

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL,

Plaintiff,

v.

HEARTS 2 HEROES INC.,
a West Virginia corporation,

Serve: C T CORPORATION SYSTEM
4701 Cox Road, Suite 285
Glen Allen, Virginia 23060
(County of Henrico)

Defendant.

CIVIL ACTION NO. _____

COMPLAINT

The Plaintiff, Commonwealth of Virginia (the "Plaintiff" or "Commonwealth"), by, through, and at the relation of its Attorney General, Mark R. Herring, petitions this Court to declare that the activities in which the Defendant, Hearts 2 Heroes Inc. d/b/a Active Duty Support Services Inc. (the "Defendant" or "H2H"), has engaged constitute violations of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, and the Virginia Solicitation of Contributions ("VSOC") law, Virginia Code §§ 57-48 through 57-69; to enjoin these violations; to restore to consumers the sums acquired from them in violation of the VCPA, or, in the alternative, impose a constructive trust on all funds received for charitable purposes; and to award civil penalties, expenses, and attorneys' fees to the Commonwealth. The Commonwealth prays that this Court grant the relief requested in this Complaint and states the

following in support thereof:

JURISDICTION AND VENUE

1. The Commonwealth brings this action pursuant to the authority set forth in § 59.1-203 of the VCPA, which provides, among other things, that the Attorney General may bring an action to enjoin any violation of the VCPA, and § 57-59(D) of the VSOC law, which provides, among other things, that the Attorney General may bring an action to enjoin any violation of the VSOC law.

2. The Circuit Court of the County of Henrico has authority to entertain this action and to grant the relief requested herein pursuant to Virginia Code §§ 8.01-620, 17.1-513, 57-59, 59.1-203, 59.1-205, and 59.1-206.

3. Venue is permissible in this Court pursuant to Virginia Code § 8.01-262(2), (3), and (4) because the Defendant has a registered office and has appointed an agent to receive process in Henrico County, because there exists a practical nexus to Henrico County including the location of fact witnesses and other evidence to the action, because the Defendant regularly conducts substantial business activity in Henrico County, and because portions of the causes of action arose in Henrico County. Venue is preferred in this Court pursuant to Virginia Code § 8.01-261(15)(c) because some or all of the acts to be enjoined are, or were, being done in Henrico County.

4. The Defendant transacted business in Virginia through soliciting or obtaining contributions from Virginia residents and advertising and selling care packages to Virginia residents, including in Henrico County.

5. At all relevant times, the Defendant has purposefully availed itself of this forum.

6. In accordance with Virginia Code § 59.1-203(B), prior to commencement of this

action, the Plaintiff gave the Defendant written notice that these proceedings were contemplated and a reasonable opportunity to appear before the Office of the Attorney General to demonstrate that no violations of the VCPA had occurred, or, in the alternative, to execute an appropriate Assurance of Voluntary Compliance that is acceptable to the Commonwealth. The Defendant did not respond to the written notice.

PARTIES

7. The Plaintiff is the Commonwealth of Virginia, by, through, and at the relation of Mark R. Herring, Attorney General of Virginia.

8. The Defendant, Hearts 2 Heroes Inc., is a corporation organized under the laws of the State of West Virginia, with its principal place of business in Bunker Hill, West Virginia. The Defendant has a registered office located at 4701 Cox Road, Suite 285, Glen Allen, Virginia 23060 and has obtained a Certificate of Authority to Transact Business in Virginia from the Virginia State Corporation Commission. The Defendant is registered as a charitable organization with the Virginia Department of Agriculture and Consumer Services' Office of Charitable and Regulatory Programs.

FACTS

9. Hearts 2 Heroes Inc. is a for-profit organization incorporated in West Virginia that solicits door to door in Virginia, West Virginia, Maryland, and Pennsylvania, and that purportedly sells care packages including items such as hygiene products and snacks, which it claims to ship to soldiers overseas.

10. As of June 26, 2018, H2H's website indicates it has sent 30,078 care packages.

11. H2H's website claims, "Our company relies solely on your help to send CARE PACKAGES overseas to our soldiers who are currently deployed and who are not receiving [sic]

any correspondences from family, friends, or anyone state side.”

12. While H2H’s website notes that it is not a “non-profit,” it also states the company is “devoted to making sure we lift the spirits and the morale of our deployed men and women overseas!”

13. H2H also solicits individuals to “donate” in-kind contributions on the “Contact Us” page of its website.

14. Consumer donors are approached at their doors and are shown different contribution levels and donation options including to which military branch donations would be directed, but once they make a payment consumer donors generally are not provided any documentation or substantiation that funds are used as promised.

15. Consumer donors are left not knowing how or whether their payments were used as promised, and in some cases only find out later through online searches that the company was not what it represented itself to be, or when examining a receipt noting that donations are not tax deductible as they were led to believe.

16. H2H has engaged in a pattern and practice of making a variety of misrepresentations to consumers and donors regarding the care packages it purports to provide.

17. H2H sales staff regularly misled consumers regarding the nature of the business, including by leading those it is soliciting to believe that it is a charity, when it is not, or that donations made are tax deductible, when they are not.

18. On information and belief, care packages, where delivered at all, are provided to military bases in the United States, not overseas as represented.

19. Moreover, on information and belief, H2H staff have engaged in other deceptive conduct such as representing to consumers that staff were veterans or volunteers when in fact

those staff were not veterans or volunteers.

