

October 1, 2014

Wayne Stenehjem
North Dakota Attorney General
600 E. Boulevard Ave.
Bismarck, ND 58505
ndag@nd.gov

VIA email

Complaint for abuse of process and illegal prosecution - Your file CPAT 110900.009

An Assistant of the State of North Dakota Attorney General issued a CEASE AND DESIST ORDER on September 5, 2014 ordering Electronic Media Marketing Group, Inc., hereinafter EMMGI and heirs from conducting business in North Dakota;

Evidence is conclusive; at the time the Assistant of the State of North Dakota Attorney General petitioned the CEASE AND DESIST ORDER, the Assistant had received information; that makes that, to have petitioned for a CEASE AND DESIST ORDER; an Abuse of Process and Illegal Prosecution of EMMGI.

EMMGI markets Internet advertising with a 30-Day Trial program designed based on the Telemarketing Sales Rules (TSR) guidelines issued by the Federal Government;

1

Evidence that the marketing program of EMMGI is compliant to the TSR was presented to the State of North Dakota investigators on June 25, 2014 and in subsequent communications.

Evidence shows that the scheme described by the Assistant in the Cease and Desist Order issued to EMMGI on September 5, 2014 is a fictitious vilification of EMMGI, and is not based on the program that EMMGI presented.

The chronology of events leading to the Abuse of Process is:

1. On June 16, 2014

The Assistant of State of North Dakota Attorney General issues EMMGI **Order To Produce Information.**

2. On June 25, 2014

EMMGI provided audio recordings, transcriptions of the audio recordings associated with a case file presenting the campaign being marketed in North Dakota; as a contractual relationship resulting from meeting of minds with representatives of North Dakota companies, who represent being authorized to:

- Advertise on the generallyyellowpages.com for a 30-Day trial.
- And pay for the services after the trial period.

The evidence presented established conclusively; the explicit acceptance and authorization of the representative of the North Dakota company of clear and conspicuous terms:

(a) Authorized to purchase advertising on behalf of the company:

The representative of the North Dakota company was asked at the time marker 01:36.0 *"you are authorized to make decisions about the company's business listings and purchases?"* and assured *"Yes"* at 01:43.6.

(b) Acceptance of the condition to cancel to prevent billing:

Our agent and the representative of the North Dakota company discussed our condition; to cancel during the trial to rescind on the authorization at 02:33.9 *"I'm going to be emailing you instructions... After I send you the email, I'm going to call you to make sure that you've received it because in the email, there is a link to cancel during the trial. Is that fair enough?"* and the condition, was accepted at 03:07.5 *"Okay"* how to cancel but only during the trial.

(c) Authorization to bill for the service after the trial and disclosure of the rate:

Our agent and the representative of the North Dakota company discussed our condition; we bill for our service past the trial period, at the time marker *"If you... keep the listing past the trial date... rate of about \$60 per month on a 12-month contract... renews every year... until you decide to discontinue... would you have the accounting department pay for the service?"* and the condition was accepted at 03:32.1 *"Yeah"* to pay for the service past the trial period.

(d) Acceptance of the billing convention:

The representative of the North Dakota company explicitly agreed to our billing convention at 03:47.6 *"Sure"* when it was explained as *"We... bill for the service if you... [do] not to cancel. Is that fair enough?"*

(e) Proof Of Delivery (POD) of written notification and instructions to cancel during the trial:

The POD of the 30-Day Trial certificate with a link to cancel, registered on our communications server, to have been transmitted to the advertiser on 5/19/2014 at 9:01.

(f) Verbal confirmation the written notification and instructions to cancel were received:

The quality control recording and its transcription established we called the representative of the North Dakota company on 5/20/2014, who confirmed at the time marker 00:32.3 *"I haven't looked at that yet, but I can look at it sometime today"*

Our agent repeated at 01:26.2 *"There is a link in the email... to cancel before the trial ends... if you... keep the listing, then you will receive an invoice for the next year of service..."* and the condition was again accepted at 01:38.3 *"Okay"*

(g) Proof Of Published Service (POPS)

Links were provided to view the information being published on, and searchable on Google, for the advertiser as a result of the progression described above.

Any informed and impartial authority would recognize that the representative of the North Dakota company; bound the company to a contract as a result of the progression presented above.

3. On July 1, 2014

EMMGI produced the information ordered consistent with the case file presented in section 2 of this complaint.

EMMGI presented the two marketing campaigns it operated in North Dakota, both derived from trial offers.

