

4. Further, jurisdiction and venue are proper pursuant to 47 U.S.C. § 227(b)(3), which grants state courts jurisdiction over actions alleging violations of 47 U.S.C § 227.

The Parties

5. Plaintiff is a Missouri limited liability corporation, maintaining its office at 14801 East 42nd Street South, Suite 100, Independence, Jackson County, Missouri 64055.

6. Defendant is and was a corporation formed in the State of Washington maintaining a principal place of business in the State of Washington.

7. At all times pertinent hereto, Defendant was and is registered or authorized to do business in the State of Missouri and Defendant may be served at its registered agent in the State of Missouri, CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105.

General Allegations

8. On or about December 17, 2012, and thereafter, Plaintiff maintained telephone service at Plaintiff's business location in Jackson County, Missouri, which was connected to a telephone facsimile machine.

9. On or about December 17, 2012, Defendant transmitted or caused to be transmitted to Plaintiff's telephone facsimile machine an unsolicited fax advertisement, an example of which is attached hereto as "**Exhibit A.**"

Class Action Allegations

10. Upon information and belief, Defendant transmitted or caused to be transmitted unsolicited fax advertisements to numerous persons in addition to Plaintiff.

11. Plaintiff brings this action on its own behalf and on behalf of a class of all

persons similarly situated pursuant to Rule 52.08. The Plaintiff Class consists of all persons to whom Defendant transmitted a facsimile promoting Defendant's products or services between April 10, 2011 and April 10, 2015.

12. The Plaintiff Class satisfies all of the prerequisites stated in Rule 52.08(a):
 - (a) The class is so numerous that joinder of all members would be impractical. Upon information and belief, members of the class number in the hundreds or thousands.
 - (b) There are questions of law or fact common to the class, such as whether or not Defendant committed the acts complained of and if the actions of Defendant violated the TCPA or constituted conversion, violation of the Missouri Computer Tampering Act, negligence, or negligence per se.
 - (c) The claims of the representative plaintiff are typical of the claims of the Plaintiff Class.
 - (d) The representative plaintiff and its counsel will fairly and adequately protect the interests of the class. Representative plaintiff and its counsel have no interests antagonistic to the class. The representative plaintiff and its counsel will prosecute the action vigorously on behalf of the class. Plaintiff is represented by counsel with experience in litigation of tort and telecommunication class action cases.

13. The Plaintiff Class also satisfies the requirements of Rule 52.08(b):
 - (a) The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications

with respect to individual members of the class, which would establish incompatible standards of conduct for the party opposing the class.

- (b) The questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

14. Further, the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the party opposing the class.

15. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy, in that:

- (a) It is believed that Defendant's computer and business records will enable Plaintiff to readily identify class members and establish liability and damages;
- (b) Liability and damages can be established for Plaintiff and the class with the same common proofs;
- (c) Statutory damages are provided for in the TCPA and are the same for all class members and can be calculated in the same or similar manner;
- (d) A class action will result in an orderly and expeditious

administration of claims, and it will foster economies of time, effort and expense;

- (e) A class action will contribute to uniformity of decisions concerning Defendant's practices;
- (f) As a practical matter, the claims of the class are likely to go unaddressed absent class certification.

Count I:
Violation of the
Telephone Consumer Protection Act

16. Plaintiff incorporates by reference Paragraphs 1 through 15 as though fully set forth herein.

17. In pertinent part, the TCPA, 47 U.S.C. § 227(b)(1)(C) provides that:

It shall be unlawful for any person within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement

18. "Unsolicited advertisement" is defined by 47 U.S.C. § 227(a)(5) as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without the person's prior express invitation or permission, in writing or otherwise."

19. The TCPA provides for a private right of action as stated in 47 U.S.C § 227(b):

(3) Private right of action

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State--

- (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,
- (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or
- (C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, 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 subparagraph (B) of this paragraph.

