



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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July 2, 2012

Lonnie Wolf
Clerk of Circuit Court
Outagamie Justice Center
320 S. Walnut St.
Appleton, WI 54911-5918

Re: *State of Wisconsin v. Robert Beaster and Creative Openings, Inc.*

Dear Mr. Wolf:

Enclosed for filing are a summons and complaint in the above matter. Please provide this office with three authenticated copies of the summons and complaint. As this is a "CX" case, there is no filing fee.

Thank you.

Sincerely,

Gwendolyn J. Cooley
Assistant Attorney General

GJC:ajs

Enclosures

STATE OF WISCONSIN

CIRCUIT COURT

OUTAGAMIE COUNTY

STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 2012-CX-

Complex Forfeiture: 30109

ROBERT BEASTER and
CREATIVE OPENINGS, INC.,
a Wisconsin corporation,
N2307 West Frontage Road
Kaukauna, Wisconsin 54130,

Defendant.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Wis. Stat. ch. 802, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Outagamie Justice

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (920) 832-5131 AND ASK FOR THE OUTAGAMIE COUNTY CIRCUIT COURT ADA COORDINATOR.


Center, 320 S. Walnut St. Appleton, WI 54911-5918, and to Gwendolyn J. Cooley, Assistant Attorney General, Plaintiff's attorney, whose address is Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 2^d day of July, 2012.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General


GWENDOLYN J. COOLEY
Assistant Attorney General
State Bar #1053856

Attorneys for State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
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STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

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COMPLAINT

The State of Wisconsin, by its attorneys, J.B. Van Hollen, Attorney General, and Gwendolyn J. Cooley, Assistant Attorney General, on behalf of the Department of Agriculture, Trade and Consumer Protection (DATCP), brings this action against the Defendant, Robert Beaster d/b/a Creative Openings, Inc. ("Creative Openings"), alleging violations of Wisconsin consumer protection laws in connection with its telemarketing activities directed at Wisconsin consumers. The state alleges as follows:

PARTIES

1. Plaintiff, the State of Wisconsin, is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin.

2. Creative Openings, Inc. is a Wisconsin domestic corporation with its headquarters located at N2277 West Frontage Road, Kaukauna, Wisconsin 54130. Its registered agent is Robert Beaster.

JURISDICTION AND VENUE

3. This action is brought pursuant to Wis. Stat. §§ 100.52(9) and 100.20(6), to obtain forfeitures, restitution, costs, and injunctive relief from Creative Openings for violations of the consumer laws identified below.

4. Venue is proper in Outagamie County because Creative Openings maintains its principal place of business and transacts substantial business there and, upon information and belief, has committed violations of law there.

FACTUAL ALLEGATIONS

5. Defendant Creative Openings engages in the business of selling new and replacement windows, doors, and siding.

6. Creative Openings, Inc., through its employees or agents, makes telemarketing calls to Wisconsin consumers to promote the sale of its products.

7. Creative Openings is a "telephone solicitor" within the meaning of Wis. Stat. § 100.52(1)(j).

8. Creative Openings has registered as a telemarketer with the Wisconsin Department of Agriculture, Trade and Consumer Protection, pursuant to Wis. Admin. Code § ATCP 127.81(1).

9. For 2010 and 2011 registration, Creative Openings registered the following eight telephone numbers for use in its telemarketing activities:

920-759-7380	920-759-9187
920-759-7481	920-759-9188
920-759-9185	920-759-9189
920-759-9186	920-759-9193

10. Pursuant to Wis. Stat. § 100.52 and Wis. Admin. Code § ATCP 127.82, the state maintains a nonsolicitation directory (also known as the “no call list”) containing the residential phone numbers of Wisconsin residents who inform the state that they do not want to receive telephone solicitations.

11. Wis. Stat. § 100.52(4)(a)2. and Wis. Admin. Code § ATCP 127.82(2) (the “No Call Law”) prohibit making telephone solicitations to residential numbers listed on the no call list, with limited exceptions.

12. Creative Openings has made numerous telemarketing calls to numbers on the no call list when none of the exceptions to the statutory ban on such calls apply.

13. Since 2004, 89 consumers have filed complaints with DATCP involving Creative Openings’ telemarketing practices, including violations of the state’s no call law. Thirty-eight of those complaints have been received since January 1, 2011.

14. Despite being informed of the no call complaints against it, Creative Openings has failed to modify its practices to come into compliance with the No Call Law.

15. In November 2010, DATCP sent a civil investigative demand to Creative Openings requesting, among other things, the company's telephone records for 2009 and the first eleven months of 2010.

16. Those records showed Creative Openings made, on average, more than 38,000 telephone calls per month between January 2009 and November 2010.

17. A review of 1.2 million of those outgoing telephone calls revealed that 597,118 of them were to numbers registered on the no call list.

18. The records produced by Creative Openings showed that it used 16 telephone lines for telemarketing in 2009, and increased to 21 lines beginning in November 2009. However, it had only registered 8 lines with DATCP in its telemarketing registration.

19. Telemarketing calls using telephone numbers that are not registered with DATCP are prohibited by Wis. Admin. Code § ATCP 127.81(1)(c), which provides that “[n]o individual may make a telephone solicitation to a covered telephone customer unless the telephone solicitation is covered by a registration under this section.”

20. The registration of a telemarketer includes the number of lines used to make telephone solicitations, and the telephone numbers assigned to each such line. Wis. Admin. Code § ATCP 127.81(2)(g) & (h).

VIOLATIONS

COUNT 1

No call Violations

21. Beginning no later than January 2009, Creative Openings has made numerous telephone solicitations, through employees or agents, to residential telephone customers whose telephone numbers were on the state's non-solicitation directory, in violation of Wis. Stat. § 100.52(4)(a)2. & (b)2., and Wis. Admin. Code § ATCP 127.82(2).

22. Each such call constitutes a separate violation, each of which carries a forfeiture of \$100.00, pursuant to Wis. Stat. § 100.52(10).

COUNT 2

Telemarketing with Unregistered Phone Lines

(Wis. Stat. §100.52 and Wis. Admin. Code § ATCP ch. 127)

23. Beginning no later than January 2009, Creative Openings has made numerous telephone solicitations, through employees or agents, to residential telephone customers using phone lines and numbers that Creative Openings had not registered with DATCP, in violation of Wis. Admin. Code § ATCP 127.81(1)(c).

24. Each telephone solicitation made during these time periods constitutes a separate violation, each of which carries a forfeiture of \$100.00, pursuant to Wis. Stat. § 100.52(10).

RELIEF


WHEREFORE, Plaintiff, State of Wisconsin, demands judgment against Defendant Robert Beaster d/b/a Creative Openings, Inc., as follows:

1. Enjoining Creative Openings from further violations of Wisconsin law pursuant to Wis. Stat. §§ 100.20(6) and 100.52(9).
2. Imposing forfeitures of \$100.00 for each violation of Wis. Stat. § 100.52(4) and Wis. Admin. Code §§ ATCP 127.81 & 127, plus all applicable penalty assessments and surcharges, pursuant to Wis. Stat. § 100.52(10)(b).
3. Awarding the Department of Justice and the Department of Agriculture, Trade and Consumer Protection the expenses of investigation and prosecution, including attorneys fees, relating to enforcement of Defendant's violations, pursuant to Wis. Stat. § 100.263.
4. Awarding such other relief as the court may deem just and equitable.

Dated this 2nd day of July, 2012.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General



GWENDOLYN J. COOLEY
Assistant Attorney General
State Bar #1053856

Attorneys for State of Wisconsin

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