4. On July 28, 2014

Against what was indicated by the evidence, the Assistant of the State of North Dakota Attorney General submitted an Assurance of Voluntary Compliance:

- (a) In item 4, the Assistant cited “...received consumer complaints... indicating [EMMGI] is engaged in deceptive acts or practices in connection with the sale of online business directory listings, including mailing false, deceptive and misleading solicitations... in an attempt to sell, business listings in an online directory, or attempting to collect payment for listings never properly agreed to or authorized”
- (b) In Item 8, the Assistant cited “...unlawful to send... an invoice... in order to solicit payment for... services not yet performed and not yet ordered”
- (c) In Item 9, the Assistant disregarded the evidence and found “as a result of this investigation the attorney general alleges [EMMGI] has violated [what is represented above]”
- (d) In Item 14, the Assistant asked that EMMGI “voluntarily agrees to... permanently enjoined from engaging in the... sale... in North Dakota, and from billing or collecting payment... for alleged past sales”
- (e) In Item 15, the Assistant asked that EMMGI “voluntarily agree to cancel all existing accounts... with North Dakota persons...”
- (f) In Item 17, the Assistant asked that EMMGI “pay to the Attorney General... \$2,000 in lieu of... attorney fees... suspended... form of a... money order... delivered to... Elin S. Alm Assistant Attorney General”

3

5. On September 5, 2014

The Assistant of the State of North Dakota Attorney General served a CEASE AND DESIST ORDER notarized by Elin Alm. The following presents the scheme depicted, that goes against what was indicated by the evidence they was presented, as you will assess, the scheme depicted is not based on the evidence they were presented:

- (a) Item 4, the Assistant depicted “[EMMGI] ...subject of complaints alleging... deceptive practices... starting no later than 2010, ...contacted consumers, churches, businesses and other organizations in North Dakota via telephone to solicit payment for business listing services allegedly ordered and performed”
- (b) The Assistant’s vicious vilification of my company is apparent in the flagrant misrepresentation of the evidence;

Item 9,

“[EMMGI] call businesses, informing them that they have been selected to receive a risk free trial”

In actuality; the evidence provided showed the actual quote as:

“My name is ***** and I'm calling from the generalYellowPages.com and this call is recorded. We issued ***** a 30-day trial listing in the generalYellowPages.com and I just have to go

over the information I have in front of me to make sure everything is correct..."

(c) Also in Item 9,

"Although [EMMGI] quickly list the cost if the person would like to continue services and they will only bill for the services if the person decides not to cancel, evidence of the misleading nature of this trial offer includes the fact that [EMMGI] state that the question of who with the business would pay for the services is just a hypothetical question"

Where in actuality; the evidence shows the agreement:

In section 2(c) of this complaint, the meeting of minds with the representative of the North Dakota company about payment for our service was disclosed to have been discussed at the time marker 03:08.4 *"If you... keep the listing past the trial date... rate of about \$60 per month on a 12-month contract... renews every year... until you decide to discontinue... would you have the accounting department pay for the service?"* and that condition was accepted at 03:32.1 *"Yeah"* Then the billing convention was accepted by the representative of the North Dakota company at the time marker at 03:47.6 *"Sure"* when it was explained as *"We... bill for the service if you... [do] not to cancel. Is that fair enough?"*

(d) In Item 5, the Assistant contends representatives of North Dakota companies did not participate at all, in trial promotions with EMMGI as the basis of any previous relationships:

(1) *"...alleges that [EMMGI] call unsuspecting employees of... businesses and represents... business previously ordered... further ask if the person wishes to continue or cancel the service. When... requests to cancel... [EMMGI] inform... that a \$599.95 payment is due for listing services already provided... following the... call... send an invoice... demanding payment... person... has no way of verifying whether the alleged services were provided, and... provide proof to contradict... allegations..."*

The Assistant disregards; representatives of North Dakota companies did not dispute their obligation before EMMGI as a result of participating in a trial advertising program.

"...are able to provide... only a taped recording relating to the collection call and not the initial sales... [EMMGI] argue... verifications of where to send an invoice constitute... an admission that the amount is due"

"...their alleged customers never authorized or consented to the charges and listing"

The Assistant formulates these accusations against the factual evidence that EMMGI enlists advertisers with trial promotions that representatives of North Dakota companies, admit having participated in.

(2) Where convenient; the Assistant even discredits that EMMGI has a trial promotional program and vilifies EMMGI by depicting:

"[EMMGI] attempt to deceive... into believing... organization authorized a listing on a website... in order to send an invoice..."

"misrepresentations and deception... to collect payment from... persons who never agreed to purchase services..."

- (3) While at other times; the Assistant admits that EMMGI has a trial promotional program but vilifies the program to depict what is necessary in her agenda:

"[EMMGI] also solicits customers through free trial offers"

"...calls are deceptive and misleading... recipients of the calls are not clearly informed of the consequence of confirming their business information..."

