

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

2009 SEP 18 AM 10:37

STATE OF TENNESSEE, *ex rel.*  
ROBERT E. COOPER, JR., ATTORNEY  
GENERAL and REPORTER,

RICHARD R. ROOKER, CLERK

)  
) *elt* D.C.  
)

Plaintiff,

v.

No. 08-C-3494

MARCUS DONNELL JONES, individually  
and d/b/a JONES MEMORIALS, d/b/a  
www.jonesmemorials.com, a website owned  
and operated by MARCUS DONNELL JONES,  
and HALF OFF STONES, a sole proprietorship  
owned and operated by MARCUS DONNELL  
JONES, and d/b/a www.halfoffstones.com,  
a website owned and operated by MARCUS  
DONNELL JONES,

Judge Barbara Haynes

Defendant Jones,

and

HENRY WAYNE MONK, individually and  
d/b/a MONK MEMORIALS, a sole  
proprietorship owned and operated by  
HENRY WAYNE MONK, and d/b/a  
www.monkmemorials.com, a website owned  
and operated by HENRY WAYNE MONK,

Defendant Monk.

**ORDER GRANTING STATUTORY TEMPORARY INJUNCTION, ASSET  
FREEZE, AND OTHER EQUITABLE RELIEF, INCLUDING  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The State's Motion for Statutory Temporary Injunction, Asset Freeze and Other Relief  
came to be heard before Judge Barbara Haynes on September 18, 2009. Based upon the State's  
Complaint and its Exhibits, the Motion and its Exhibits, the record herein and oral argument, the

Court finds that Plaintiff's Motion for Statutory Temporary Injunction, Asset Freeze and Other Relief should be granted. Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court finds as follows:

1. **Jurisdiction and Venue.** This Court has jurisdiction of the subject matter of this case and the parties pursuant to Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County, pursuant to Tenn. Code Ann. § 47-18-108(a)(3), because it is the county where the alleged unfair or deceptive acts or practices took place or are about to take place, the county in which Defendant Jones and Defendant Monk conduct, transact or have transacted business and the county where Defendants both reside.

2. **Authority to Issue Injunction.** This Court has the authority to enter this temporary injunction and asset freeze pursuant to Tenn. Code Ann. § 47-18-108(a)(4), which states:

The courts are authorized to issue orders and injunctions to restrain and prevent violations of this part, and such orders and injunctions shall be issued without bond.

and Tenn. Code Ann. § 47-18-108(a)(1), which states:

Whenever the consumer affairs division has reason to believe that any person has engaged in, is engaging in, or based upon information received from another law enforcement agency is about to engage in any act or practice declared unlawful by this part and that proceedings would be in the public interest, the attorney general and reporter, at the request of the consumer affairs division, may bring an action in the name of the state against such person to restrain by temporary restraining order, temporary injunction or permanent injunction the use of such act or practice.

3. **Factors Considered.** On an application for a temporary injunction, the Court has four factors that the Court usually considers in determining whether such a temporary injunction

should be granted. The first factor being that the Plaintiff would suffer irreparable harm if the relief is not granted, that the Plaintiff has no adequate remedy at law, that the action is in the public interest and that such public interest would be weighed and balanced against any harm to the Defendants to the extent that the public interest would outweigh such private interest, and that the Plaintiff is likely to prevail on the merits of the case when the case is presented on its final basis.

4. **Statutory Injunction Standard.** The State has submitted that under a statutory injunction request the relevant inquiries under FTC case law and the State's temporary injunction authority, Tenn. Code Ann. § 47-18-108(a)(1), are whether the State has shown a likelihood of success on the merits of its action and whether the injunction would be in the public interest. Since the statutory temporary injunction standard encompasses two of the four standards used under the traditional standard, the Court finds that based upon the evidence presented an injunction and asset freeze is appropriate under either the traditional temporary injunction standard or the statutory injunction standard.

