce within the State of Tennessee through the advertising, offering for sale, and sale of advertising campaigns and associated promotional materials to motor vehicle dealerships.

16. Defendants enter into agreements with motor vehicle dealers to provide promotional materials for "sale events."

17. Under these agreements, motor vehicle dealers pay Defendants a fee for advertising related to the sale event.

18. Defendants' promotional materials include television, radio, newspaper and internet advertisements.

19. Defendants also provide dealerships with consulting, training and staff composed of employees and/or independent contractors.

20. Defendants create and require dealers to use the promotional materials that are utilized in conjunction with sales events.

21. Defendants' promotional materials represent directly or by implication that the vehicles included in sale events are from some source other than dealer's normal used vehicle inventory by using such terms as, "The Repo Joe Sale," "Bought from Independent Appraisers," "National Vehicle Disposal," "Government Vehicle Disposal," "Police Seized Vehicle Selloff" and "Company Car Fleet Disposal," and/or further represent directly or by implication that the vehicles advertised are not usually available to the public for sale.

22. In fact, the vehicles offered in conjunction with sale events are part of dealers' normal used vehicle inventories and are not obtained from unconventional sources.

23. Defendants' promotional materials represent directly or by implication that Defendants have relationships with third parties that enable them to procure certain types of vehicles for sale events.

24. In fact, Defendants do not procure vehicles or help motor vehicle dealers procure vehicles for sale events.

25. Defendants' promotional materials represent that vehicles offered in conjunction with the sale event, which are not sold during the event, will be "sold off" on the following business day.

26. In fact, vehicles remaining unsold after the sale event usually remain part of the dealers' standard inventory and are "sold off" on the next business day following said event.

27. Defendants' advertisements represent directly or by implication that all of the vehicles offered in conjunction with a sale event may be purchased with a certain down payment amount and at a certain monthly payment amount, both of which are prominently featured in the advertisement.

28. In fact, the advertised down payment and monthly payment amounts apply to specific vehicles, not to all of the vehicles advertised.

29. Additionally, the down payment amount Defendants advertise is contingent on the creditworthiness of the purchaser, the term of the contract and the rate of financing (APR) for which the consumer qualifies.

30. The monthly payment amount Defendants advertise is also contingent on the creditworthiness of the purchaser, the down payment, the term of the contract and the rate of financing (APR) for which the consumer qualifies.

31. Defendants' print advertisements utilize footnotes or asterisks to disclose additional costs and conditions of sale, including but not limited to the term of the contract and

the rate of financing (APR).

### VIOLATIONS OF LAW

The Plaintiff incorporates by reference and re-alleges each and every allegation contained in Paragraphs 1 - 31 of this Complaint. At all times relevant to this Complaint, the conduct of offering automobile marketing occurred in the conduct of "trade", "commerce" and/or a "consumer transaction" and constitutes the offering of, or providing of, "goods" and/or "services" as defined in Tenn. Code Ann. §§ 47-18-103(5), (10) and (11).

32. Each and every unfair or deceptive act or practice engaged in by Defendants as recited above constitutes a separate violation of the Tennessee Consumer Protection Act as provided by Tenn. Code Ann. § 47-18-104(b).

28. Defendants' promotional materials create the false and misleading impression that vehicles offered in conjunction with sale events are obtained from an outside source and are not part of the dealer's normal used car inventory.

29. Defendants' promotional materials create the false and misleading impression that vehicles offered in conjunction with sale events are not usually available for purchase by the general public.

30. Defendants' promotional materials create the false and misleading impression that vehicles offered in conjunction with the sales events are available to the public at a discounted price because of their origin.

31. Defendants' promotional materials create the false and misleading impression that vehicles offered in conjunction with sale events were procured by the Defendants.

37. Defendants' promotional materials create the false and misleading impression that all of the vehicles being offered for sale in conjunction with a sale event may be purchased with a certain down payment amount, when such is not the case.

38. Defendants' promotional materials create the false and misleading impression that all of the vehicles being offered for sale in conjunction with a sale event may be purchased at a certain monthly payment amount, when such is not the case.

39. Defendants' promotional materials create the false and misleading impression that the standard down payment amount advertised is not dependent on the creditworthiness of the purchaser, the term of the contract and/or the rate of financing (APR).