"...recipient is never asked to accept or reject any offer or to agree to a trial"

- (e) The Assistant further attempts at vilifying EMMGI by depicting a scheme that EMMGI targeted churches:

"[EMMGI]...appear to deliberately target churches... run by volunteers who are less likely to know whether the listing has been previously authorized by others..."

The client list submitted to the Assistant does not support the accusation that EMMGI has targeted a particular industry or sector.

The Assistant clearly makes that gratuitous, unsubstantiated claim as it is morally wrong to target churches with the scheme the Assistant depicts.

The act of attributing a criminal motive to an action that in itself does not constitute a violation of any conventions or laws, where the criminal motive being attributed vilifies its subject is a violation of legal conventions.

- (f) The Assistant falsely represents "*...[EMMGI] engaged in... business directory scam or invoice scam...*" and claims that is "*based on... information received*" while the information that is presented in this complaint shows the scheme represented in the Cease and Desist Order is fictitious, fabricated to fit the accusation and is not representative of the evidence.

6. On September 12, 2014, Vlad Adolph President of EMMGI, contacted the Assistant Attorney General who petitioned for the Cease and Desist order to confront her about her flagrant abuse of process:

Mr. Adolph put in context at 02:55.5:

"...me and my company were the subject of an abuse of process... Cease and Desist order... says we're attempting to collect monies from people that never authorized services..."

"...we contend... those people set up a... trial service with us"

"You... say we have a trial... but our program is vilified and grossly misrepresented to depict a scheme that has nothing to do with what I sent you"

Elin Alm represented 03:28.6 :

To have listened to hundreds of recordings *"I listened to absolutely all the tape recordings"*

"I have not to see that there is any authorization for the services for the ones that were billed"

"It's different with the trial service – your new ones..."

Mr. Adolph at 03:59.2:

"most of the companies... conceded... they have enlisted with our company on a trial..."

"the other thing is that [our campaigns] ...shows that we do conduct a trial program. And the benefit of assumption is that the same people that are authorizing services... and saying they didn't, when we sent you a recording and the proof of authorization, that these people agreed to list on our site, to cancel during the 30 days if they wanted to rescind, and to pay for the service after the trial"

"you depict that we say that [clients] would only hypothetically be paying and you said that is misleading. They would only hypothetically be paying if they don't cancel... that may have been said by one of our people that that's not in our scripts"

Though it can be factually shown to the contrary, Elin Alm argued 05:04.2:

"it's in the script, but it's in the written record of the call that was made to one of the hotels..."

Mr. Adolph explained the premise that clients are only billed on the hypothesis they do not cancel and that the Assistant had vilified the premise in the Cease and Desist Order while it is not vile 05:12.9:

"it's a 30-Day trial and people are only paying if they don't cancel... that is not misleading in any way"

"Our scripts... are adhering with the telemarketing sales Rules... this is the only State that we're having such an issue with"

Mr. Adolph put in context EMMGI's 30-Day Trial program is legitimate at 05:55.9:

"there's a Telemarketing Sales Rules, we're legitimate in offering our service on a trial that they will be billed if they don't cancel. And that is clearly established... there are means by which they have to cancel, and the dates by which they have to cancel... we send them links to cancel, ...we even call them and ask did you receive the link, because if you don't cancel you will be billed..."

Even though Mr. Adolph's depiction of the 30-Day Trial program is factually exact as it was submitted to the Assistant on June 25, 2014, and as it is presented in section 2 of this complaint for your review; Elin Alm flagrantly misrepresented the evidence to say at 06:39.2:

"I haven't seen any scripts indicating that. I haven't seen any recordings indicating that, either"

Elin Alm then accused:

"If so, you didn't provide me all the documents we asked for if that in fact exists. But I don't know if you recorded or not"

Mr. Adolph called on the email verification when that evidence was submitted and Elin Alm then revised her position at 07:45.5 as:

"I know which one you're talking about"

Elin Alm abandoned verbally the contention that our trial registration was the fraud she depicted in the Cease and Desist order, by calling on a different claim she made in the Cease and Desist order at 08:51.7 to change the subject:

"we also have several businesses that were told back in 2010 that you would forgive the debt... and you're collecting... that's the one that I sent you and we also have another one"

Mr. Adolph put in context at 09:04.9:

"that doesn't show the scheme that you depicted ...on the other hand, we have shown that our program is up to par..."

In spite of the evidence, Elin Alm maintained at 09:27.8:

"I... disagree... I will see if Parrell... wants to talk to you"

At 09:48.9, Elin Alm then further supported her position by flagrantly misrepresenting the evidence that is supplied for all to see in section 2 of this complaint as:

"I don't know that he knew what he was agreeing to... your script... it's not set up as a sales call. You're just calling to verify the address and then there's a hypothetical question if you will pay bills in the future"

Mr. Adolph called Elin Alm on her misrepresentation of the evidence at 10:10.0:

"that is a gross misrepresentation of our program" and read verbatim from the evidence submitted to her on June 25, 2014 and presented in section 2 of this complaint.