5. **Proper Standard.** The Court finds that the proper standard for a statutory temporary injunction is the one applied in *See State v. Expyfi, LLC, et al.*, No. 07-3365, Cir. Ct. of Tenn., 20<sup>th</sup> Jud. Dist., Davidson County, Div. III (Nov. 21, 2007); *State v. Payton Abernathy, et al.*, No. 169384, Chan. Ct. of Tenn., 6th Jud. Dist., Knox County, Div. III (May 3, 2007); *State v. Froehlig, et al.*, No. 33293, Cir. Ct. of Tenn., 21st Jud. Dist., Williamson County, Div. II (Mar. 2, 2007); *State v. Olomoshua, et al.*, No. 06C2912, Cir. Ct. of Tenn., 20th Jud. Dist., Davidson County, Div. III (Nov. 16, 2006); *Tennessee Real Estate Comm'n v. Hamilton*, No. 01A01-9707-CH-00320, 1998 WL 272788, at \*4-6 (Tenn. Ct. App. May 22, 1998); *State v. Continental Distributing Co.*, No. 74892, Ch. Ct. of Tenn., 11th Jud. Dist., Hamilton County,

Part I (Sept. 1, 1994); *see also* *FTC v. Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634 (M.D. Tenn. Aug. 18, 2005). Pursuant to *Expyfi, Abernathy, Froehlig, Olomoshua, Tennessee Real Estate Commission, Continental Distributing Co., and National Testing Services*, this Court concurs that the movant's burden for a statutory temporary injunction is met upon a demonstration of a substantial likelihood of success of demonstrating at trial that the non-movants are violating the statute. A showing of immediate and irreparable harm is assumed with the violation of the statute. Proof of immediate and irreparable harm or the inadequacy of other remedies is not required for a statutory temporary injunction.

6. **Substantial Likelihood of Success on the Merits.** The Court finds that the State has shown a substantial likelihood of ultimate success on the merits of its claim that Defendant Marcus Donnell Jones, individually, d/b/a Jones Memorials, and d/b/a Half Off Stones, and Defendant Henry Wayne Monk, individually, and d/b/a Monk Memorials and as agent of Marcus Donnell Jones in the sole proprietorships, Jones Memorials and Half Off Stones, have violated the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.* through Defendant's conduct as detailed in the State's Complaint and its exhibits, the State's Motion with Exhibits, and supporting Memorandum.

7. **Public Equities Outweigh Private Equities.** The Court finds that the public equities, advanced by the State in safeguarding the monies generated by the Defendants in the operation of the above-named sole proprietorships or any other such businesses in order to preserve funds for consumer restitution and other ascertainable losses, outweigh the private equities favoring Defendants, that a temporary injunction granting an asset freeze is in the public interest, and therefore, a statutory injunction must issue.

8. **No Bond Required.** The Court finds that no bond is required of the State for the issuance of this statutory temporary injunction and asset freeze pursuant to Tenn. Code Ann. § 47-18-108(a)(4).

9. **TCPA Remedial Legislation.** Pursuant to Tenn. Code Ann. § 47-18-115, this Court finds that the Tennessee Consumer Protection Act is remedial legislation necessary for the protection of the consumers of the State of Tennessee and elsewhere, and that it is to be construed to effectuate the purposes and intent set forth at Tenn. Code Ann. § 47-18-102.

10. **TCPA Construed Consistent with FTC Authority.** Pursuant to Tenn. Code Ann. § 47-18-115, this Court finds that the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*, is to be construed consistently with the interpretations given by the federal trade commission and the federal courts pursuant to § 5(A)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)).

