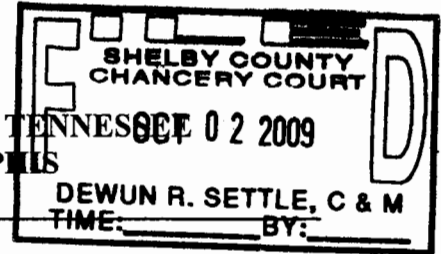


IN THE CHANCERY COURT FOR SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS



STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR., ATTORNEY)
GENERAL and REPORTER,)
)
Plaintiff,)
v.)
)
BLUEHIPPO FUNDING, LLC, et al.)
)
Defendants.)

No. CH-08-1979-1

JURY DEMAND

**MOTION FOR ORDER REQUIRING DEFENDANTS TO SHOW CAUSE WHY THEY HAVE
FAILED TO COMPLY WITH ORDER COMPELLING DEFENDANTS TO RESPOND TO
INTERROGATORIES AND PRODUCE DOCUMENTS AND MATERIALS**

The State moves for an order requiring the Defendants to show cause why they have failed to comply with the Court's Order Compelling Defendants to Respond to Interrogatories and Produce Documents and Materials ("Order to Compel") dated August 27, 2009. As detailed below, the State asks the Court to grant the State access to the Defendants' principal place of business and to depose a representative of the Defendants' choosing who is most familiar with the Defendants' recordkeeping, among other matters.

STATEMENT OF FACTS

1. Under the Order to Compel, the Defendants were required to submit full and complete responses to every deficient discovery response identified by the State in letters to the Defendants dated April 29, 2009, May 14, 2009, June 2, 2009, and another letter dated June 2, 2009 (Attached as Coll. Ex. 3 to Mot. to Compel) by September 9, 2009. Or. to Compel, at 5.

2. Following a request by counsel who is representing BlueHippo nationally, but who has not made an appearance in this matter, the State agreed to change the deadline for production to September 16, 2009. This was the only amount of time that opposing counsel requested.

3. On September 16, 2009, the State did not receive a production of any documents or any Interrogatory responses.

4. Instead, on September 16, 2009, opposing counsel left the State a voicemail asking for an additional five (5) days to produce the required documents and responses without any explanation of the need for an extension. Later that day, opposing counsel sent a letter and an affidavit from BlueHippo's Chief Technical Officer claiming that the Defendants could not produce any documents or respond to Interrogatories because of a seizure of computers by United States Marshals on September 16, 2009, as a result of a Writ of Execution in a case entitled *Nearshore Call Center Servs. v. Edison Response d/b/a BlueHippo*, Case No. 1:08-cv-00439-AMD (D. Md.). Attached as Coll. Ex. 1.

5. On September 16, 2009, at 5:44 p.m. CT, the Defendants' local counsel sent the State an email and a "draft" document entitled "Defendant BlueHippo Funding, LLC's Supplemental Objections and Responses to Plaintiff's First Set of Request for Production of Documents." Attached as Coll. Ex. 2. According to counsel's email, the draft was sent to "demonstrate[e] BlueHippo's intent to produce the requested information and comply with its discovery obligations in a timely manner." The draft document is an almost verbatim copy of the responses that the Defendants originally issued to the State's discovery in March 2009 -- discovery responses that the Court found to be evasive and non-responsive in its Order to Compel.

6. On September 21, 2009, the State sent the Defendants a letter asking when the Defendants planned on submitting a full and complete supplemental production. Attached as Ex. 3.

7. On September 23, 2009, the Defendants produced 662 pages of documents consisting chiefly of an updated consumer spreadsheet, various versions of the Defendants' operating agreements, various versions of the Defendants' "Business Services Agreement" between themselves, various versions and amendments to Gateway Reseller Agreements, and various versions of early sales training manual. *See* Ex. 4, Discovery Log.

8. On September 25, 2009, the Defendants produced 9,731 additional documents. These documents consist of all contractual documents that the Defendants have on record for consumers with billing addresses in Tennessee. *See* Ex. 4, Discovery Log.

