

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

WAUKESHA COUNTY

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

Plaintiff,

v.

Case No. 10-CX-

Complex Forfeiture: 30109

MICHAEL TODD MESSMER,  
individually,  
7357 South Pennsylvania Avenue  
Oak Creek, Wisconsin 53154,

and

MARILYN L. BROERMAN,  
individually and d/b/a The Beacon Project  
and Creative Marketing Solutions,  
515 Orient Road  
Charlotte, North Carolina 28211

Defendants.

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## COMPLAINT

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The State of Wisconsin, by its attorneys, J.B. Van Hollen, Attorney General, and Assistant Attorney General John S. Greene, brings this action against the Defendants named above and 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. Defendant Michael Todd Messmer is an adult residing at 7357 South Pennsylvania Avenue, Oak Creek, Wisconsin 53154.

3. Defendant Marilyn L. Broerman is an adult residing, upon information and belief, at 515 Orient Road, Charlotte, North Carolina 28227.

## **JURISDICTION AND VENUE**

4. This action is brought pursuant to Wis. Stat. § 440.48(1).

5. Pursuant to Wis. Stat. § 801.50(2)(a) and (c), venue is proper in Waukesha County because some of the claims alleged in this complaint arose there.

## **FACTS**

6. Defendant Broerman has operated a business under the name Creative Marketing Solutions (CMS), which among other things sells plastic countertop vending units.

7. Upon information and belief, CMS is a sole proprietorship owned by Broerman.

8. Broerman has also operated under the name The Beacon Project, through which she has claimed to assist in the location of missing children by supplying stickers to be placed on candy vending units sold through CMS.

9. Broerman, through CMS and The Beacon Project, created a candy vending scheme that, for purposes of marketing, masquerades as a charitable enterprise that assists in locating missing children.

10. Broerman, through CMS and the Beacon Project, supplies the purchasers of the candy canisters with stickers that suggest the proceeds will be used for charitable purposes, and instructs the purchasers how to utilize the stickers and operate the business.

11. Broerman has solicited purchasers of the vending units through newspaper advertisements which she has placed in newspapers in multiple states, including Wisconsin.

12. In 2007, Broerman placed ads in the Milwaukee Journal Sentinel, one example of which is as follows:

**PERFECT TIMING!**

Invest \$36,000 and make \$3000 cash every week. Once we find 3 people for Milwaukee, you'll never see this ad again. Call 888-814-4515

13. Defendant Messmer responded to CMS' newspaper ad and decided to purchase a candy vending business.

14. To launch his new business venture, in July 2007 Messmer purchased 240 plastic counter-top candy vending canisters from Broerman. For his initial \$36,000.00 investment, Messmer received the canisters, candy to fill the canisters, stickers to place on the units, and placement services to find business locations in Southeastern Wisconsin where the canisters could be placed.

15. Of the 240 canisters, Messmer placed 200 in service with the remaining 40 to be held in reserve should a unit in service get broken or stolen.

16. In August 2007, Messmer purchased an additional 204 canisters from Broerman, together with candy, stickers, and placement services identical to the initial order.

17. The stickers provided for placement on the canisters were supplied by Broerman through “The Beacon Project.”

18. Broerman—through “The Beacon Project”—supplied three different stickers to place on each canister:

- a. A missing child poster (reduced in size to fit on the canister);
- b. A sticker with pricing information (e.g. “5 for \$1”); and
- c. A sticker reading “Thank You for Your Generous Donation.”

19. Messmer placed the stickers on each of his canisters in accordance with a diagram provided by The Beacon Project suggesting how to place the stickers on the units.

20. After his initial purchase of 440 canisters, Messmer subsequently purchased an additional 327 canisters from third parties, all of which had stickers similar to those he had placed on the canisters he originally purchased from Broerman. Upon information and belief, the additional canisters were originally sold by Broerman, who supplied the stickers affixed to the canisters.

21. Thus, for varying time periods between 2007 and 2010, Messmer operated approximately 731 canisters in Southeastern Wisconsin, at different business locations, including many in Waukesha County.

22. The canisters were typically placed on the counter of a business establishment and allowed consumers to remove candy, for which they were expected to place money in the top of the unit.