20. On or about December 17, 2012, Defendant violated the TCPA by using or causing to be used a telephone facsimile machine, computer, or other device to send an unsolicited facsimile advertisement to Plaintiff's telephone facsimile machine.

WHEREFORE, Plaintiff prays that this Court:

- (a) Enter an order pursuant to Rule 52.08(c) that this action is to be maintained as a class action and appoint and denominate the undersigned as class counsel;
- (b) Enter judgment for Plaintiff and Plaintiff Class against Defendant awarding damages of \$500.00 to \$1,500.00 for each violation of the TCPA;
- (c) Enter a Preliminary and Permanent Injunction prohibiting Defendant from transmitting unlawful facsimile advertisements; and
- (d) Any relief the Court deems just and proper under the circumstances.

Count II:
Conversion

21. Plaintiff incorporates by reference Paragraphs 1 through 20 as though fully set forth herein.

22. On or about December 17, 2012, and thereafter, Plaintiff possessed an unqualified and immediate ownership interest and right to possession and use of its facsimile machine, telephone line, toner, paper, and memory.

23. Plaintiff never authorized Defendant to use Plaintiff's facsimile machine, telephone line, toner, paper, or memory for any purpose.

24. Without authorization, on or about December 17, 2012, Defendant assumed or exercised the right of ownership and possession over Plaintiff's facsimile machine, telephone line, toner, paper, and memory by using or causing to be used a telephone facsimile machine, computer, or other device to send an unsolicited facsimile advertisement to Plaintiff's telephone facsimile machine.

25. During Defendant's exercise of unauthorized ownership and possession over Plaintiff's facsimile machine, telephone line, toner, paper, and memory, Plaintiff was excluded from exercising its ownership and possession rights over its facsimile machine, telephone line, toner, paper, and memory.

26. As a direct and proximate result of Defendant's conversion of Plaintiff's facsimile machine, telephone line, toner, paper, and memory, Plaintiff was aggrieved and denied its ownership rights and has suffered an actual and ascertainable loss and interest thereon, including, but not limited to the loss of use of Plaintiff's facsimile

machine, telephone line, toner, paper, and memory and the permanent loss of Plaintiff's toner and paper.

WHEREFORE, Plaintiff prays that this Court:

- (a) Enter an order pursuant to Rule 52.08(c) that this action is to be maintained as a class action and appoint and denominate the undersigned as class counsel;
- (b) Enter judgment for Plaintiff and Plaintiff Class against Defendant awarding damages, interest, and costs of suit;
- (c) Enter a Preliminary and Permanent Injunction prohibiting Defendant from transmitting unlawful facsimile advertisements; and
- (d) Any relief the Court deems just and proper under the circumstances.

Count III:
Violation of the
Missouri Computer Tampering Act

27. Plaintiff incorporates by reference Paragraphs 1 through 26 as though fully set forth herein.

28. In pertinent part, the Missouri Computer Tampering Act, RSMo. § 569.097 ("MCTA"), provides:

A person commits the crime of tampering with computer equipment if he knowingly and without authorization or without reasonable grounds to believe that he has such authorization:

- (1) Modifies, destroys, damages, or takes equipment or data storage devices used or intended to be used in a computer, computer system, or computer network; or

(2) Modifies, destroys, damages, or takes any computer, computer system, or computer network.

29. In pertinent part, the MCTA, provides:

A person commits the crime of tampering with computer users if he knowingly and without authorization or without reasonable grounds to believe that he has such authorization:

(1) Accesses or causes to be accessed any computer, computer system, or computer network; or

(2) Denies or causes the denial of computer system services to an authorized user of such computer system services, which, in whole or in part, is owned by, under contract to, or operated for, or on behalf of, or in conjunction with another.

