

**IN THE CHANCERY COURT FOR SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

STATE OF TENNESSEE, <i>ex rel.</i>)	
ROBERT E. COOPER, JR., ATTORNEY)	
GENERAL and REPORTER,)	
)	No. CH-08-1979-1
Plaintiff,)	
v.)	JURY DEMAND
)	
BLUEHIPPO FUNDING, LLC, et al.)	
)	
Defendants.)	

**MOTION FOR ORDER REQUIRING DEFENDANTS TO SHOW CAUSE WHY THEY
ARE NOT IN CIVIL CONTEMPT OF COURT**

The State moves the Court for an order requiring the Defendants to show cause why they are not in civil contempt of court at a hearing and by, at least, producing select financial records described below at the hearing for this Motion on March 9, 2009. Should the documents to be produced fail to adequately establish the Defendants' inability to pay, the State will then move to hold the Defendants in civil contempt to coerce compliance with this Court's order.

Pursuant to this Court's Order Granting Temporary Injunction, Asset Freeze and Other Equitable Relief, the Defendants were required to deposit \$1,000,000 in an interest-bearing account with the Shelby County Clerk and Master's office by the close of business on February 6, 2009. The Defendants have not deposited this amount as of the time of the filing of this Motion. On February 9, 2009, the Defendants asserted for the first time in a Notice, which recognized that they were not in compliance with the Court's Order, that the settlement the Defendants reached with the Federal Trade Commission nearly a year earlier, on February 25, 2008, *potentially* conflicts with the portion of the Court's order requiring a deposit of funds with

the Clerk and Master. The information in the record so far does not support the Defendants' assertion.

The Defendants' conduct strongly appears to meet the factors for civil contempt that the Supreme Court of Tennessee identified in *Konvalinka v. Chattanooga-Hamilton County Hosp. Authority*, 249 S.W.3d 346, 254-355 (Tenn. 2008).

First, the Order Granting Temporary Injunction, Asset Freeze, and Other Equitable Relief was issued by a court having jurisdiction over both the subject matter of the case and the parties. Tenn. Code Ann. § 16-11-105 specifically authorizes chancery courts to “hear and determine *all controversies* between the state and corporations . . . upon a bill filed by the attorney general and reporter on behalf of the state.” (Emphasis added). This court has personal jurisdiction over the Defendants by way of Tennessee's long-arm statute because the Defendants have transacted business in whole or in part within Tennessee, advertised in Tennessee, and omitted material facts concerning transactions with Tennessee consumers. Tenn. Code Ann. § 20-2-214(a)(1), (2), and (7). Jurisdiction and venue is also found in the TCPA and cannot be limited by a consumer's actions. Tenn. Code Ann. § 47-18-108, Tenn. Code Ann. § 47-18-113(b)(1).

Second, the Order Granting Temporary Injunction, Asset Freeze, and Other Equitable Relief was clear, specific, and unambiguous. The Defendants acknowledge their understanding of the Order in their February 9, 2009, Notice and indicated that they failed to comply. Defs. Not., at 1.

Third, the Defendants actually disobeyed or otherwise resisted the Order Granting Temporary Injunction, Asset Freeze, and Other Equitable Relief. The Defendants again acknowledged this in their February 9, 2009, Notice in which they explicitly state, “Defendants

failed to meet the deadline of complying with the Asset Freeze on Friday, February 6, 2009.”

Defs. Not., at 1.

Fourth, the Defendants failure to remit funds appears to be willful because the Defendants are acting contrary to a known duty to remit the funds. While an adequate showing of an inability to pay by the contemnor can negate this factor, the evidence gathered in the record so far does not support the Defendants’ newly-found assertion.

Based on the amount in gross sales made in Tennessee as of September 2008, (\$2,629,870.91), and this Court’s undisputed finding that the Defendants’ sales in Tennessee comprise only .875% of the Defendants’ total sales nationwide, the Defendants ***have generated a staggering \$300,556,675.43 in gross sales nationwide*** as of September 2008. Also, the Defendants newly-found assertion is couched in terms of a ***potential*** rather than actual conflict.

