

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
NINETEENTH JUDICIAL CIRCUIT

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General,

Plaintiff,

vs.

LUZIUS BERNHARD
d/b/a VOTE-AUCTION.COM
Kurrentgasse 10/22
Vienna, Austria A-1010,

Defendant.

Case No. 00CV 325329

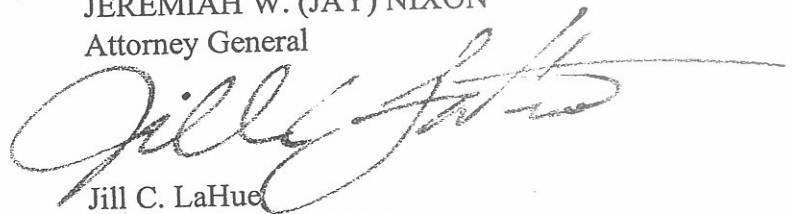
Division No. I

VOLUNTARY DISMISSAL

COMES NOW Plaintiff, State of Missouri, by and through its Attorney General, Jeremiah W. (Jay) Nixon, and Assistant Attorney General Jill C. LaHue and, pursuant to Rule 67.02(a), voluntarily dismisses its Petition for Injunctive Relief, Civil Penalties, and Other Relief against Defendant Luzius Bernhard, d/b/a Vote-Auction.com, without prejudice to the reinstatement thereof.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General


Jill C. LaHue
Missouri Bar No. 44092
Assistant Attorney General

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
NINETEENTH JUDICIAL CIRCUIT

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
)	
Plaintiff,)	Case No.
)	
)	Division No.
vs.)	
HANS BERNHARD and)	
LUZIUS BERNHARD)	
Kurrentgasse 10/22)	
Vienna, Austria A-1010,)	
)	
VIENNA BACKBONE SERVICE)	
Landesgerichtsstrasse 18/3)	
Vienna, Austria A-1010, and)	
)	
CORE INTERNET COUNCIL OF)	
REGISTRARS)	
World Trade Center 11 - 29)	
Route de Pre-Bois)	
Geneva, Switzerland CH-1215)	
)	
Defendants.)	

ORDER GRANTING TEMPORARY RESTRAINING ORDER

Now on this 1 day of November, 2000, the above matter comes on for hearing on plaintiff's application for a temporary restraining order against defendants in the above matter. Plaintiff State of Missouri appears by Assistant Attorneys General Jill C. LaHue and Laura Krasser. Defendants appear by no appearance. The Court notes that, pursuant to Rule 92.92(a)(3), defendants were given the required 24 hours notice of plaintiff's intention to seek this temporary restraining order.

Chapter 407 of the Missouri Revised Statutes, otherwise known as the Missouri Merchandising Practices Act, authorizes the Attorney General, whenever it appears to him that a person "has engaged in, is engaging in or is about to engage in any method, act, use, practice, or solicitation . . . declared to be unlawful by this chapter, [to] seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such . . . acts . . . engaging therein or doing anything in furtherance thereof." § 407.100.1, RSMo 1994. Subsection 2 of this provision allows the Attorney General to seek a temporary restraining order in any action brought under the above section.

Because of the high public interest in preventing or stopping violations of Chapter 407, courts have correctly found that the Attorney General may be granted orders restraining such activity under § 407.100.1 without the necessity of proving all the elements required of private parties seeking such relief. This finding was first made not long after Chapter 407 was enacted in *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362 (Mo. App. 1973). There the court said that the legislative intent behind Chapter 407 is to authorize such relief where a finding of violation is made, and without the need for a showing of a threat of irreparable harm or lack of an adequate remedy at law. *Id.* at 370.

In keeping with the above principle, other courts have found that the only prerequisite for injunctive relief under § 407.100 is the finding that a person has engaged in, is engaging in or is about to engage in any practice declared unlawful by Chapter 407. Once that finding has been made, irreparable harm to the public is presumed. *State ex rel.*

Webster v. Milbourn, 759 S.W.2d 862, 864 (Mo. App. 1988). The Missouri Supreme Court confirmed this approach when it held that an action for injunctive relief under Chapter 407 is a statutory action, not a traditional equitable proceeding, and therefore does not require a showing of inadequacy of legal remedies. *State ex rel. Nixon v. Telco Dir. Pub.*, 863 S.W.2d 596, 599 (Mo. banc 1993).

Section 407.020, RSMo 1994 provides that:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

The Court concludes that plaintiff's verified petition states sufficient facts for the Court to find that defendants have been, and are currently, engaged in practices declared unlawful by Chapter 407, and that the granting of this temporary restraining order is proper. Specifically, the Court finds that before, during, after and in connection with the marketing, offering, advertising and/or selling of votes, in trade and commerce, in the State of Missouri, defendants have, in knowing concert with one another and others, engaged in the following conduct:

- a. misrepresenting, directly or by implication, through their website to Missouri consumers that the buying and selling of election votes is lawful, and;

that buying and selling votes in Missouri is illegal under Missouri law.

This temporary restraining order shall remain in effect until further order of the Court. Plaintiff's application for a preliminary injunction is set for hearing on November, 20th, 2000 at 1:00 in Division 1 of the Circuit Court of Cole County, Missouri, 301 E. High St., Jefferson City, Missouri 65101. IT IS SO ORDERED THIS 1 DAY OF November, 2000 AT 2:45.

Thomas J. Brann
Judge

Order granting Temporary Restraining Order

November 2000

Amela Hunt

- b. omitting the material facts concerning the unlawfulness of the election activities promoted by "vote-auction.com."

The Court concludes that, examined in light of the letter and purpose of Missouri's consumer protection statutes and regulations, these facts show that defendants have engaged in deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of material facts, all declared to be unlawful under § 407.020, RSMo 1994, and that, pursuant to § 407.100, this temporary restraining order is authorized. ACCORDINGLY, IT IS HEREBY ORDERED THAT, pursuant to § 407.100.1, RSMo. 1994, defendants, their officers, directors, parent corporations, subsidiaries, d/b/a's, agents, employees, representatives, attorneys, assigns, and all those acting in concert with them or for them or on their behalf in whatever capacity, and having actual notice of this order by personal service or otherwise, are enjoined as follows:

- A. Defendants and all those acting in concert with them are enjoined and ordered to immediately cease and desist from representing on the vote-auction.com web site or any web site by any other name in any manner as a forum for conducting a vote "auction" that the buying and selling of votes of Missouri citizens is legal.
- B. Defendants and all those acting in concert with are ordered to disclose on the vote-auction.com web site or any web site by any other name in any manner as a forum for conducting a vote "auction"