

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:)	
)	
TSA Stores, Inc.)	CG Docket No. 02-278
)	DA 05-342
Petition for Declaratory Ruling with)	
Respect to Certain Provisions of the)	
Florida laws and regulations)	

COMMENTS

I. INTRODUCTION

InfoCision Management Corporation (IMC), is a leading teleservices company that specializes in nonprofit fundraising, direct to consumer and business-to-business applications. IMC provides sales and customer support, fundraising and public education services to many national charities and Fortune 1000 corporations.

IMC raises more money for nonprofit organizations than any other outbound telephone marketing company in the world. We also have an unmatched reputation for quality, integrity and customer service. IMC's mission is to be the highest quality teleservices provider of the 21st Century.

IMC fully supports the FCC's previous comments and actions that differing state law should be preempted with regard to application to interstate telephone calls. IMC files these comments today in support of TSA Stores, Inc., (The Sports Authority) ("TSA") which has requested the FCC preempt Florida state law with regard to deliver of recorded messages to customers of the Sports Authority (Fl. Stat. §501.059).

As set forth in previous comments to the Commission, IMC believes that the FCC has an unprecedented opportunity to coordinate federal telemarketing list provisions to further consumer privacy, respect free speech and avoid duplicative and burdensome requirements on legitimate business. The national regulatory scheme should eliminate duplication and inconsistencies between the FCC, FTC and state regulatory schemes.

II. COMMENTS

The FCC should take advantage of this opportunity to reaffirm its previous opinions that Florida's law does not apply to interstate calls. Congress specifically allowed recorded calls to be placed to consumers with their express consent or as designated the FCC 47 U.S.C. §227(b)(1)(B).

Florida's suit against TSA, which placed calls to consumers who specifically gave their telephone numbers to TSA and did not make instructions to the contrary (i.e. a do-not-call request), frustrates Congress' intent.

The TCPA establishes a comprehensive scheme of regulation for telemarketing enforceable by federal and state regulators and private consumers. Differing state laws needlessly confuse consumers and businesses and impose needless expenses on businesses like TSA.

DA 05-342

Florida law provides that:

No person shall make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of recorded message when a connection is completed to a number called.

Fla. Stat. § 501.059(7)(a).

That same section goes on to provide that:

Nothing herein prohibits the use of an automated telephone dialing system with live messages if the calls are made or messages given solely in response to calls initiated by the persons to whom the automatic calls or live messages are directed or if the telephone numbers selected for automatic dialing have been screened to exclude any telephone subscriber who is included on the department's then-current "no sales solicitation calls" listing or any unlisted telephone number, or if the calls made concern goods or services that have been previously ordered or purchased.

Id. at (b).

The Florida statute is attached in its entirety as *Exhibit A* to this comment.

Florida has interpreted this section despite the language "or if the calls made concern goods or services that have been previously ordered or purchased" to bar all recorded calls to consumers and has sued TSA for violating this section when it placed recorded messages announcing sales to its own customers who had provided their telephone number to TSA in an in-store visit.

The TCPA provides that businesses can place recorded calls to their established customers within 18 months of a purchase or 3 months of an inquiry. 47 CFR § 64.1200(a)(2).

Businesses placing these calls are required to maintain an internal "do-not-call" list which "trumps" this established business relationship for any consumer who tells the business not to call it in the future. In the case of The Sports Authority, consumers who did not provide their

telephone number to The Sports Authority were not called.

InfoCision represents many commercial and nonprofit entities which have found that, in some circumstances, recorded messages represent an efficient and welcomed means of communicating with an entity's existing customers or donor base. In the recent political election, many political candidates found that recorded messages were an effective means to communicate with their supporters resulting in record levels of voter turnout.

The FCC should take this opportunity to limit states' authority to bar any of the above types of recorded calls to intrastate calls. Individuals' privacy rights are adequately protected by the limits on the definition of established business relationship and individuals' ability to make caller-specific "do-not-call" requests. Florida should not be allowed to frustrate this federal scheme of uniform regulation.

Nor is this problem limited to the State of Florida. Attached as *Exhibit B* is a chart prepared by our counsel which sets forth other states which do not allow businesses to place recorded calls to their own customers. The FCC should take this opportunity to specify that these companies' jurisdiction is limited to intrastate calls.

Finally, attached as *Exhibit C* is a Utah state court decision which ruled that Utah's law concerning delivery of recordings, similar in some respects to the Florida law involved in this preemption request, was preempted with regard to application to interstate calls. Although the plaintiff state agency in that matter has appealed that decision, the FCC should take this opportunity to adopt a similar rule with regard to Florida and other states' laws regarding delivery of recordings and definitions of "established business relationship."