11. **Factual Findings.** The Court makes the following factual findings:

- A. The State of Tennessee initiated a law enforcement action for violations of the Tennessee Consumer Protection Act against the Defendants on August 10, 2009.
- B. The filing of the State's Complaint is preceded by an enforcement action brought under Tenn. Code Ann. § 47-18-106. The State's action was necessitated by Defendant Jones' noncompliance with an investigatory subpoena as issued in the State's underlying investigation.
- C. On January 29, 2009, the this Court ordered Defendant Jones d/b/a Jones Memorials, d/b/a Half Off Stones, to comply with the State's investigative request for production of documents and the State's request that Defendant Jones appear for testimony. Further, on that same date, this Court ordered Defendant Jones to pay remedial civil penalties in the amount of One Thousand Dollars (\$1,000) for non-compliance with the Request for Consumer Protection Information, which, according to the unanswered Complaint, Defendant Jones has failed to pay as of this date.

- D. On May 22, 2009, this Court ordered Defendant Jones to pay the State's attorneys fees and costs in the total amount of Eight Thousand Three Hundred Forty-Five Dollars (\$8,345.00).
- E. On August 12, 2009, Defendant Marcus Donnell Jones and Defendant Henry Wayne Monk were served with the State's Complaint.
- F. On September 9, 2009, the State filed a Motion for Statutory Temporary Injunction and Motion for Expedited Hearing.
- G. On September 11, 2009, the Court entered an order setting this matter for expedited hearing on September 18, 2009 at 9:00 a.m.
- H. The State presented eleven (11) sworn affidavits of consumers with experiences consistent with the allegations in the State's Complaint.
- I. The State presented thirty-one (31) consumer complaints filed with the State of Tennessee Division of Consumer Affairs, eighty (80) consumer complaints filed with the Better Business Bureau ("BBB"); it appears that fifteen (15) consumers filed complaints with other sources known to the State at this time. Some consumers filed with more than one agency.
- J. The Defendants have failed to respond to the various agencies' efforts to resolve consumer complaints about 70% of the time.
- K. The State presented Defendants' websites, by capture or copy (pdf.) through the Affidavits of Jim KempVane and Nathan Casey.
- L. No responsive pleading has been filed to the State's Motion for Statutory Injunction.
- M. No responsive pleading has been filed to the State's Motion for Expedited Hearing.
- N. No responsive pleading has been filed to the State's Complaint.

**ORDER OF TEMPORARY INJUNCTION AND ASSET FREEZE**

**DEFINITIONS**

12. For the purpose of this Temporary Injunction Order, the following definitions shall apply to the following terms:

- A. "Advertise," "Advertisement" or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that

is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, electronic mail, website or other digital form, slide, radio, broadcast television, cable television, or commercial or infomercial whether live or recorded.

- B. **“And”** and **“Or”** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.
- C. **“Asset”** or **“Assets”** shall mean any legal or equitable interest in, right to, or claim to, any real and personal property— including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.
- D. **“Attorney General”** shall mean Office of the Tennessee Attorney General.
- E. **“Consumer”** shall mean any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- F. **“Clear and Conspicuous”** or **“Clearly and Conspicuously:”** A statement is **“Clear and Conspicuous”** or **“Clearly and Conspicuously”** disclosed if, by whatever medium, it is readily understandable and presented in such size, color, contrast, location, and audibility, compared to other information with which it is presented, that is readily apparent to the person to whom it is disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner which is readily noticeable and understandable. Further, a disclosure of information is not clear and conspicuous if, among other things, it is obscured by the background against which it appears or there are other distracting elements. Warnings, safety disclosures or statements of limitation must be set out in close conjunction with the benefits described, or with appropriate captions of such prominence that warnings, disclosures or statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading or contrary. The statement shall be in understandable language and syntax.

Nothing contrary to, inconsistent with, or in mitigation of the statement shall be used in any communication.

