

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA,
DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,

Plaintiff,

vs.

PMC COMPUTER MARKETING
SYSTEMS, INC., a foreign corporation.

Defendants.

Case No. 02CA 1593

FILED
CIRCUIT CIVIL DIV.
02 JUL -1 AM 11:02
LEON COUNTY, FLORIDA

**Complaint For Permanent Injunction,
Civil Penalties and Other Statutory Relief**

Plaintiff, State of Florida, Department of Agriculture and Consumer Services, sues the Defendant, PMC Computer Marketing Systems, Inc., a foreign corporation, and alleges as follows:

ALLEGATION COMMON TO ALL COUNTS

1. This is an action for permanent injunction, civil penalties and other statutory relief, brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes.
2. This Court has jurisdiction pursuant to the provision of said Act.
3. Plaintiff, State of Florida, Department of Agriculture and Consumer Services, is the enforcing authority of the Florida Deceptive and Unfair Trade Practices Act as defined in

Chapter 501, Part II, Florida Statutes, Chapter 570.07(36), Florida Statutes (and its predecessor Chapter 570.544(10)), and is authorized to seek the relief sought herein pursuant to the provisions of the named statutes and such other statutes authorizing such relief.

4. The amount in controversy exceeds the jurisdictional limits of this Court.

5. The acts and practices alleged herein occurred in and affect more than one judicial circuit.

6. Defendant, PMC Computer Marketing Systems, Inc., is a Texas corporation with its principal place of business in Houston, Texas. Defendant accepted the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the State of Florida and therefore such action on the part of Defendant constitute an appointment by Defendant of the Secretary of State of the State of Florida as Defendant's agent on whom all process in any action or proceeding against it arising out of any transaction or operation connected with or incidental to the business or business venture. Defendant was operating, conducting, engaging in or carrying on a business or business venture in the State of Florida. Further, Defendant engaged in solicitation of Florida businesses and citizens and sold products, materials and things processed, serviced or manufactured by Defendant and such products, materials and things were used in the State of Florida. Specifically, Defendant sold to numerous Florida businesses and consumers the ProLead 2000 which is a computer auto-dialer hardware/software package that calls customers and once connected to a live person, the machine automatically plays a pre-recorded message promoting the particular product or service of the person purchasing the ProLead 2000.

7. Plaintiff has conducted an investigation and has coordinated with the Department of Legal Affairs and has determined that enforcement action serves the public interest.

8. Defendant at all times material hereto, has engaged in the trade or commerce, by advertising, soliciting, offering or distributing a good or service, within the definition of Section 501.203(8), Florida Statutes.

9. Defendant is engaged in the business of selling to numerous Florida businesses and consumers the ProLead 2000 which is a computer auto-dialer hardware/software package that calls customers and once connected to a live person, the machine automatically plays a pre-recorded message promoting the particular product or service of the person purchasing the ProLead 2000.

10. In addition, Defendant guaranteed and repeatedly advised its customers that the ProLead 2000 was legal in Florida and that if the customer had any problem with the ProLead 2000 that Defendant would refund the customer all of its money. That numerous Florida customers have contacted Defendant with regard to the Florida regulatory agencies advising Florida customers that the use of ProLead 2000 violates Section 501.059, Florida Statutes. Further, use of the ProLead 2000 violates 47 U.S.C. s. 227 known as the Telephone Consumer Protection Act of 1991. Copy of Defendant's guarantee is attached hereto as Exhibit A. Copy of Defendant's correspondence representing that ProLead 2000 is legal in Florida is attached hereto as Exhibit B.

11. Defendant repeatedly gave assurances to Florida customers that the ProLead 2000 would not violate Florida law. The ProLead 2000 as marketed by Defendant to Florida

customers causes Florida customers to violate both Federal and State statutes regarding telephone solicitation.

12. Unless the Defendant is enjoined from engaging further in the acts and practices herein complained, the continued activities of Defendant will result in sever damage to the unwary consuming public and Florida businesses.

COUNT I
(Injunctive Relief)

13. Plaintiff realleges paragraphs 1 through 12, above.

14. Section 501.204(1), Florida Statutes, declares unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce to be unlawful.

15. The Defendant's acts and practices as set forth herein constitute unfair and deceptive acts or practices in the conduct of a trade or commerce in violation of Section 501.204(1), Florida Statutes.

16. The Defendant's acts and practices as set forth herein were and are to the injury and prejudice of members of the consuming public and business community and constituted and now constitute unfair methods of competition, unconscionable or deceptive acts or practices within the meaning and intent of the Federal Trade Commission Act.

17. The Defendant's aforesaid acts described herein constitute unfair, unconscionable or deceptive trade practices in violation of Section 501.204, Florida Statutes.