30. Plaintiff's telephone facsimile machine is one or more of the following, pursuant to RSMo. § 556.063:

(a) A "computer" because it is "the box that houses the central processing unit (cpu), along with any internal storage devices, such as internal hard drives, and internal communication devices, such as internal modems capable of sending or receiving electronic mail or fax cards, along with any other hardware stored or housed internally . . .";

(b) "Computer equipment" because it is "computers, terminals, data storage devices, and all other computer hardware associated with a computer system or network";

(c) "Computer hardware" because it is "all equipment which can collect, analyze, create, display, convert, store, conceal or transmit electronic, magnetic, optical or similar computer impulses or data . . ."; or

(d) A "computer system" because it is "a set of related, connected or unconnected, computer equipment, data, or software."

31. Defendant's unsolicited facsimile transmission to Plaintiff's telephone facsimile machine is tampering because, as defined by RSMo. § 569.010, "to tamper" means "to interfere with something improperly, to meddle with it, displace it, make unwarranted alterations in its existing condition, or to deprive, temporarily, the owner or possessor of that thing."

32. The MCTA provides for a private right of action, as provided in RSMo. § 537.535:

1. In addition to any other civil remedy available, the owner or lessee of the computer system, computer network, computer program, computer service or data may bring a civil action against any person who violates sections 569.095 to 569.099, RSMo, for compensatory damages, including any expenditures reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, computer service, or data was not altered, damaged, or deleted by the access.

2. In any action brought pursuant to this section, the court may award reasonable attorney's fees to a prevailing plaintiff.

33. Defendant violated RSMo. § 569.097 on or about December 17, 2012 by tampering with and modifying, destroying, or damaging the telephone line, internal storage device, paper, and toner of Plaintiff's telephone facsimile machine without Plaintiff's authorization.

34. Defendant violated RSMo. § 569.099 on or about December 17, 2012 by tampering with and accessing, causing to be accessed, denying service, or causing service to be denied to Plaintiff's telephone line and telephone facsimile machine without Plaintiff's authorization.

35. As a result of Defendant's violation of the MCTA, Plaintiff is entitled to attorney's fees and compensatory damages, including expenditures to verify Plaintiff's telephone facsimile machine was not altered, damaged, or otherwise affected by Defendant's unauthorized access and tampering.

WHEREFORE, Plaintiff prays that this Court:

- (a) Enter an order pursuant to Rule 52.08(c) that this action is to be maintained as a class action and appoint and denominate the undersigned as class counsel;
- (b) Enter judgment for Plaintiff and Plaintiff Class against Defendant awarding damages, reasonable attorney's fees, and costs of suit;
- (c) Enter a Preliminary and Permanent Injunction prohibiting Defendant from transmitting unlawful facsimile advertisements; and
- (d) Any relief the Court deems just and proper under the circumstances.

Count IV:
Negligence

36. Plaintiff incorporates by reference Paragraphs 1 through 35 as though fully set forth herein.

37. As the operators or controllers of a telephone facsimile machine, computer, or other device used to send telephone facsimile communications, Defendant owed a duty of reasonable care to conduct its facsimile marketing campaign in a reasonable manner so as not to cause unauthorized use and consumption of the facsimile machine, telephone line, toner, paper, and memory of Plaintiff.

38. This duty of reasonable care included the duty to refrain from sending a facsimile advertisement to Plaintiff unless: (1) Plaintiff had expressly consented to receiving facsimile advertisements from Defendant and Defendant included the specific opt-out language on the face of each facsimile advertisement as required by 47 U.S.C. § 227(b)(1)(C)(i), (ii), and (iii); or (2) Defendant had a documented established business relationship with Plaintiff and Defendant included the specific opt-out language on the face of each facsimile advertisement as required by 47 U.S.C. § 227(b)(1)(C)(i), (ii), and (iii).

39. In the exercise of reasonable care, Defendant knew or should have known that Plaintiff had not expressly consented to receiving facsimile advertisements from Defendant and Defendant's facsimile advertisement did not include the specific opt-out language on the face of each facsimile advertisement as required by 47 U.S.C. § 227(b)(1)(C)(i), (ii), and (iii).