- G. **“Deceptive”** or **“Deception”** shall mean causing or tending to cause a consumer to believe what is false or misleading or tending to mislead a consumer as to a matter of fact. (Tucker v. Sierra Builders, 180 S.W.3d 109, 116 (Tenn. Ct. App. 2005)).
- H. **“Defendants”** shall mean all Defendants captioned above and/or any and all officers, directors, owners, employees, sales staff, managers, partners, parents, subsidiaries, successors, related entities, future purchasers, merged parties, inheritors or other successors in interest, assigns, agents and representatives acting on behalf of all Defendants.
- I. **“Division”** or **“Division of Consumer Affairs”** shall mean the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- J. **“Document”** shall be synonymous in meaning and equal in scope to the usage of the term in Tenn. R. Civ. P. 34, and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained, extracted and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document.
- K. **“FTC Mail Order Rule”** or **“Federal Trade Commission Mail or Telephone Order Merchandise Rule,”** shall mean the Federal Trade Commission rule set forth at 16 C.F.R. § 435.1 and as may be amended from time to time, promulgated under the authority of 15 U.S.C. § 552, which describes unfair or deceptive acts or practices by a seller in connection with mail or telephone order sales in or affecting commerce, as “commerce” is defined in the Federal Trade Commission.
- L. **“Goods”** shall mean any tangible chattels leased, bought, or otherwise obtained for use by an individual primarily for personal, family, or household purposes of a franchise, distributorship agreement, or similar business opportunity.
- M. **“Including”** or **“Include”** shall mean “including, without limitation.”
- N. **“Money”** or **“Monies”** in the context of refunds to consumers, includes all charges, fees, taxes or other valuable paid to Defendants
- O. **“Person”** shall mean a natural person, individual, organization or other legal entity, including a corporation, partnership, proprietorship,

association, trust, estate, cooperative, limited liability company, government or governmental subdivision or agency, any legal or commercial entity however organized, or any other group or combination acting as an entity.

- P. **“Services”** shall mean any work, labor, or services including services furnished in connection with the sale or repair of goods or real property or improvements thereto.
- Q. **“State,” “State of Tennessee,” or “Attorney General”** shall mean the Plaintiff and shall mean the Office of the Tennessee Attorney General and Reporter.
- R. **“TCPA”** shall mean to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. § 47-18-101 *et seq.* and as may be amended from time to time.
- S. **“Unfair” or “Unfairness”** shall mean causing substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. Substantial injury involves monetary injury. Injury will be considered substantial if a relatively small harm is inflicted on a large number of consumers or if a greater harm is inflicted on a relatively small number of consumers. Consumers cannot reasonably avoid injury when a merchant's sales practices unreasonable create or take advantage of an obstacle to the free exercise of consumer decision-making, including withholding important information from consumers, overt coercion, or exercising undue influence over a highly susceptible class of consumers. *Tucker v. Sierra Builders*, 180 S.W.3d 109, 117 (Tenn. Ct. App. 2005).

**STATUTORY TEMPORARY INJUNCTION:**

**Prohibitions and Affirmative Requirements of Defendants**

13. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1) and (a)(4) and based upon the above, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants, Marcus Donnell Jones, individually and d/b/a Jones Memorials, a sole proprietorship, d/b/a www.jonesmemorials.com, a website owned and operated by Marcus Donnell Jones, and Half Off Stones, a sole proprietorship owned and operated by Marcus Donnell Jones, and d/b/a www.halfoffstones.com, a website owned and operated by Marcus Donnell Jones, and Defendant

Henry Wayne Monk, individually and d/b/a Monk Memorials, a sole proprietorship owned and operated by Henry Wayne Monk, and d/b/a www.monkmemorials.com, a website owned and operated by Henry Wayne Monk (collectively referred to as "Defendants" as defined above) and, each of their officers, directors, owners, employees, sales staff, managers, partners, parents, subsidiaries, related entities, future purchasers, merged parties, inheritors, or other successors in interest, agents, successors, representatives, and assigns, and any other persons in active concert or participation with the Defendants who receive actual notice of this Temporary Injunction Order, shall be temporarily enjoined, restrained and bound, directly or indirectly, from engaging in the practices set forth herein and further, required to directly or indirectly satisfy the affirmative requirements immediately upon entry of the Statutory Temporary Injunction Order, set forth herein:

