

5CV03

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>STATE OF IOWA EX REL THOMAS J MILLER ATTORNEY GENERAL OF IOWA Plaintiff(s)</p> <p>VS.</p> <p>CW PROMOTIONS LLC ALPHONSO WADE BARNUM WILLIE C NANCE TOP FAITH SOLUTIONS LLC CITY WIDE PROMOTIONS LLC NEW START MEDIA LLC LAFAYIA KAY BARNUM TFS LLC ALUMNI SPORTS LLC NEW START MARKETING XPRESHION MULTIMEDIA XPRESHION MULTIMEDIA LLC HENRY ALEXANDER CLARK GREATER SOLUTIONS LIMITED LIABILITY COMPANY KELSEY J PATTERSON</p> <p>Defendant(s)</p>	<p>05771 EQCE083843</p> <p>ORDER</p> <p>Granting State's Application For Temporary Injunctive Relief</p>
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This matter came before the court on April 12, 2019, for hearing on the State's application for temporary injunctive relief. The State was represented by Assistant Iowa Attorneys General Mariclare Thinnies Culver and William Pearson. The various defendants were represented by either attorney Harold DeLange or attorney Mark Malloy, as reflected in the record and the docket. Said hearing was continued to and concluded on May 31, 2019, at which time counsel for the parties were invited by the court to submit proposed findings, conclusions, and rulings. Having now entertained the oral and written arguments of counsel, having reviewed the court's file and the evidentiary record made at the hearing, and being otherwise fully advised in the premises, the court now rules on the State's application and, for the reasons stated herein, GRANTS same.

Preliminarily, the court addresses defendants' objection to the court's receipt/consideration of certain affidavits offered by the State. Iowa Rule of Civil Procedure 1.1502 (1) specifically allows a request for temporary injunctive relief to be "supported by affidavit." Iowa case law further recognizes that such a request may also be supported by "sworn testimony." *Kleman v. Charles City Police Department*, 373 N.W.2d 90, 95-96 (Iowa 1985). The rules of evidence are applied less strictly with respect to an application for temporary injunctive relief than for permanent injunctive relief. Defendants' objection lacks merit and is therefore overruled.

The court's review of the evidentiary record made at the hearing supports the following factual findings:

1) At all times relevant hereto, Alphonso Wade Barnum (hereinafter "Barnum") has owned and operated numerous limited liability companies (hereinafter "LLC's") in Davenport, Iowa. All of the LLCs (named defendants in this action) were operated under Barnum's sole direction and control, and have been engaged in telemarketing whereby Barnum and LLC agents and/or employees solicit(ed) the sale of advertising space on paper promotional items.

2) Defendants have engaged nationwide in fraudulent and otherwise unlawful practices under the Iowa Consumer Fraud Act in their marketing and sale of advertising space on said paper promotional items which include but are not limited to such items as community event calendars, local high school sports calendars, city guides, and city information booklets. Said conduct follows the following pattern:

A) During the time period from January, 2016, through the present, Barnum created a series of limited liability companies in Iowa such as New Start Media LLC and Citywide Promotions, LLC (also known as CW Promotions LLC, and Citiwide Promotions LLC). In or about September, 2017, Barnum created and began doing business as Top Faith Solutions LLC (also known as TFS LLC and Top Faith). Barnum also created a limited liability company called Greater Solutions Limited Liability Company through filings with the Illinois Secretary of State's office in November, 2018, and began using that LLC in early December, 2018. In early 2019, defendants and their employees and/or agents began telemarketing to consumers, claiming to be calling on behalf of companies called Xpreshion Multimedia and DK Management. The LLCs were the subject of numerous complaints filed by consumers with the Iowa Attorney General's office and the Better Business Bureau.

B) Barnum was the sole member of each LLC and exercised complete control over said LLCs, the business activities of said LLCs, and the fraudulent business practices engaged in by Barnum and those LLCs.

C) Barnum and, on at least one occasion, his mother, defendant Willie Nance, opened bank accounts in the name or names of those limited liability companies Barnum was using at the time. The evidence established that Barnum opened nine of the ten bank accounts the State was able to locate and subpoena account records for. The State established that Barnum was the sole owner of these bank accounts.

D) Defendants Barnum, Willie Nance, and LaFayia Barnum opened dozens of merchant accounts, also called credit card processing accounts, in the names of the LLCs with different credit card vendors. LaFayia Barnum and Willie Nance each individually represented that they were the sole owners of the LLCs at the time of the opening of said accounts. In separate car purchase documents, LaFayia Barnum also declared that she received \$1000.00 monthly income from the LLC called Top Faith Solutions. Defendants then connected those LLC credit card processing accounts to the various LLC bank accounts such that, when the LLCs received consumer monies by means of credit card transactions, those monies would be deposited from the credit card processor accounts directly into the LLC bank accounts controlled by Barnum. All of these bank accounts and credit card processing accounts are used in the commission of fraud against consumers.

