

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
BY THOMAS W. CORBETT, JR.	:	
ATTORNEY GENERAL,	:	
	:	M.D. 2007
Petitioner,	:	
v.	:	
	:	
INNOVATIVE MEDIA, INC., d/b/a	:	
<u>www.PhantomPlate.com</u> ,	:	
	:	
Respondent	:	

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection ("Commonwealth"), which has caused an investigation to be made into the business practices of Innovative Media, Inc., d/b/a www.PhantomPlate.com ("Respondent"), pursuant to the *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. §§ 201-1 –201-9.3 ("Consumer Protection Law"); the *Vehicle Code*, 75 Pa.C.S.A. §§ 101, *et seq*; An Act pertaining to the *Unauthorized Practice of Law*, 42 P.S. § 2524; An Act relating to the *False Marking of Patents*, 35 U.S.C. § 292; and the *Fictitious Names Act*, 54 Pa.C.S.A. §§ 301—332, and states the following:

WHEREAS, Respondent, Innovative Media, Inc., d/b/a www.PhantomPlate.com is a Pennsylvania business corporation which has engaged in trade and commerce within the Commonwealth of Pennsylvania through the internet solicitation and sale of various products designed to conceal motor vehicle license plate numbers and/or letters from photo-radar traffic cameras; and

WHEREAS Respondent has a registered business address of 2151 Queens Drive, Apt. B-4, Harrisburg, Pennsylvania, 17110;

WHEREAS, the Respondent Innovative Media, Inc., d/b/a www.PhantomPlate.com has registered with the Commonwealth of Pennsylvania, Department of State, Corporation Bureau, pursuant to the Business Corporation Law, 15 Pa.C.S.A. § 1308.

WHEREAS, Respondent operates, controls and maintains various websites to sell its products including: www.PhotoBlocker.com; www.InvisiblePlate.com; www.NoTicket.com; and www.MARLC.com.

BACKGROUND

WHEREAS, based upon its investigation, the Commonwealth believes that the Respondent has engaged in the following conduct of trade or commerce in the Commonwealth of Pennsylvania:

1. Beginning on or before November 2001, the Respondent began advertising its products on the internet. The Respondent describes its products as:
 - a) PhotoBlocker spray, a high gloss formula aerosol which "distorts" license plates by reflecting photo camera flash;
 - b) PhotoShield Cover, a clear license plate cover which incorporates a thin strip of lens on the inside which "blurs" photo-radar camera photos with or without flash based upon the refraction caused by the lens;
 - c) Reflector Cover which works on the same principle as PhotoBlocker but is a clear plastic cover with light reflecting crystals instead of an aerosol spray; and,
 - d) License plate fasteners, license plate frames, radar detectors, GPS data bases and navigation units, clear license plate covers, and an E-book.

2. At least two hundred (200) Pennsylvania consumers have purchased one or more of Respondent's products, including the items mentioned in Paragraph 1(d), above, which items are not the subject of this Assurance of Voluntary Compliance.

3. The Commonwealth alleges that the Respondent misrepresented the legality of its products by claiming its products are "100% legal," on their internet website pages.

4. The Respondent makes the following reference on its internet website pages regarding the legality of its products under the heading "frequently asked questions:"

Q. Is this product legal?

A. YES. The laws in most countries require your license plate to be legible to the naked eye. PhotoBlocker™ Spray is a high gloss, clear, reflective spray that is undetectable. It causes no distortion nor does it obstruct your license plate's view. YOUR LICENSE WILL BE VISIBLE TO THE NAKED EYE. Besides, no one will even know you have it on. It only fools the cameras;

5. Further, in response to this question under the heading "frequently asked questions," [c]an the police enhance the photo to read my plate number after it is overexposed due to PhotoBlocker," the Respondent indicates that "[i]f they tamper with the picture, the evidence is not admissible in a court of law."

6. Despite Respondent's affirmative representations regarding the legality of its products, as set forth in Paragraph 4, above, the use of its products is specifically prohibited by Pennsylvania law.