- A. Defendants shall not engage in any unfair or deceptive acts or practices in the conduct of their businesses. Defendants shall fully abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, including, but not limited to, §§ 47-18-104(a), 47-18-104(b)(1-27), which prohibits any and all unfair and/or deceptive acts or practices.
- B. Defendants shall fully comply with the FTC Mail Order Rule.
- C. Defendants shall not engage in any false, unfair or misleading advertisements or promotions offering the sale of any goods or services, including, but not limited to, tombstones, headstones, grave markers, cemetery equipment or other products.
- D. Defendants shall not offer goods or services or otherwise accept orders for goods or services unless Defendants have the financial soundness and business ability to deliver the goods and services in a timely fashion and as represented and promised to the consumer.
- E. Defendants shall each separately be required to affirmatively maintain and keep a quantity of goods in stock and available and employ staff sufficient to meet reasonably anticipated consumer demand.

- F. Defendants shall not misrepresent the delivery date of goods and services ordered by the consumer.
- G. Defendants shall, clearly and conspicuously disclose the estimated delivery date in writing on the order and invoice provided to the consumer at the time that the original contract for goods and services is entered into and before any monies or other valuable consideration is received from the consumer.
- H. If delivery of the ordered goods and services cannot be made at the time of the original stated delivery date, due to unforeseen circumstances, Defendants, as soon as they learn of the necessity of a delayed delivery date, shall be required to provide a timely, clear and conspicuous notice of the delay by email, telephone, and mail to the applicable consumer. This required notice shall, clearly and conspicuously, provide the new delivery date and shall offer the consumer two options:
- (i) the option to cancel and receive a full, prompt, monetary refund of all monies paid within ten (10) business days of the consumer's request; or
  - (ii) the option to accept the modified delivery date.
- If no consumer response is received within ten (10) business days of said notice being sent to the consumer, the consumer shall be deemed to have elected to cancel the transaction and Defendants shall be required to provide the consumer a full refund of all monies paid. Defendants shall be prohibited from extending any delivery date more than thirty (30) days from the originally established delivery date on the order and invoice. Defendants shall maintain all records of the transactions described in this section as set forth in paragraph 13.DD.
- I. Defendants shall be required to refund consumers all monies paid within no more than ten (10) business days of notification of the consumer's exercise of his/her option to cancel and receive a full monetary refund.
- J. Defendants' advertisements in any medium including, but not limited to, their Internet websites shall, clearly and conspicuously, disclose the consumer's option to receive a full monetary refund and cancel the order in any situation where delivery is delayed or the goods or services are not otherwise delivered as advertised or represented during the sales transaction.
- K. Defendants shall, clearly and conspicuously, disclose the full price of all charges, fees and taxes for their goods and services to the consumer in their advertisements and on the written order provided to the consumer prior to taking any monies or other valuable consideration from the consumer.

- L. Defendants shall not misrepresent that the sale prices or other offers are for a limited time only (or other term or phrase of similar import), when that is not the case.
- M. Defendants shall be prohibited from stating, implying or causing to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, the Consumer Advocate and Protection Division, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Defendants.
- N. Defendants shall be prohibited from representing or implying that any procedure or other acts or practices hereafter used or engaged in by Defendants has been approved or endorsed, in whole or in part, by the State of Tennessee, any governmental unit of the State of Tennessee and/or the Tennessee Attorney General.
- O. Defendants shall not enter into any contract or agreement with any consumer that contains any terms which would violate this Order, any injunction entered by the Court, the Tennessee Consumer Protection Act of 1977 or any other law, regulation or rule.
- P. Defendants shall not represent or imply that goods or services have sponsorship, approval, characteristics, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status or affiliation or connection that such person does not have.
- Q. Defendants shall not represent that goods or services are of a particular standard, quality or grade, if they are of another.
- R. Defendants shall not advertise goods or services with intent not to supply reasonably expectable public demand, unless the advertisement clearly and conspicuously discloses a limitation of quantity.
- S. Defendants shall be prohibited from making any of the following misrepresentations, or misrepresentations of similar import, to consumers:
  - (i) That Defendants provide “accelerated free shipping” (or term or phrase of similar import) if such is not the case;
  - (ii) That Defendants provide “reliable insured and accurate delivery” (or term or phrase of similar import) if such is not the case;
  - (iii) That consumers’ satisfaction is guaranteed (or term or phrase of similar import) if such is not the case;