E) Barnum rented office space for whatever LLC he was then operating under, hired employees or otherwise paid agents who performed the telemarketing, and provided telephones and/or computers used by the employees/agents to conduct the unlawful business practices.

F) Barnum then targeted a town or towns, obtained email addresses for all local small business owners in said towns, and sent a blast email solicitation to the small business owners in that town.

State Investigator Al Perales testified that Barnum would sometimes skip the email solicitation and have his employees/agents directly call on the small business owners in a given town. The same misrepresentations that defendants made in the blast emails were then made verbally by telephone

to the local business owners. Defendants' solicitations offered the recipient the opportunity to support the community by purchasing an advertisement on some paper promotional item such as a high school or community event calendar. Defendants and their agents, always using fake names and spoofing local area code numbers on the telephones, represented to prospective advertisement buyers that 5000 or more of the paper promotional item containing the advertisement would be distributed in the ad buyers' local community. Defendants told consumers that the products would be distributed either by physically distributing them at local stores, city offices, and/or through "every door direct mail" ("EDDM") by the United States Postal Service, or both. The State's evidence established, however, that the 5000 promotional items were never distributed as promised. In fact, the heart of the scam, each time it was committed, was that a) none of the promotional items were ever distributed, b) only a few promotional items were distributed, or c) the only promotional items distributed were 25 or so "courtesy copies" sent directly to the consumer/local business owner who purchased the ad.

G) From January, 2016, to February, 2019, Barnum employed or contracted with numerous people including but not limited to Latosha Morrison, Paul Barnes, Misty Barnes, Destiney Hurstrom, defendant Kelsey Sagers Patterson, defendant Henry Alexander Clark, and Barnum's sons, Joe Lewis and Joswa Lewis. These agents/employees of Barnum made the telephone calls, made misrepresentations, engaged in confusing, deceitful, and fraudulent high-pressure tactics, and took the consumers' money on behalf of Barnum.

H) in addition to taking credit card payments from consumers for the promotional products the defendants never distributed, defendants also used remotely created checks to defraud people. This was sometimes, but not always, done in conjunction with what the state investigator referred to as the "confusion/past-due bill" scam. In this version of the scam, Barnum's employees/agents called existing and new consumer victims and, using deceit, misrepresentations, confusion, and coercion, falsely told consumers that they had previously agreed to purchase advertising on some nonexistent promotional items, that the items had been printed and distributed, and that the bill or invoice was long past due. Consumers were falsely told that their account was being sent to a collection agency that day unless the consumer paid said fictitious debt that day, over the phone. Consumers then gave defendants the consumers' bank name, account name, and account and routing numbers to allow a one time payment on the fictitious debt. Once defendants obtained the consumers' banking information, defendants used their software and hardware to create checks on the consumer's checking account. Defendants created negotiable checks, made payable to one of the defendant LLCs, with the consumer as the payer, which were then run through the consumer's checking account and deposited in one of the LLC bank accounts. In this version of the scam, instead of using deceit and fraud to obtain a single payment from a consumer victim, defendants ran numerous checks, without authorization, through consumer victims' bank accounts. For example, one consumer victim in Michigan had over \$80,000 in checks remotely created by defendants run through her account. As another example, a consumer victim in Illinois had more than \$47,000 in remotely created checks run through his business checking account.

I) Defendants committed the same fraud with consumer victims' credit cards. Once a consumer victim gave defendants his or her credit card account information, defendants made numerous unauthorized credit card charges, payable to one of the LLCs on the consumer's credit card account.

Defendants made tens of thousands of dollars in fraudulent credit card charges to one consumer victim's credit card account.

J) During the pendency of the State's investigation and after its lawsuit was filed herein in early December, 2018, defendants continued to violate the Iowa Consumer Fraud Act. Immediately after the lawsuit was filed, defendants stopped using the name Top Faith Solutions LLC and began operating as Greater Solutions Limited Liability Company, and immediately began establishing new bank accounts in the latter LLC's name that day after the lawsuit was filed. Greater Solutions

began victimizing consumers immediately. When defendants attempted to scam some of their past victims who had already been warned by the State of the new "Greater Solutions" name, defendants changed tactics again. In January, 2019, defendants ran the same scams including the confusion/past-due bill scam, calling and claiming to be a company called Xpreshion Multimedia out of Davenport, Iowa, but often using the same telephone number that had previously been used as Top Faith's and/or Greater Solutions' telephone number. Defendants also sometimes called claiming to be "DK Management" using the same telephone number that had previously been used for Xpreshion Multimedia.