The FCC should take action consistent with the TCPA and these sources to impose a uniform federal scheme of regulation for interstate calls by granting the request for preemption.

III. CONCLUSION

IMC has always structured its activities to honor the privacy requests of individuals. It complies with the federal do-not-call list and laws. Consumers, however, are not served, and indeed are harmed, by separate state lists, with varying exemptions and applicability. IMC urges the FCC to confirm its previous statements that state lists, and varying state laws are limited in application to intrastate calls. As state regulators can enforce these federal standards, they remain able to protect their citizens in applying this uniform standard.

Steve Brubaker
Senior Vice President of Corporate Affairs

April ____, 2005

Attachments

EXHIBIT A

FLORIDA STATUTES 2001

*** THIS DOCUMENT IS CURRENT THROUGH THE 2001 LEGISLATIVE SESSION ***

TITLE XXXIII REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND
SOLICITATIONS

CHAPTER 501 CONSUMER PROTECTION

PART I GENERAL PROVISIONS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Fla. Stat. § 501.059 (2001)

501.059 Telephone solicitation.

(1) As used in this section:

(a) "Telephonic sales call" means a call made by a telephone solicitor to a consumer, for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(b) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family, or household purposes, including, without limitation, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates, and any services related to such property.

(c) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

1. In response to an express request of the person called;
2. Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call;
3. To any person with whom the telephone solicitor has a prior or existing business relationship; or
4. By a newspaper publisher or his or her agent or employee in connection with his or her business.

(d) "Commission" means the Florida Public Service Commission.

(e) "Telephone solicitor" means any natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

(f) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods or services.

(g) "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

(h) "Doing business in this state" refers to businesses who conduct telephonic sales calls from a location in Florida or from other states or nations to consumers located in Florida.

(i) "Department" means the Department of Agriculture and Consumer Services.

(2) Any telephone solicitor who makes an unsolicited telephonic sales call to a residential, mobile, or telephonic paging device telephone number shall identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation.

(3) (a) Any residential, mobile, or telephonic paging device telephone subscriber desiring to be placed on a "no sales solicitation calls" listing indicating that the subscriber does not wish to receive unsolicited telephonic sales calls may notify the department and be placed on that listing upon receipt by the department of a \$ 10 initial listing charge. This listing shall be renewed by the department annually for each consumer upon receipt of a renewal notice and a \$ 5 assessment.

(b) The department shall update its "no sales solicitation calls" listing upon receipt of initial consumer subscriptions or renewals and provide this listing for a fee to telephone solicitors upon request.

(c) All fees imposed pursuant to this section shall be deposited in the General Inspection Trust Fund for the administration of this section.

(4) No telephone solicitor shall make or cause to be made any unsolicited telephonic sales call to any residential, mobile, or telephonic paging device telephone number if the number for that telephone appears in the then-current quarterly listing published by the department. Any telephone solicitor or person who offers for sale any consumer information which includes residential, mobile, or telephonic paging device telephone numbers, except directory assistance and telephone directories sold by telephone companies and organizations exempt under s. 501(c)(3) or (6) of the Internal Revenue Code, shall screen and exclude those numbers which appear on the division's then-current "no sales solicitation calls" list. This subsection does not apply to any person licensed pursuant to chapter 475 who calls an actual or prospective seller or lessor of real property when such call is made in response to a yard sign or other form of advertisement placed by the seller or lessor.

(5) (a) A contract made pursuant to a telephonic sales call is not valid and enforceable against a consumer unless made in compliance with this subsection.

(b) A contract made pursuant to a telephonic sales call:

1. Shall be reduced to writing and signed by the consumer.
2. Shall comply with all other applicable laws and rules.
3. Shall match the description of goods or services as principally used in the telephone solicitations.

4. Shall contain the name, address, and telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

5. Shall contain, in bold, conspicuous type, immediately preceding the signature, the following statement:

"You are not obligated to pay any money unless you sign this contract and return it to the seller."

6. May not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

(c) The provisions of this subsection do not apply to contractual sales regulated under other sections of the Florida Statutes, or to the sale of financial services, security sales, or sales transacted by companies or their wholly owned subsidiaries or agents, which companies are regulated by chapter 364, or to the sale of cable television services to the duly franchised cable television operator's existing subscribers within that cable television operator's franchise area, or to any sales where no prior payment is made to the merchant and an invoice accompanies the goods or services allowing the consumer 7 days to cancel or return without obligation for any payment.