40. In the exercise of reasonable care, Defendant knew or should have known that Defendant did not have a documented established business relationship with Plaintiff and Defendant's facsimile advertisement did not include the specific opt-out language on the face of each facsimile advertisement as required by 47 U.S.C. § 227(b)(1)(C)(i), (ii), and (iii).

41. Defendant acted negligently and breached this duty of reasonable care on or about December 17, 2012 by using or causing to be used a telephone facsimile machine, computer, or other device to send an unsolicited facsimile advertisement to Plaintiff's telephone facsimile machine, causing unauthorized use and consumption of Plaintiff's facsimile machine, telephone line, toner, paper, and memory.

42. As a direct and proximate result of Defendant's negligence, Plaintiff was aggrieved and has suffered an actual and ascertainable loss, including, but not limited to, the loss of use of Plaintiff's facsimile machine, telephone line, toner, paper, and memory and the permanent loss of Plaintiff's toner and paper.

WHEREFORE, Plaintiff prays that this Court:

- (a) Enter an order pursuant to Rule 52.08(c) that this action is to be maintained as a class action and appoint and denominate the undersigned as class counsel;
- (b) Enter judgment for Plaintiff and Plaintiff Class against Defendant awarding damages and costs of suit;
- (c) Enter a Preliminary and Permanent Injunction prohibiting Defendant from transmitting unlawful facsimile advertisements; and
- (d) Any relief the Court deems just and proper under the circumstances.

Count V:
Negligence Per Se

43. Plaintiff incorporates by reference Paragraphs 1 through 42 as though fully set forth herein.

44. On or about December 17, 2012, the TCPA and the MCTA applied to Defendant.

45. On or about December 17, 2012, Defendant violated the TCPA by using or causing to be used a telephone facsimile machine, computer, or other device to send an unsolicited facsimile advertisement to Plaintiff's telephone facsimile machine.

46. On or about December 17, 2012, Defendant violated the MTCA by tampering with and modifying, destroying, or damaging the telephone line, internal storage device, paper, and toner of Plaintiff's telephone facsimile machine without Plaintiff's authorization.

47. On or about December 17, 2012, Defendant violated the MCTA by tampering with and accessing, causing to be accessed, denying service, or causing service to be denied to Plaintiff's telephone line and telephone facsimile machine without Plaintiff's authorization.

48. Plaintiff was in the class of persons the TCPA and the MCTA is designed to protect.

49. As a direct and proximate result of Defendant's violation of the TCPA and the MCTA, Plaintiff was aggrieved and has suffered an actual and ascertainable loss, including, but not limited to, the loss of use of Plaintiff's facsimile machine, telephone line, toner, paper, and memory and the permanent loss of Plaintiff's toner and paper.

50. The losses suffered by Plaintiff are of the type the TCPA and the MCTA are designed to protect.

51. The TCPA and the MCTA provide for a private right of action.

WHEREFORE, Plaintiff prays that this Court:

- (a) Enter an order pursuant to Rule 23(c)(1) that this action is to be maintained as a class action and appoint and denominate the undersigned as class counsel;
- (b) Enter judgment for Plaintiff and Plaintiff Class against Defendant awarding damages and costs of suit;
- (c) Enter a Preliminary and Permanent Injunction prohibiting

Defendants from transmitting unsolicited facsimile advertisements;
and

- (d) Any relief the Court deems just and proper under the circumstances.

Demand For Trial By Jury

52. Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

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YOU'RE INVITED!



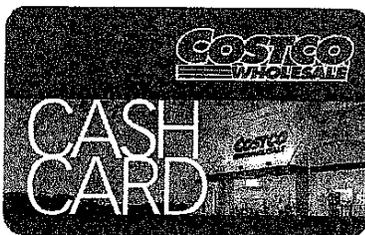
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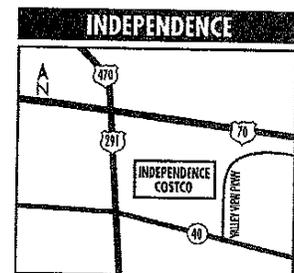


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