7. The Commonwealth alleges that Respondent's products unlawfully obscure the registration plate in a manner which inhibits the proper operation of an automated red light enforcement system in violation of the *Vehicle Code*, 75 Pa. C.S.A. §§ 1332(b)(2).

8. The Commonwealth alleges that in addition to being erroneous, the references to legality and admissibility of evidence are legal opinions and conclusions which the Respondent is not licensed or otherwise qualified to make.

9. Additionally, Respondent has a policy which provides that "all sales are final."

10. The Commonwealth avers that, recently, in direct response to the Commonwealth's inquiry into this matter, Respondent provides a 30 day money back guarantee to all customers which is prominently displayed on all of its websites and receipts sent to customers.

11. Despite the numerous advertising representations pertaining to legality, both the PhotoShield Cover and Reflector Cover have contained as part of their packaging materials a cardboard backing with the following warning:

LAWS CONCERNING THIS PRODUCT VARY FROM STATE TO STATE. YOUR STATE MAY PROHIBIT ITS USE ON PUBLIC ROADS OR RESTRICT ITS USE TO NOVELTY PLATES, SHOW CAR USE OR OFF-ROAD AREAS ONLY. IN SOME STATES, INCLUDING WITHOUT LIMITATION CALIFORNIA, OFF-ROAD USES ARE ALSO PROHIBITED. THE MANUFACTURER AND RETAILER ASSUME NO RESPONSIBILITY FOR ANY USE OR APPLICATION OF THIS PRODUCT IN VIOLATION OF ANY APPLICABLE LAW. BEFORE INSTALLING THIS PRODUCT, PLEASE CHECK YOUR STATE AND LOCAL LAWS AND REGULATIONS.

12. The Commonwealth avers that, recently, in direct response to the Commonwealth's inquiry into this matter, Respondent includes a notice with each purchase of a Photo Shield Cover and Reflector Cover that states:

"WARNING: LAWS CONCERNING THIS PRODUCT VARY FROM STATE/PROVINCE. YOUR STATE/PROVINCE MAY PROHIBIT ITS USE ON PUBLIC ROADS OR RESTRICT ITS USE TO NOVELTY PLATES, SHOW CAR USE OR OFF-ROAD AREAS ONLY. IN SOME STATES/PROVINCES, INCLUDING WITHOUT LIMITATION CALIFORNIA, OFF-ROAD USES ARE ALSO PROHIBITED. THE MANUFACTURER AND RETAILER ASSUME NO RESPONSIBILITY FOR ANY USE OR APPLICATION OF THIS PRODUCT, PLEASE CHECK YOUR STATE/PROVINCIAL AND LOCAL/MUNICIPAL LAWS AND REGULATIONS. THE MANUFACTURER AND RETAILER ASSUME NO RESPONSIBILITY FOR ANY

USE OR APPLICATION OF THIS PRODUCT IN VIOLATION OF ANY APPLICABLE LAW. BEFORE INSTALLING THIS PRODUCT, PLEASE CHECK YOUR STATE LOCAL LAWS AND REGULATIONS. IN SOME STATES IT IS UNLAWFUL TO DISPLAY ON ANY VEHICLE A REGISTRATION PLATE WHICH IS OBSCURED IN ANY MANNER WHICH INHIBITS THE PROPER OPERATION OF AN AUTOMATED RED LIGHT ENFORCEMENT SYSTEM.

13. On every PhotoBlocker Spray can there is a disclaimer stating "...

RESPONSIBILITY AND RESULTS OR USING REMAINS SOLELY AND ENTIRELY WITH PURCHASER AND/OR USER."

14. The Commonwealth avers that, recently, in direct response to the Commonwealth's inquiry into this matter, the Respondent has begun to make a disclaimer regarding the legality of its products which is placed in small font at the very bottom of their internet webpage and states:

The manufacturer and retailer assume no responsibility for any use or application of this product in violation of any applicable law. Before installing this product, please check your state and local laws and regulations. In some states it is unlawful to display on any vehicle a registration plate which is obscured in any manner which inhibits the proper operation of an automated red light enforcement system.