(6) (a) A merchant who engages a telephone solicitor to make or cause to be made a telephonic sales call shall not make or submit any charge to the consumer's credit card account or make or cause to be made any electronic transfer of funds until after the merchant receives from the consumer a copy of the contract, signed by the purchaser, which complies with this section.

(b) A merchant who conducts a credit card account transaction pursuant to this section shall be subject to the provisions of s. 817.62.

(c) The provisions of this subsection do not apply to a transaction:

1. Made in accordance with prior negotiations in the course of a visit by the consumer to a merchant operating a retail business establishment which has a fixed permanent location and where consumer goods are displayed or offered for sale on a continuing basis;

2. In which the consumer may obtain a full refund for the return of undamaged and unused goods or a cancellation of services notice to the seller within 7 days after receipt by the consumer, and the seller will process the refund within 30 days after receipt of the returned merchandise by the consumer;

3. In which the consumer purchases goods or services pursuant to an examination of a television, radio, or print advertisement or a sample, brochure, or catalog of the merchant that contains:

a. The name, address, and telephone number of the merchant;

b. A description of the goods or services being sold; and

c. Any limitations or restrictions that apply to the offer; or

4. In which the merchant is a bona fide charitable organization or a newspaper as defined in chapter 50.

(7) (a) No person shall make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.

(b) Nothing herein prohibits the use of an automated telephone dialing system with live messages if the calls are made or messages given solely in response to calls initiated by the persons to whom the automatic calls or live messages are directed or if the telephone numbers selected for automatic dialing have been screened to exclude any telephone subscriber who is included on the department's then-current "no sales solicitation calls" listing or any unlisted telephone number, or if the calls made concern goods or services that have been previously ordered or purchased.

(8) The department shall investigate any complaints received concerning violations of this section. If, after investigating any complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall not exceed \$ 10,000 per violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Consumer Frauds Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(9) (a) In any civil litigation resulting from a transaction involving a violation of this section, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his or her reasonable attorney's fees and costs from the nonprevailing party.

(b) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(c) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(d) Any award of attorney's fees or costs shall become a part of the judgment and subject to execution as the law allows.

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

(10) The commission shall by rule ensure that telecommunications companies inform their customers of the provisions of this section. The notification may be made by:

(a) Annual inserts in the billing statements mailed to customers; and

(b) Conspicuous publication of the notice in the consumer information pages of the local telephone directories.

HISTORY: s. 1, ch. 87-253; s. 1, ch. 90-143; ss. 3, 5, ch. 91-237; s. 1, ch. 92-186; s. 59, ch. 92-291; s. 3, ch. 94-298; s. 616, ch. 97-103.

EXHIBIT B

Delivery of Recording Laws: Are Established Business Relationship Calls Exempt from Federal and State Bans¹?

Jurisdiction (Statutory Citation)	Established Business Relationships Exempt from Ban? ²
Federal (47 USC 227; 47 CFR 64.1200)	Yes
Alabama (Ala. Pub. Serv. Comm. Rule T17)	Yes
Alaska (45.50.475)	Yes
Arizona (13-2919; 14-1278)	No
Arkansas (5-63-204)	No
California (Civ. Code 1770(a)(22); Pub. Util. 2872(f))	Yes
Colorado (18-9-311)	Yes, but express consent required.
Connecticut (52-570c)	Calls allowed but state restrictions apply.

¹ Even if these types of calls are exempt from ban, restrictions such as curfew, permit, disconnect and disclosure requirements can apply.

² See statutes for specific definitions of established business relationship.

Delaware (No State Statute)	Yes
DC (34-1701)	Yes, calls allowed concerning merchandise or goods previously ordered.
Florida (501.059)	No
Georgia (46-5-23)	Yes, calls allowed concerning merchandise or goods previously ordered.
Hawaii (No State Statute)	Yes
Idaho (IDAPA 31.51.02)	Calls allowed but state restrictions apply.
Illinois (815 ILCS 305/20)	Yes
Indiana (24-5-14-5)	Yes
Iowa (476.57)	Calls allowed but state restrictions apply.
Kansas (No State Statute)	Yes
Kentucky (367.461)	Yes, calls allowed concerning merchandise or goods previously ordered.