18. Unless Defendant is permanently enjoined from engaging further in such acts and practices as herein described, the activities of the Defendant will cause injury to the unwary consuming public.

COUNT II
(Civil Penalties)

19. Plaintiff realleges paragraphs 1 through 12, above.

20. Defendant had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that its acts, as described above, were and are unfair, unconscionable or deceptive trade practices.

21. Defendant is therefore liable for civil penalties in the amount up to \$10,000.00 per violation under Section 501.2075, Florida Statutes.

COUNT III
(Reimbursement)

22. Defendant realleges paragraph 1 through 21, above.

23. Pursuant to Section 501.207(3) should the Court find the Defendant liable for unfair, unconscionable or deceptive trade practices, then, in such event, the Court, pursuant to such statute may order reimbursement to consumers. Defendant's activities with regard to Florida consumers and businesses constitute unfair, unconscionable or deceptive trade practices.

WHEREFORE, the Plaintiff, State of Florida, Department of Agriculture and Consumer Services, requests this Court to grant the following relief:

A. Grant a permanent injunction against Defendant, through their officers, agents, employees or any other persons who act under, by through or on behalf of Defendant, prohibiting such persons from doing the following acts:

(i) Marketing or selling the automated system for the selection or dialing telephone numbers or the playing of a recorded message when a connection is completed to the number called within the State of Florida;

- (ii) Violating Chapter 501, Florida Statutes;
- (iii) Grant restitution to all consumers, known and unknown, found to have paid for and received the automated system for the selection or dialing telephone numbers or the playing of a recorded message when a connection is completed to the number called from Defendant.

B. Grant such further relief as follows:

- (i) Plaintiff hereby moves that the Court grant relief under Section 501.207(3), Florida Statutes;

- (ii) Assess against Defendant civil penalties in the amount of \$10,000.00 for each act or practice found to be in violation of Chapter 501, Part II, Florida Statutes;

- (iii) Waive any posting of bond in the action pursuant to Section 60.08. Florida Statutes;

- (iv) Award reasonable attorney fees and costs to Plaintiff herein; and

- (v) Grant such other and further relief as this Court deems just and proper.

C. Plaintiff demands trial by jury of all issues triable by jury in this action.

STATE OF FLORIDA, DEPARTMENT OF
AGRICULTURE & CONSUMER SERVICES



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Progressive Marketing
Communications



LEADING NEW BUSINESS TO YOU

To Whom It May Concern:

The ProLead 2000 is legal to operate in the state of Florida, and there are many 'for profit' business owners using our system, and enjoying the increase in new business that a steady stream of fresh leads bring.

As previously stated, in the event that the state of Florida were to outlaw the ProLead 2000, then PMC would buy out your lease and release you from any further lease obligations.

Sincerely,



Keith Lakin
Sales Manager

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MIDNIGHT 11-21-70-7
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COMMUNICATIONS



LEADING NEW BUSINESS TO YOU

ONE-YEAR RESPONSE GUARANTEE

Dear Customer:

I would like to welcome you as a new member of the PMC family. Along with a very powerful marketing tool at your disposal, you also have a very skilled team of marketing experts to guide you along the way.

PMC, through extensive market testing, has been able to create the presentations and methods that can guarantee responses. By using our presentations and methodologies, we know you can succeed and we are willing to back it up with the strongest guarantee offered for any type of advertising or marketing program in the United States today.

Follow our procedures and do not try to re-invent the wheel. We are the marketing experts and we know what works. We guarantee our procedures and methodologies, not yours. This is the guarantee:

We guarantee (5) leads a day based on 4,000 calls per day. The system must be consistently operating on a regular basis during normal business hours throughout the guarantee period. We can only guarantee the response rate of the equipment, not your own closing rate, however we will give you additional training on closing if needed. If the Pro Lead 2000 does not perform as stated in this guarantee and all conditions of the guarantee are met, PMC will reimburse all monies paid toward the lease, and will reimburse all monies paid on lease, until lease is paid for in full. Each payment made by you will be reimbursed to you immediately once PMC has received proof of your monthly payment to the Lease Company. You will maintain possession of the equipment throughout the duration of the lease, and upon expiration and payoff, the equipment is to be returned to PMC. Your lease agreement with the Lease Company is not affected by this guarantee, and you are committed to the full term of your lease agreement, as it is neither transferable nor cancelable.

You must use our approved presentations and procedures for the entire guarantee period, not yours. The response rate will be verified by PMC from the call list report, based on the number of hang-ups to the number of completed transfers (CP's). Any alterations of the call list report will void this guarantee. Reports of the call list must be faxed or mailed to PMC for weekly verification. Any failure to meet all criteria stated herein will nullify this guarantee.

If you have any questions, do not hesitate to call me at 1-800-510-5734.

Sincerely,

Progressive Marketing Communications