9. To date, the State has not received responses to *any* Interrogatories and has received only a partial production of documents, consisting mostly of documents that the Defendants had previously produced to counsel. The Defendants have not produced any documents in response to the following document categories set forth in the Order to Compel:

- All BlueHippo advertisements (BH RFP #23) (only one transcript of a BlueHippo ad was produced by the Defendants following the Order to Compel, BH-TN 616-618);
- All BlueHippo storyboards, draft advertisements, mock-ups, etc. (BH RFP #24);
- BlueHippo communication to advertisers (BH RFP #24);
- BlueHippo communication to actor or spokesperson (BH RFP #26);
- Any other communication to an actor or spokesperson in possession of BlueHippo (BH RFP #27);
- Internal documentation about the content of advertisements (BH RFP #28);
- Reports on targeted demographic group (BH RFP #29);
- BlueHippo communication with the media (BH RFP #30);
- Documents concerning the translation of advertisements (BH FPR #31);
- All telephone sales scripts (BH RFP #32) (two versions of sales scripts that were previously produced were contained in the Sales Training Manuals that were produced);
- Frequently asked questions responses or scripted answers to consumer questions (BH FRP #34);

- Internal communication about the content of sales scripts (BH RFP #34);
- All sales verification tapes with Tennesseans (BH RFP #37);
- Any documents showing which verification tape corresponds with each Tennessee consumer (BH RFP#38);
- All correspondence sent by BlueHippo to Tennesseans (BH RFP #40);
- Documents showing the use of store credit by any Tennessee consumer (BH RFP #44);
- Documents showing any Tennesseans who exercised their “seven day right to cancel” (BH RFP #46);
- Consumer payment history documents (BH RFP#41);
- Credit bureau reports of Tennessee consumers (BH RFP #42);
- Rebate or “good pay” discount checks (BH RFP #43);
- Communication between BlueHippo and sellers of its products (BH RFP #12);
- Internal communication about any dates or scheduled shipping dates for products (BH RFP #48);
- Documents from the merchandise seller showing dates or scheduled shipping dates for products (BH RFP #48);
- Overnight carrier documents showing when Tennessee consumer products were shipped (BH RFP #39);
- Consumer complaints from Tennesseans and BlueHippo’s response (BH RFP #45);
- Documents referencing the security or vulnerability of the Defendants’ website (BH RFP #16);
- Any annual reports, balance sheets, income statements, etc. (BH RFP #17);
- Any submissions to the IRS (BH RFP #17);
- Bank statements, balance statements, withdrawal notifications, funds transfer receipts, etc. (BH RFP #18);
- Any security interest (BH RFP #19);
- Signature cards for each bank account (BH RFP #20);
- Bank applications, etc. (BH RFP #21);
- Documents referencing job descriptions or duties (BH RFP#4);
- Board meeting minutes (BH RFP#5);
- Contracts or agreements between BlueHippo and Edison Worldwide (BH RFP #6);
- Contracts or agreements with sales call outsourcing companies (BH RFP #11);
- Contracts or agreements with collection agencies (BH RFP #13); and
- All documents referenced in the Defendants’ Interrogatory responses (BH RFP #50).

MOTION

Based on the above and in order to inquire as to the Defendants’ ability to comply and actual compliance with the Order to Compel, the State moves for an order containing the following:

(1) Authority to enter the Defendants' principal place of business during regular business hours at 7000 Security Boulevard, Baltimore, Maryland to view all areas where the Defendants' paper, electronic, or other records are actually or might be kept with the Defendants' designated representative and opposing counsel present. In addition, the State seeks authority to take recording devices to document its review at a time mutually agreeable to opposing counsel but no later than October 23, 2009.

(2) Further, on a separate day from the State's entry upon land for inspection, the State seeks authority to depose a representative of each Defendant, at their designation, who is the most knowledgeable about the following matters to last from day-to-day until completed:

(a) The steps taken to produce the documents and materials that have been actually produced by the Defendants to the State following the issuance of the Order to Compel.

(b) The documents and materials that have been actually produced by the Defendants to the State prior to the issuance of the Order to Compel.