<p>Louisiana (LA Pub. Serv. Comm. Gen Order R-27021 II.H.3., La. R.S. 45:816)</p>	<p>Yes</p>
<p>Maine (10 MRS 1498)</p>	<p>Yes, calls allowed concerning merchandise or goods previously ordered.</p>
<p>Maryland (8-204)</p>	<p>Yes</p>
<p>Massachusetts (Mass. Ann. Law Chapt. 159, § 19B)</p>	<p>Yes</p>
<p>Michigan (445.111; 484.125)</p>	<p>Yes, calls allowed concerning merchandise or goods previously ordered.</p>
<p>Minnesota (325E.26, 4)</p>	<p>Yes</p>
<p>Mississippi (77-3-453; 77-3-723)</p>	<p>Yes</p>
<p>Missouri (407.1085)</p>	<p>Yes</p>
<p>Montana (45-8-216)</p>	<p>Yes</p>
<p>Nebraska (86-242)</p>	<p>Yes</p>

Nevada (597.814)	Yes
New Hampshire (RSA 359-E:1)	Yes
New Jersey (48:17-28)	Yes
New Mexico (57-12-22)	Yes, but express consent required.
New York (NY Gen. Bus. Law § 399-p)	Calls allowed but state restrictions apply.
North Carolina (75-104)	No
North Dakota (51-28-02; 51-18-01)	Yes
Ohio (No State Statute)	Yes
Oklahoma (15 Okl. Sta. 755.1(C)(3)(b); 21 Okl. Stat. 1847a(3)(b))	Yes, calls allowed concerning merchandise or goods previously ordered.
Oregon (759.290)	Yes

Pennsylvania (52 Pa Code 63.60)	Calls allowed but state restrictions apply.
Rhode Island (5-61-3.4)	Restrictions only apply if “prize” representation is made. ³
South Carolina (16-17-446)	Yes
South Dakota (SD Stat. § 37-30-24)	Yes
Tennessee (47-18-1507)	Yes, calls allowed concerning merchandise or goods previously ordered but express consent must also be obtained.
Texas (Tex. Util. Code § 55.121)	Calls allowed but state restrictions apply and permit required.
Utah (13-25a-102)	Yes
Vermont (No State Statute)	Yes
Virginia (18.2-425.1)	Yes
Washington (80.36.400)	No

³ Please see “prize” chart for specific representations included in this restriction.

West Virginia (No State Statute)	Yes
Wisconsin (100.52)	No
Wyoming (6-6-104; 40-12-303)	No

EXHIBIT C

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

FILED DISTRICT COURT
Third Judicial District

UTAH DIVISION OF CONSUMER)
PROTECTION,)
)
Plaintiff,)
)
v.)
)
FLAGSHIP CAPITAL dba)
INTEGRATED CREDIT SOLUTIONS,)
)
Defendant.)

THIRD JUDICIAL DISTRICT
By _____
SALT LAKE COUNTY
Deputy Clerk

FEB 01 2004

Case No. 030901239

DC

OPINION AND ORDER

This matter came before the Court on January 27, 2004, on Plaintiff's Motion for Summary Judgment. This Court, having found Defendant's arguments meritorious, concludes that this Court lacks jurisdiction over this case and therefore dismisses this suit with prejudice for the reasons set forth below.

STANDARD OF REVIEW

The sole issue before this Court was whether it had subject matter jurisdiction over Defendant's interstate telephone call. Subject matter jurisdiction is a question of law and is reviewed *de novo* by this Court with no deference to the findings of law by the Administrative Decision and Administrative Appeal of the decision of the Utah Department of Commerce. Findings of Fact, Conclusions of Law and Recommended Order ("Olsen Order"), Feb. 11, 2002 and Order on Review ("Boyer Order"), November 27, 2003. See Wheeler v. McPherson, 40 P.3d 632, 635 (Utah 2002).

This Court has made no independent Findings of Fact and adopts the Findings of Fact as set forth in the Olsen and Boyer Orders.

Opinion and Order (re: case dismissed with prejudice)

030901239 VD13628403
FLAGSHIP CAPITAL

FINDINGS OF FACT

In relevant part, as set forth in the Boyer Order, Defendant placed an interstate telephone call to a resident of Utah on behalf of Lighthouse Credit Foundation, a Florida non-profit corporation. Boyer Order, Findings of Fact, ¶¶2, 3.