Elin Alm repeated at 11:48.8:

"I totally disagree..."

At 11:59.5, Mr. Adolph call Elin Alm on deliberately acting to cause him and his company a prejudice:

"I'm talking about a factual evidence here. That's what is written. I'm not interpreting anything"

Parrell Grossman joined the call and Mr. Adolph repeated that; the evidence his firm provided to the order to produce information was deliberately misrepresented, and the Cease and Desist Order was an abuse of process. Parrell Grossman also ignored the evidence and stated at 20:35.7:

"we just simply disagree with you"

Mr. Adolph asked Mr. Grossman to do what is indicated by the evidence at 20:40.6:

"we need to look at the evidence for what it is documented..."

Mr. Grossman admitted to a point that the program presented in section 2 of this complaint establishes a contract but defended the action calling it *"...one isolated incident"* while it is consistent with the script and that is our program.

Mr. Grossman justified the actions of the Assistant at 32:49.5 as *"we've had a lot of experience with this, and you carry some of the baggage of all the companies we..."*

Before both Elin Alm's and Parrell Grossman's insistence to misrepresent the trial promotional programs of EMMGI, and to vilify EMMGI without basis; Mr. Adolph Asked at 36:14.8:

"is there a 30-Day Trial program advertising that a company could offer that would be designed in such a way that it would not fit what you depict? In other word, can anything be done right.. and not be vilified?"

Elin Alm conceded at 36:41.3:

"I'm sure there are trial programs that can follow the law; yes"

Mr. Adolph then asked at 36:45.2:

"how does my trial program [based on the evidence] ... not follow the law?"

The representatives of the State of North Dakota declined answering.

Mr. Adolph exposed:

"we are compliant. That is the whole premise of our disagreement. We are compliant to the Telemarketing Sales Rule. However, you have issued a Cease and Desist order"

Mr. Grossman outlined at 37:47.1:

"You'll have to go through the administrative process. If you request action, then we issue a summons and complaint. We sue you. We start asking for your business records, we take your depositions. And... many, many months down the road and thousands of dollars later, we might have it resolved. So it's up to you"

Mr. Adolph exposed Mr. Grossman's tactic at 39:06.7:

"But you don't think that what you're telling me: ...many many months down the line and thousands of dollars later is being told to me so that you can simply get away with an abuse of process?"

7. The Assistant of the North Dakota Attorney General has published or caused to be published news of Cease and Desist Order, that based on the actual evidence constitutes a libel.
 - (a) A **NEWS RELEASE** on September 5, 2014 titled **CEASE AND DESIST ORDER ISSUED AGAINST VLADIMIR ADOLPHE, DBA GENERALYELLOWPAGES.COM AMD ELECTRONIC MEDIA MARKETING GROUP, Investigators determine Vladimir Adolph operating "business invoice" scam.**
 - (b) Without limitation, publication in over a dozen print, online and television news agencies.

In light of the fact that;

Assistant of the State of North Dakota Attorney General knew at the time of petitioning for the Cease and Desist Order that the evidence did not justify her actions, and that depiction made is fabricated;

CEASE AND DESIST ORDER is an abuse of process by making criminal accusations of fraud and of violations by misrepresenting marketing information, financial data, copyrights, trademarks, patents, trade secrets or technical specifications registered to EMMGI;

Allegations that are published by State of North Dakota Attorney General make unsubstantiated claims using marketing information, financial data, copyrights, trade names, trade secrets or technical specifications in a manner and with intent to cause damages to EMMGI defined as but not limited to loss of profits, industry goodwill, defamation and any other tangible or intangible measures resulting from consequences deemed as a direct, indirect, consequential, special or exemplary to the actions undertaken by Assistant of the North Dakota Attorney General;

CEASE AND DESIST ORDER has caused irreparable harm and damages to EMMGI;

EMMGI hereby **requests** that the **State of North Dakota Attorney General** retracts in writing, the **CEASE AND DESIST ORDER**. EMMGI deems that should **State of North Dakota Attorney General** deliberately fail to retract the **CEASE AND DESIST**, having been provided the evidence the scheme depicted in the **CEASE AND DESIST ORDER** is a vicious abuse of process towards/and illegal prosecution of **EMMGI**; that the **State of North Dakota Attorney General** acknowledges and agrees that it will perpetuate and exacerbate the harm and damage to **EMMGI** defined in this notice. that doing so will deliberately and purposely further the accrual of damages to **EMMGI** and that the **State of North Dakota Attorney General**, having been notified of the consequences of its actions expresses motive and intent, and accepts the responsibility of the actions undertaken by its Assistant.


Vlad Adolph
President