(c) The existence, location, and availability of documents and materials that were required to be produced under the Order to Compel, but that have not been produced.

(d) The identity (including the identities of corporate officers), location, and relationship to the Defendants of any party, including, but not limited to Edison Response or Edison Worldwide, upon whose property, the Defendants have placed documents responsive to the Order to Compel.

(e) The Defendants' efforts to comply with the Order to Compel including specific dates that documents were pulled as potentially responsive.

(f) The Defendants' access to documents produced in other litigation.

(g) The Defendants' efforts to formulate Interrogatory responses, including specific dates that documents were pulled to review for Interrogatory responses, and the specific dates that draft Interrogatory responses were drafted or finalized.

(h) The Defendants retention of hard copy paper responsive records.

(i) The Defendants' historic and current practices for document retention.

The State seeks this deposition to determine whether the Defendants have the ability to comply with the Court's Order to Compel. The State reserves the right to depose the individual on these issues again if necessary. The State does not intend to depose the designated representative(s) about the substance of specific documents as they relate to its underlying legal claim but reserves that right for a later time.

PRAYER FOR RELIEF

The State prays:

(1) That its motion be granted;

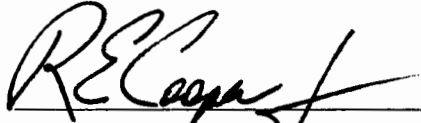
(2) That the Court enter an Order granting the State entry to the Defendants' principal place of business during normal business hours at 7000 Security Boulevard, Baltimore, Maryland to view all areas where the Defendants' paper, electronic, or other records are actually or might be kept with the Defendants' designated representative and opposing counsel present. In addition, the State seeks authority to take recording devices to document its review at a time mutually agreeable to opposing counsel but no later than October 23, 2009.

(3) That the Court enter an Order authorizing the State, on a separate day as the State's entry upon land for inspection, to depose a representative of each Defendant, at their designation, concerning the matters referenced above from day-to-day until completed.

(4) That this Court issue any other orders necessary to bring Defendants into full compliance with the Order to Compel; and

(5) That this Court grant any other relief it deems appropriate or necessary.

Respectfully submitted,



ROBERT E. COOPER, JR.

Attorney General and Reporter

B.P.R. No. 10934



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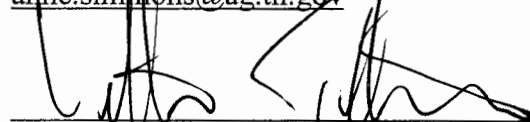
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Attorneys for the State of Tennessee

NOTICE OF HEARING

A hearing on the above-referenced motion has been set for **October 13th, 2009 at 10 a.m.** CT in Shelby County Chancery Court, Part I, in the courtroom of Chancellor Walter Evans. Failure to respond may result in the State's Motion being granted upon a proper showing.

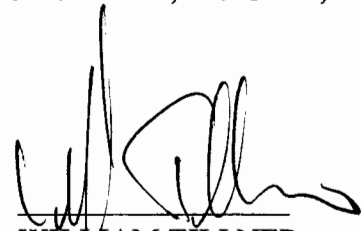
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent via electronic mail and via U.S Mail on this the 2nd day of Oct., 2009, to:

(1) Kristen Wright (kwright@bassberry.com), John Golwen (jgolwen@bassberry.com), and Colleen Hitch (chitch@bassberry.com), Bass, Berry & Sims PLC, The Tower at Peabody Place, 100 Peabody Place, Suite 900, Memphis, Tennessee 38103-3672.

(2) Abram Moore (abe.moore@klgates.com) and Michael Hayes (michael.hayes@klgates.com), K & L Gates, LLP, 70 West Madison Street, Suite 3100, Chicago, Illinois 60602-4207.

(3) Clayton Friedman (cfriedman@manatt.com), Michael Yaghi (myaghi@manatt.com), Manatt, Phelps, and Phillips, LLP, Park Tower, 695 Town Center Drive, 14th Floor, Costa Mesa, CA 92626.



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