K) In the ten LLC bank accounts at seven different banks the State was able to identify, Barnum and his LLCs profited immensely from their unlawful activities at the expense of small business owners across the country. From January, 2016, through February, 2019, \$2 million was deposited into the ten LLC bank accounts the State was able to locate.

The above findings are consistent with the findings contained in the State's proposed findings and order which, in turn, fully comport with this court's review of the evidentiary record made at the hearing. The court would also note that said findings are not refuted by defendants in their post hearing "brief."

Based upon the foregoing factual findings and applying the factors relevant to issuance of temporary injunctive relief, namely, likelihood of success on the merits, threat of irreparable harm/no adequate legal remedy, balance of harms, and public interest (see *Curtis 1000, Inc. v. Youngblade*, 878 F.Supp. 1224, 1244-49 (N.D. IA 1995); *Kleman, supra*, at 95-96; *Max 100 L.C. v. Iowa Realty Co., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001); *Nichols v. City of Evansdale*, 687 N.W.2d 562, 572 (Iowa 2004)), the court concludes that the requested temporary injunctive relief is warranted.

A. Likelihood of success on the merits: The court concludes that this factor weighs heavily in favor of the State. The record contains substantial and un rebutted evidence that defendants have, at all times relevant hereto, been subject to the Iowa Consumer Fraud Act and have been engaging in practices and/or acting in furtherance of practices which are unlawful according to that statute.

B. Threat of irreparable harm/no adequate legal remedy: The court concludes that this factor also weighs heavily in favor of the State. If temporary injunctive relief is not granted, the State's ability to effectively enforce the Iowa Consumer Fraud Act and to protect its citizenry will be seriously impaired, perhaps even eviscerated.

C. Balance of Harms: Presumably, the imposition of temporary injunctive relief will have significant negative economic impact on the defendants although the court was presented with no proof of same. However, this is outweighed by the threat of potential harm to the State and its citizenry if the injunctive relief is not granted and defendant's are allowed to continue the alleged unlawful practices and/or actions in furtherance of same.

D. Public interest: Certainly, the public has an interest in promoting the pursuit of legitimate economic activity by its members. However, this interest is unquestionably outweighed by the public's interest in being protected from unlawful activity.

For all these reasons, the court concludes that temporary injunctive relief in the form requested by the State is warranted and, therefore, the State's application is GRANTED as follows.

Order For Temporary Injunction:

Defendants and each of defendant's agents, employees, independent contractors, salespersons, servants, representatives, officers and directors, principals, partners, members, affiliates, predecessors, successors, assigns, merged or acquired predecessors, parent or controlling entities,

and all other persons, corporations, and business entities acting in concert with or participating with defendants, including but not limited to Paul Barnes, Misty Barnes, Destiney Hurstrom, Kelsey Sagers Patterson, Henry Alexander Clark, Latosha Morrison, Joe Lewis, Joswa Lewis, and any other person who has actual or constructive notice of the court's injunction, individually, in conjunction with others, or directing others to do on their behalf, are enjoined from:

1. Creating, incorporating, filing, employing, or using any LLC and any other form of business entity, for the purpose of conducting any business or activity involving A) telemarketing, B) the sale of advertising, C) the sale of promotional items, and D) the sale of promotional items containing advertising;
2. Engaging in telemarketing, that is, the marketing of goods or services by means of telephone calls to potential customers;
3. Using electronic or digital means, including but not limited to emails and websites, to communicate with potential customers for the purpose of soliciting customers or sales;
4. Creating, endorsing, presenting, cashing, and/or depositing any check or draft, payable to any defendant, which has been electronically or remotely created by any defendant or at the direction of any defendant, on the account of any other person or business entity.
5. Applying for and/or using any merchant account, credit card processing account, and bank account for the purpose of conducting any business or activity involving A) telemarketing, B) the sale of advertising, C) the sale of promotional items, and D) the sale of promotional items containing advertising.

Further, each defendant limited liability company is dissolved by this order, which dissolution shall be filed with the Iowa and Illinois Secretary of State's Corporation Divisions, and defendants are enjoined from using those entities and business names.



State of Iowa Courts

Case Number
EQCE083843
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Case Title
STATE OF IOWA VS ALPHONSO WADE BARNUM ET AL
OTHER ORDER

So Ordered

A handwritten signature in cursive script that reads "Robert B. Hanson".

Robert B. Hanson, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2019-07-26 16:01:45