- (iv) That Defendants' goods and services include a "100% guaranteed warranty" (or term or phrase of similar import) if such is not the case;
  - (v) That Defendants provide a warranty in connection with promised shipping deadlines (or term or phrase of similar import) if such is not the case;
  - (vi) That Defendants have provided "rock solid" service for "20 years strong" (or term or phrase of similar import) if such is not the case; and/or
  - (vii) That Defendants provide in-house production (or term or phrase of similar import) if such is not the case.
- T. Defendants shall not represent, advertise or promote that they can provide or deliver any return, profit, or financial gain whatsoever, on any investment to potential investors or consumers, if such is not the case.
- U. Defendants shall not advertise goods or services with intent not to sell them as advertised.
- V. Defendants shall not advertise that any business is "going out of business" more than ninety (90) days before such business ceases to operate.
- W. Defendants shall be required to fully comply with Tenn. Code Ann. § 6-55-401 to § 6-55-413 where a municipality has adopted the regulations of liquidation sales pursuant to Tenn. Code Ann. § 6-55-413.
- X. Defendants shall not advertise any sale by falsely representing that a person is going out of business.
- Y. Defendants shall not represent or imply that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law.
- Z. Defendants shall not represent or imply that a guarantee or warranty confers or involves rights or remedies which it does not have or involve.
- AA. Defendants shall not misrepresent or imply that a consumer transaction confers or involves rights or remedies that it does not have or involve.
- BB. Defendants shall not use the consumer names, addresses, telephone numbers and other personally identifiable information gathered from consumers for any marketing purposes or any other purpose, and shall not

provide them to any other person, other than law enforcement, for any reason, including for the purposes of marketing to these consumers now or in the future.

- CC. Defendants shall be prohibited from selling or otherwise distributing to any other person any consumer lists or other personally identifiable information.
- DD. Defendants shall respond within five (5) business days to all consumer complaints.
- EE. Defendants shall not offer for sale "memberships," investment opportunities, and/or business opportunities to consumers.
- FF. Immediately upon entry of this Order, Defendants shall maintain consumer complaint files, alphabetized by last name, which includes at a minimum, the hard copy, if any of the consumer's written complaint (if by mail, facsimile or email) or a summary of the telephonic complaint, the full name of the consumer, nature of complaint, date of transaction, notes and/or copies of communications with the complaining consumers, and response, *e.g.* resolution by refund, cancellation or otherwise) or other result. Each Defendant shall be separately required to affirmatively maintain and keep, in a secure location in the State of Tennessee, hard copies of all orders, invoices and receipts, notices required by any injunction or court order, any correspondence and any other writings or documents generated in the course of Defendants' operation of businesses and engaging in trade or commerce with a consumer, by Defendants, suppliers, or any other person until expressly otherwise ordered by the Court. That secure location shall be made available to the State's representative(s), within twenty-four (24) hours written notice from the State, during regular business hours.
- GG. Within no more than three (3) days of entry of this Order, Defendants shall be required to separately notify the State in writing of the physical address of the secure location they have selected within the State of Tennessee to maintain the records required by paragraph 23.FF. Further, within no more than (3) days of entry of this Order, each Defendant shall be required to notify the State in writing of a telephone number and contact name the State can use to request that the secure location be made available to the State representative as described in paragraph 23.FF.
- HH. Defendants shall not destroy, damage, alter, or remove from the State of Tennessee any documents, electronic and written, files, names and addresses of consumers responding to Defendants' promotions, bank statements, financial statements, revenue journals, cash journals, any

financial records, correspondence, concerning Defendants' past and/or current cemetery memorial or monument businesses or any other matter covered by the State's lawsuit and the State's Motion for Temporary Injunction and this Order.