23. Periodically, Messmer or someone assisting him would remove the money from the canisters and replenish the candy supply.

24. Messmer treated the operation purely as a sole-proprietorship vending business.

25. Messmer did not donate any of the candy proceeds to any charitable organization benefiting missing children, or to any other charitable organization.

26. The stickers—particularly the missing child poster and the “Thank You for Your Generous Donation” sticker—conveyed the false impression that a charitable organization was behind the solicitation effort, or that the proceeds would be used for charitable purposes, when neither was true.

27. The placement of the canisters constituted solicitations within the meaning of Wis. Stat. § 440.41(9).

28. To the extent Messmer could be deemed to be “selling” the candy, the placement of the canisters constituted a “charitable sales promotion” within the meaning of Wis. Stat. § 440.41(3).

29. Broerman, through her operation of CMS and The Beacon Project, participated in the planning, management, and execution of Messmer's solicitations or charitable sales promotions.

30. Messmer has never registered as a charitable solicitor pursuant to Wis. Stat. § 440.44.

31. Neither The Beacon Project nor CMS has ever registered as a charitable organization pursuant to Wis. Stat. § 440.42.

## **VIOLATIONS**

### **COUNT 1**

#### **Unfair or Deceptive Acts or Practices**

#### **Wis. Stat. § 440.46(1)(a)**

32. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

33. Wisconsin Stat. § 440.46(1)(a) prohibits a person from using unfair or deceptive acts or practices in the execution of a solicitation or charitable sales promotion.

34. Messmer and Broerman engaged in unfair or deceptive acts or practices, thereby violating Wis. Stat. § 440.46(1)(a) by misleading consumers into believing that the money collected from the candy canisters would support the work of one or more charities dedicated to the cause of locating or assisting missing children.

35. Each canister placed before the public constitutes a separate violation of Wis. Stat. § 440.46(1)(a).

36. Each violation of Wis. Stat. § 440.46(1)(a) subjects Messmer and Broerman to a forfeiture of not less than \$100.00 nor more than \$10,000.00, pursuant to Wis. Stat. § 440.48(1)(b).

**COUNT 2**  
**Misrepresentation**  
**Wis. Stat. § 440.46(1)(d)**

37. Plaintiff re-alleges all preceding paragraphs of the complaint and incorporates them herein.

38. Wisconsin Stat. § 440.46(1)(d) prohibits a person in the planning, management, or execution of a solicitation or charitable sales promotion from representing or leading anyone, in any manner, to believe that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes if that is not the fact.

39. By placing pictures of missing children and statements of gratitude for donations on the vending units, or by effectuating such placement, Messmer and Broerman led consumers to believe that the proceeds from the vending units would be used for charitable purposes, when such was not the case, in violation of Wis. Stat. § 440.46(1)(d).

40. Each canister placed before the public constitutes a separate violation of Wis. Stat. § 440.46(1)(d).

41. Each violation of Wis. Stat. § 440.46(1)(d) subjects Messmer and Broerman to a forfeiture of not less than \$100.00 nor more than \$10,000.00, pursuant to Wis. Stat. § 440.48(1)(b).

**RELIEF**

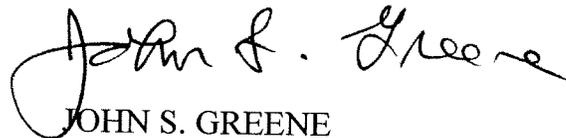
**WHEREFORE**, Plaintiff, State of Wisconsin, demands judgment against Defendants Michael Todd Messmer and Marilyn L. Broerman, as follows:

1. Enjoining Defendants from further violations of Wisconsin law pursuant to Wis. Stat. § 440.48(1)(b);
2. Imposing forfeitures for each violation of Wis. Stat. §§ 440.46(1)(a) and 440.46(1)(d);
3. Awarding the State of Wisconsin the expenses of investigation and prosecution, including attorney fees, relating to the investigation and prosecution of this matter, pursuant to Wis. Stat. § 440.48(1)(b).
4. Awarding such other relief as the court may deem just and equitable.

Dated this 28<sup>th</sup> day of September, 2010.

Respectfully submitted,

J.B. VAN HOLLEN  
Attorney General



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