20. On information and belief, H2H staff would also regularly “skim” cash donations for themselves.

21. In one instance, a consumer was told the entire donation would be used for a care package, but was not shown or provided any documents regarding the transaction.

22. The consumer paid \$48 to H2H.

23. The consumer was so impressed by the H2H sales person’s presentation that a neighbor came over and also gave money to H2H.

24. In another instance, a consumer was told that donations would be tax deductible and that the H2H staff member was a volunteer, when neither representation was true.

25. The consumer paid \$48 to H2H.

26. The Commonwealth has reason to believe that such occurrences were typical of H2H transactions, and that the misrepresentations noted are only the tip of the proverbial iceberg regarding the company’s deception.

27. On information and belief, many consumers would not have donated funds had they known the true nature of the business, and the donations they gave were made in lieu of providing to other groups.

28. From at least as early as June 2015 through at least December 2016, H2H made thousands of sales of “care packages” in the Commonwealth totaling more than \$100,000 in funds provided to the company in amounts ranging from \$5 to \$320.

29. The company continues to solicit on Facebook and a website located at www.activedutysupportservices.com.

CAUSES OF ACTION

Count I: Virginia Consumer Protection Act

30. The Plaintiff realleges and incorporates herein by reference the matters set forth in Paragraphs 1 through 29 above.

31. The Defendant is now, and was at all relevant times mentioned herein, a “supplier” of “goods” or “services” in connection with “consumer transaction[s]” as those terms are defined in § 59.1-198 of the VCPA.

32. By advertising, selling, and offering for sale care packages to consumers in their homes, the Defendant has engaged and does engage in “consumer transaction[s],” as defined in § 59.1-198 of the VCPA.

33. By misrepresenting to individuals that H2H is a charity or that donations made are tax deductible, misrepresenting that care packages are sent overseas, and misrepresenting that sales staff were veterans or vounteers, the Defendant has engaged in the following prohibited practices under the VCPA:

- a. Misrepresenting the source, sponsorship, approval, or certification of goods or services, in violation of § 59.1-200(A)(2);
- b. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits, in violation of § 59.1-200(A)(5);
- c. Advertising goods or services with intent not to sell them as advertised, or with the intent not to sell at the price or upon the terms advertised, in violation of § 59.1-200(A)(8); and
- d. Using any deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, in violation of

§ 59.1-200(A)(14).

34. Individual consumers have suffered losses as a result of the Defendant's violations of § 59.1-200(A)(2), (5), (8), and (14) of the VCPA.

35. The Defendant has willfully engaged in the acts and practices described in this Complaint in violation of the VCPA.

Count II: Virginia Solicitation of Contributions Law

36. The Plaintiff realleges and incorporates herein by reference the matters set forth in Paragraphs 1 through 35 above.

37. The Defendant is or was during all relevant times a "charitable organization" which held itself out to be organized or operated for "charitable purpose[s]," and "solicit[ed]" or obtained "contribution[s]" solicited from the public as those terms are defined in the VSOC law.

38. By misrepresenting to individuals that H2H is a charity or that donations made are tax deductible, misrepresenting that care packages are sent overseas, misrepresenting that sales staff were veterans or volunteers, and using or permitting the use of funds raised by a charitable solicitation for purposes other than the solicited purpose, the Defendant has engaged in the following prohibited practices under the VSOC law:

- a. Employing in any solicitation or collection of contributions for a charitable purpose any device, scheme or artifice to defraud or obtain money or property by any misrepresentation or misleading statement, in violation of § 57-57(L); and
- b. Using or permitting the use of the funds raised by a charitable solicitation for any purpose other than the solicited purpose or, with respect to funds raised by general appeals, the general purposes of the charitable or civic organization on

whose behalf the solicitation was made, in violation of § 57-57(N).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court:

A. Permanently enjoin H2H from violating § 59.1-200(A)(2), (5), (8), and (14) of the VCPA and § 57-57(L) and (N) of the VSOC law, pursuant to Virginia Code §§ 59.1-203 and 57-59(D);

B. Grant judgment against H2H and award to the Commonwealth all sums necessary to restore to any consumers the money or property acquired from them by H2H in connection with its violations of § 59.1-200(A)(2), (5), (8), and (14) of the VCPA, pursuant to Virginia Code § 59.1-205;

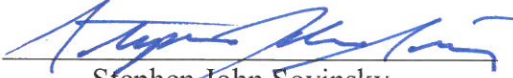
C. Grant judgment against H2H and award to the Commonwealth civil penalties of up to \$2,500 per willful violation of § 59.1-200(A)(2), (5), (8), and (14) of the VCPA, pursuant to Virginia Code § 59.1-206(A), and civil penalties of not more than \$5,000 per violation of § 57-57(L) and (N) of the VSOC law, pursuant to Virginia Code § 57-59(E);

D. Grant judgment against H2H and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000 per violation of § 59.1-200(A)(2), (5), (8), and (14) of the VCPA and its costs, reasonable expenses incurred in investigating and preparing the case not to exceed \$250 per violation of § 57-57(L) and (N) of the VSOC law, and its attorneys' fees, pursuant to Virginia Code §§ 59.1-206(C) and 57-59(E);

E. Impose a constructive trust on all funds received by H2H from the solicitations described in this Complaint for the benefit of charitable organizations who support those purposes for which the funds were solicited; and

F. Order such other and further relief as may be deemed proper and just.

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

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