40. Defendants' promotional materials create the false and misleading impression that the standard monthly payment amount advertised is not dependent on the creditworthiness of the purchaser, the down payment, the term of the contract and/or the rate of financing (APR).

41. Defendants' promotional materials, by including material terms in smaller print by way of asterisks and related footnotes, fail to adequately and/or clearly and conspicuously disclose that the ability to purchase a vehicle for the featured down payment and monthly payment amounts is dependent upon a number of factors including the creditworthiness of the purchaser, the down payment amount, the term of the contract and/or the rate of financing (APR).

42. The aforesaid acts and practices constitute unfair methods of competition and/or unfair or deceptive acts or practices as prohibited by Tenn. Code Ann. § 47-18-101 *et seq.*, including, without limitation:

- a. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of Tenn. Code Ann. § 47-18-104(b)(2);

- b. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of Tenn. Code Ann. § 47-18-104(b)(3);
- c. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, in violation of Tenn. Code Ann. § 47-18-104(b)(5);
- d. Advertising goods or services with intent not to sell them as advertised, in violation of Tenn. Code Ann. § 47-18-104(b)(9); and
- e. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of Tenn. Code Ann. § 47-18-104(b)(27).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, pursuant to the Tennessee Consumer Protection Act of 1977, the Attorney General's general statutory authority, the Attorney General's common law authority, and this Court's equitable powers, prays that an order and judgment be entered and that such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108(4):

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 20-13-101 and § 47-18-116.

2. That process issue and be served upon Defendants, requiring them to appear and answer this Complaint.

3. That this Court adjudge and decree that the Defendants have engaged in the aforementioned acts or practices which violate the Consumer Act and other laws and regulations.

4. That pursuant to Tenn. Code Ann. § 47-18-108(a)(1), (a)(4), and (a)(5), this Court grant permanent prohibitory and mandatory injunctive relief against Defendants to enjoin and ameliorate the foregoing acts or practices, which are in violation of the Consumer Act and other



laws and regulations and such order be issued without cost bond as set forth in Tenn. Code Ann. § 47-18-108(a)(4).

5. That this Court, pursuant to Tenn. Code Ann. § 47-18-108(a)(1), (a)(4) and (a)(5), require real and personal properties and assets be frozen.

6. This pursuant to Tenn. Code Ann. § 47-18-108(b)(1), this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses as defined by Tenn. Code Ann. § 47-18-2101(a), including statutory interest, and requiring Defendants to be liable for such repayment of ascertainable losses and prejudgment and statutory interest to such consumers and other persons, and to pay all costs of a court selected third party administrator to distribute the ascertainable losses as restitution and administer the same.

7. That this Court adjudge and decree that Defendants pay civil penalties for each violation of Tenn. Code Ann. § 47-18-104 of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3);

8. That this Court enter judgment against the Defendants and in favor of the State of Tennessee for reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees and costs, pursuant to Tenn. Code Ann. § 47-18-108 (b)(4) and (a)(5).

9. That this Court revoke any business licenses or other licenses or certificates authorizing Defendants to engage in automobile marketing in this State because of their persistent and knowing violations of the Consumer Act as set forth in Tenn. Code Ann. § 47-18-108(b)(2).

10. That this Court make such orders and render such judgments as may be necessary to disgorge the profits and ill-gotten gains Defendants realized by reason of the alleged violations of the Consumer Act.

11. That all costs in this case be taxed against Defendants.

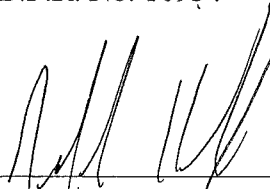
12. That no costs be taxed to the State as set forth in Tenn. Code Ann. § 47-18-116.

13. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

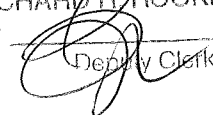
RESPECTFULLY SUBMITTED,



ROBERT E. COOPER, JR.  
Attorney General and Reporter  
B.P.R. No. 10934



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I hereby certify that this is a true copy  
of original instrument filed in my office  
this 24 day of Mar 20 11  
RICHARD B. ROOKER Clerk  
By  Deputy Clerk