CONCLUSIONS OF LAW

The Utah Telephone and Facsimile Solicitations Act, Utah Code Ann. §§ 13-25a-101 through 107 (“UTFSA”), regulates the use of an “automated telephone dialing system” defined as “equipment used to store or produce telephone numbers, call those numbers, and connect the number with a artificial or recorded voice message.” *Id.* at § 13-25a-102. At the time Defendant’s call was placed, the UTFSA banned calls using these systems unless there was prior express consent to receive the call or an established business relationship between the parties to the call. *Id.* at §13-25a-103. Violations are subject to fines between \$100 and \$1000 per violation, cease and desist orders, and increased fines and criminal liability for intentional violations. *Id.* at §13-25a-105.

It should be noted that the UTFSA has since been amended to allow calls placed by or on behalf of charitable organizations. *Id.* at §13-25a-103 (the amendment became effective May 5, 2003).

Defendant has argued that the UTFSA does not apply to interstate telephone calls because the United States Congress has preempted its application through the Telephone Consumer Protection Act of 1991 (“TCPA”) 47 U.S.C. § 227). Plaintiff argued that the UTFSA was not preempted by the TCPA and that Defendant waived its subject matter jurisdiction argument by failing to seek judicial review of the Boyer Order.

The United States Supreme Court and the Utah Supreme Court have ruled that

preemption is a question of subject matter jurisdiction. See Int'l Longshoreman's Ass'n v. Davis, 476 U.S. 380, 399 (1986); Utah v. Vjijil, 784 P.2d 1130, 1132 (Utah 1989).

The United States Constitution gives the United States Congress the power to preempt state law because the laws of the United States are “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. The test for preemption of state law by federal law is:

“Federal law preempts state law in three circumstances: (1) when Congress explicitly defines the extent to which the enacted state preempts state law; (2) when state law actually conflicts with federal law; or (3) when state law attempts to regulate conduct in a field that Congress intended the Federal Government to occupy exclusively.” United States v. Wagoner County Real Estate, 278 F.3d 1091, 1096 (10th Cir. 2002); see also Lorillard Tobacco v. Reilly, 533 U.S. 525, 541 (2001). Further, a “federal agency acting within the scope of its congressionally delegated authority may preempt state regulation, and hence render unenforceable state or local laws that are otherwise not inconsistent with federal law.” City of New York v. FCC, 486 U.S. 57, 63 (1988).

The intent of Congress regarding preemption is clear. See, e.g., 137 Cong. Rec. S. 18781 (1991) (“State regulation of interstate communications, including interstate communications initiated for telemarketing purposes, is preempted”); Legislative History, S. Rep. No. 102-178 (1991), and S. Rep. No. 102-177 (1991).

Opinions of the Fourth, Fifth and Ninth United States Appellate Circuits, and an appellate court in Texas also adopt this language. See Int'l Sci. & Tech. Inst., Inc., v. Inacom Communications, Inc., 106 F.3d 1146, 1154 (4th Cir. 1997); Chair King, Inc., v. Houston's Cellular Corp., 131 F.3d 507, 513 (5th Cir. 1997); Moser v. FCC, 46 F.3d 970, 972 (9th Cir. 1995), and Omnibus Int'l, Inc. v. AT&T, Inc., 111 S.W.3d 818, 823 (Tex.

App. 2003).

This is not a situation where the United States Congress has simply decided which law, state or federal, applies to the interstate call. See, e.g., Violette v. Smith & Nephew Dyonics, Inc., 62 F.3d. 8, 11 (1st Cir. 1995). Here, Congress has designated another forum for the class of actions regarding allegedly illegal interstate telemarketing calls brought by any state agency or official. These actions are to be brought in federal court using the enforcement mechanism of the TCPA. 47 U.S.C. § 227(f). Where Congress has designated another forum for resolution of a certain class of disputes, such decision deprives other courts of jurisdiction to decide those cases. The TCPA mandates the federal court is the only proper place for Utah to seek remedies for these calls, 42 U.S.C. § 227(f)(2), and this Court therefore lacks subject matter jurisdiction over this suit.

This Court also finds that Defendant did not waive its subject matter jurisdiction argument, which, in any event, is not waivable.

Because this Court lacks subject matter jurisdiction over Defendant's interstate telephone call because the UTSFA is preempted by the TCPA, this case is DISMISSED with prejudice.

IT IS SO ORDERED

DATED this 9 day of February, 2004.


JUDGE STEPHEN L. HENRIOD



CERTIFICATE OF SERVICE

On the date below written, the undersigned hereby certifies a true and correct copy of the foregoing **ORDER** was mailed with all first-class postage pre-paid to:

Jeffrey Buckner
Assistant Attorney General
Commercial Enforcement Division
Mark L. Shurtleff
Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, Utah 84114-0872

DATED this the 3rd day of February, 2004.