**ASSET FREEZE**

14. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in order to preserve funds for consumer restitution for ascertainable losses of consumers, and/or disgorgement of ill-gotten gains and in direct advancement of the State's police and regulatory power, civil law enforcement authority, and the purposes of the Tennessee Consumer Protection Act identified at Tenn. Code Ann. § 47-18-102, including allowing the State of Tennessee to provide for the protection of consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices, the advancement of ethical standards of dealing between persons engaged in business, and the maintenance of the integrity of the marketplace in Tennessee as a whole, Defendant Marcus Donnell Jones, individually, d/b/a Jones Memorials, and d/b/a Half Off Stones, and Defendant Henry Wayne Monk, individually, and d/b/a Monk Memorials and as agent of Marcus Donnell Jones in the sole proprietorships, Jones Memorials and Half Off Stones, and, each of their officers, directors, owners, employees, sales staff, managers, partners, parents, subsidiaries, related entities, future purchasers, merged parties, inheritors, or other successors in interest, agents, successors, representatives, and assigns, and any other persons in active concert or participation with the Defendants who receive actual notice of this Order, pursuant to Tenn. Code Ann. § 47-18-108 (b)(1) and based upon the above, shall be temporarily enjoined, restrained and bound, directly or indirectly, from engaging in the practices set forth and required to directly or indirectly satisfy the affirmative requirements immediately upon entry of this Statutory Temporary Injunction and Asset Freeze.

A. Defendants shall be prohibited from liquidating, encumbering, borrowing

against, withdrawing, transferring to another company or person or otherwise dissipating any asset or money which any consumer has purchased already and made partial or full payment to either or both Defendants.

- B. At least twenty-five percent (25%) of any and all proceeds from Defendants' continued sale of tombstones, grave markers, flat markers, or any other cemetery goods and services, during the pendency of this action, shall be deposited in a registry account under the care, custody, and control of the Circuit Court Clerk within no more than five (5) business days of Defendants' receipt of said proceeds.
- C. At the time each deposit of proceeds as described above in Paragraph 14.B is made, Defendants shall submit a copy of each order, invoice, consumer's name, address, telephone number, email address, amount paid by each consumer purchaser, and the amount of money being deposited. Each document submitted to the Court must be signed and notarized by Defendants.
- D. The above described proceeds shall be held *in custodia legis* by the Davidson County Circuit Court Clerk as described below. The account will be listed as "Monies Held For Potential Consumer Restitution and Disgorgement of Ill-Gotten Gains Pursuant to Temporary Injunction Order in the case of *State of Tennessee v. Marcus Donnell Jones, individually, and d/b/a Jones Memorials, d/b/a www.jonesmemorials.com, a website owned and operated by Marcus Donnell Jones, and Half Off Stones, a sole proprietorship owned and operated by Marcus Donnell Jones, and d/b/a/ www.halfoffstones.com, a website owned and operated by Marcus Donnell Jones, and Henry Wayne Monk, individually, and d/b/a Monk Memorials, a sole proprietorship owned and operated by Henry Wayne Monk, and d/b/a www.monkmemorials.com, a website owned and operated by Henry Wayne Monk.*"
- E. The monies shall be placed in a registry account that will bear the highest interest rate.
- F. The monies shall be held in a registry account of this Court until an Order by this Court expressly stating otherwise.