Despite having ample opportunities to raise the issue of the potential conflict between the FTC’s Stipulated Judgment and this Court’s asset freeze before in the affidavit of John Burcham, the January 7, 2009 temporary injunction hearing, and the February 4, 2009 hearing on the Defendants’ Motion to Revise or Stay Enforcement of Asset Freeze Order, the Defendants failed to do so and only raised the argument after the funds became due. Notably, the FTC’s Stipulated Judgment did not prevent the Defendants from entering into a settlement with the Washington Attorney General on February 6, 2009, the date the funds were due in Shelby County. Attach. A, to this Motion. Under the terms of the Washington settlement, the Defendants are required to pay the Washington Attorney General \$25,000.00 within thirty days after entry of the settlement. In addition, within sixty days, the Defendants have to give Washington consumers who have a paid-in-full order a full refund, the merchandise ordered, or a store credit of 125% of the consumer’s original purchase price.

MOTION

Based on the above and in order to inquire as to the Defendants' ability to pay, the State moves that the Defendants produce the following documents and any other documents that they deem relevant to their assertion of an inability to pay:

(1) The most recent income statement for BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada, to the extent that such income statement exists.

(2) The most recent balance sheet for BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada, to the extent that such balance sheet exists.

(3) The most recent corporate income tax statement for BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada submitted to the Internal Revenue Service or comparable state taxing authority to the extent that such corporate income tax statements exist.

(4) The most recent prospectus or other report generated for potential investors of BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada to the extent that such prospectuses or reports exist.

(5) All bank statements (electronic, paper or otherwise) issued since September 1, 2008, for accounts owned, used, or otherwise accessed by BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada in the possession of BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada, to the extent that such statements exist.

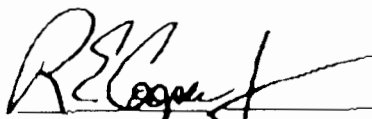
(6) All withdrawal or funds transfer receipts (electronic, paper, or otherwise) issued since September 1, 2008, for accounts owned, used, or otherwise accessed by BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada in the possession of BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada, to the extent that such withdrawal or funds transfer receipts exists. This does not include any withdrawals or transfers made in a transaction with a consumer.

PRAYER FOR RELIEF

The State prays:

- (1) That its motion be granted;
- (2) That the Court order Defendants to produce at the hearing on March 9, 2009, the documents listed above in paragraphs (1) – (6) including, but not limited to:
 - a. the most recent income statement, balance sheet, corporate income tax statement and prospectus or other report generated for potential investors of BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada,
 - b. All bank statements issued since September 1, 2008, for accounts owned, used, or otherwise accessed by BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, and
 - c. All withdrawal or funds transfer receipts issued since September 1, 2008, for accounts owned, used, or otherwise accessed by BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada.
- (3) That should the Court find the Defendants' assertion as to an inability to pay is without factual basis, a separate hearing will be held on an expedited basis to assess whether the Defendants' are in civil contempt of court and to assess any other remedies and sanctions available at law including but not limited to under the Tennessee Consumer Protection Act;
- (4) That this Court issue any other orders necessary to bring Defendants into full compliance with the Order dated February 4, 2009; and
- (5) That this Court grant any other relief it deems appropriate or necessary.

Respectfully submitted,



ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 10934



BRANT HARRELL, B P R. No. 24470
ANNE SIMMONS, B P R. No. 26272
Assistant Attorneys General
Office of the Tennessee Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202-0207
Phone: (615) 741-4657
Facsimile: (615) 532-2910
brant.harrell@ag.tn.gov
anne.simmons@ag.tn.gov



WILLIAM TILLNER, B P R. No. 22312
Assistant Attorney General
Office of the Tennessee Attorney General
2nd Floor Donnelly J. Hill Building
170 North Main Street
Memphis, TN 38103
Phone: (901) 543-9039
Facsimile: (901) 543-9025
bill.tillner@ag.tn.gov

Attorneys for the State of Tennessee

NOTICE OF HEARING

A hearing on the above-referenced motion has been set for **March 9, 2009 at 10 a.m. CT** in Shelby County Chancery Court, Part I, in the courtroom of Chancellor Walter Evans. Failure to respond may result in the State's Motion being granted upon a proper showing.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent via electronic mail and via U.S Mail on this the 23rd day of February to:

(1) Gerald D. Neenan (gneenan@nealharwell.com), Kendra Sampson (ksampson@nealharwell.com), Neal and Harwell, PLC, 150 Fourth Avenue North, Suite 2000, Nashville, Tennessee 37219; and

(2) Clayton Friedman (cfriedman@manatt.com), Michael Yaghi (myaghi@manatt.com), Manatt, Phelps, and Phillips, LLP, Park Tower, 695 Town Center Drive, 14th Floor, Costa Mesa, CA 92626.



WILLIAM TILLNER