**COURT ORDERED AFFIRMATIVE ACCOUNTING REQUIRED**

15. Pursuant to Tenn. Code Ann. § 47-18- 108 (b)(1), IT IS ORDERED, ADJUDGED AND DECREED that immediately upon entry of this Temporary Injunction and Asset Freeze, the Defendants shall provide this Court with an accounting of all assets in their

possession or held on their behalf relating to their sale of tombstones, grave markers, flat markers and/ or other cemetery items, goods and services, or any investment opportunities. Further, Defendants shall provide the location of each account, the account numbers, the amounts in each account, the names of entities on those accounts, the addresses of the entities and persons with authority to withdraw transfer money or in any way affect the money in those accounts. A copy of the ordered records provided to this Court shall be provided to counsel for the State of Tennessee contemporaneously at the address listed on this Order.

**ATTORNEYS' FEES AND COSTS**

16. IT IS ORDERED, ADJUDGED AND DECREED that the award of attorneys' fees and costs relating to the State's Motion and the related Memorandum and hearings associated with it is reserved. This Order does not entitle Defendants to seek or to obtain attorneys' fees as a prevailing party under any statute, regulation, or rule.

**FULL FORCE & EFFECT**

17. IT IS ORDERED, ADJUDGED AND DECREED that this Temporary Injunction Order and Asset Freeze shall remain in full force and effect unless otherwise expressly ordered by this Court.

**APPLICABILITY OF ORDER AND NOTICE**

18. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants shall provide notice of this Order to each of their officers, directors, partners, subsidiaries, affiliates, managers, parents, related entities, successors, agents, representatives, sales staff, employees, agents, successors and assigns, and other persons in active concert or participation with Defendants who receive actual notice of this temporary injunction order and asset freeze on the day of entry of this Order.

19. Upon motion of the State, the Court shall set an expedited hearing for consideration of whether based upon the financial information provided under this Order, it is appropriate for monies to be placed into a court account by the Defendants' for possible consumer restitution and disgorgement of ill-gotten gains beyond those required herein pending a final determination in this matter.

#### **PENALTIES FOR FAILURE TO COMPLY**

20. Pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108(c), any knowing violation of the terms of this Order shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions or remedies, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.

21. Any subsequent failure to comply with the terms of this Order is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

#### **COURT COSTS**

22. Defendants shall pay all court costs associated with this Temporary Injunction Motion, the related hearing and entry of this Order.

23. No costs shall be taxed or assessed to the State as provided by Tenn. Code Ann. §§ 47-18-108(a)(4) and 47-18-116.

#### **IMMEDIATE ENTRY**

24. In accordance with this Court's Order Setting Expedited Statutory Temporary Injunction Hearing, entered September 11, 2009, given the exigent circumstances, any applicable local rules or rules of civil procedure are waived, this Order and any other order relating to the State's Motion for Statutory Temporary Injunction hearing shall be entered immediately and

served via U.S. Mail, postage prepaid, on Defendants or, if Defendants obtain counsel, to their counsel.

25. Based on the above, the State's Motion for Statutory Temporary Injunction and Asset Freeze is GRANTED:


**IT IS SO ORDERED.**

ISSUE DATE: 9-17-09 10:26 AM

  
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JUDGE BARBARA N. HAYNES  
THIRD CIRCUIT COURT

SUBMITTED FOR ENTRY:

ROBERT E. COOPER, JR.  
Attorney General and Reporter  
B.P.R. No. 010934

  
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**CERTIFICATE OF SERVICE**

On this the 15 day of September, 2009, I hereby certify that a true and exact copy of the foregoing Order Granting Statutory Temporary Injunction, Asset Freeze, Including Findings of Fact and Conclusions of Law has been mailed, first-class postage pre-paid to:

Marcus Donnell Jones  
3311 Hawkwood Lane,  
Nashville, TN 37207

and

Wayne Monk  
1005-B Delmas Ave.  
Nashville, TN 37216

  
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B.P.R. No. 009157