15. While this disclaimer paraphrases Pennsylvania law, Respondent does not clearly and conspicuously disclose that Pennsylvania Law prohibits the use of these products.

16. The Commonwealth alleges that Respondent's conduct violated Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4)(iii), (v) and (xxi), in the following ways:

- (iii) Causing a likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- (v) Representing that goods or services have sponsorship, approval characteristics, ingredients, uses benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have; and,

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. § 201-2(4)(iii), (v) and (xxi).

17. The Commonwealth alleges that Respondent has misrepresented the effectiveness of its products.

18. According to at least one test conducted on the "Mythbuster" television program which aired on the Discovery Channel in April and May of 2007, the Respondent's products failed to adequately distort or blur the license plate in a manner which would render it unreadable by the speed camera.

19. Respondent's own solicitations state "[o]ur products are designed to defeat all types of red light, speed and radar cameras."

20. The Commonwealth alleges that, despite this assertion, Respondent fails to clearly and conspicuously disclose that, unlike the other two products Respondent offers for sale (PhotoBlocker Spray and ReflectorTM Cover) only the Respondent's Photo Shield Cover product is effective for cameras that do not use a flash.

21. The Commonwealth alleges that Respondent's conduct violates Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4)(iii), (v), (vii) and (xxi), in the following ways:

- (iii) Causing a likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- (v) Representing that goods or services have sponsorship, approval characteristics, ingredients, uses benefits or quantities that they do not

have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another; and,

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. § 201-2(4)(iii), (v), (vii) and (xxi).

22. The Commonwealth alleges that Respondent misrepresented that its product is "patent pending."

23. The Respondent applied for Provisional Patent Applications with the U.S. Patent and Trademark Office in March of 2003 for its vehicle license plate cover and in April of 2004 for "PhotoBlocker". Due to inactivity, both applications expired and thus neither product was being examined or in any manner pending "patentability". However, Respondent has re-filed that application.

24. The Respondent marks every can of PhotoBlocker with a label indicating "Patent Pending" and also prominently display this label on their internet website pages in violation of 35 U.S.C. § 292.

25. The Respondent has not registered any fictitious names other than "Phantom Plate," with the Commonwealth of Pennsylvania, Department of State Corporation Bureau in accordance with the *Fictitious Names Act*, 54 Pa. C.S.A. §§ 301-332.

26. The Respondent also engages in internet sales through the use of at least the following internet web sites: www.PhotoBlocker.com; www.InvisiblePlate.com; www.NoTicket.com; and www.MARLC.com.

27. None of the domain names Respondent is utilizing as internet websites are properly registered as fictitious names in Pennsylvania nor do they state in anyway that the entity engaged in this business, or utilizing these addresses, is actually Respondent Innovative Media, Inc.

28. The Commonwealth alleges that the Respondent causes a likelihood of confusion or of misunderstanding as to the certification of their products by, another by making at least the following assertions:

- a. "Our products work as advertised watch for yourself tests and demonstrations by news agencies & police from all around the world;"
- b. Under the heading "frequently asked questions," and in response to the question, "[d]oes the product really work?" the Respondents state that they have conclusive tests conducted by the Denver Police Department, Dutch Police, Swedish TV, Australian TV, and British TV; and,
- c. "Our products have been featured on NBC, CBS, ABC News, Tech TV, Norwegian TV, Dutch TV, the Washington Times, UK's Daily Mail and many, many more."

29. The Commonwealth alleges that Respondent's conduct violated Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4)(ii), (iii), (v) and (xxi), in the following ways:

- (ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- (iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have; and,
- (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. § 201-2(4)(ii), (iii), (v) and (xxi).

WHEREAS, the Respondent denies that its conduct violates the Consumer Protection Law, the *Vehicle Code*, the *Fictitious Names Act*, or constitutes the *Unauthorized Practice of Law* or the *False Marking of Patents*;

WHEREAS, the Respondent has worked to address the Commonwealth's concerns regarding compliance with Pennsylvania laws;

WHEREAS, the Respondent agrees to cease and desist violating the Consumer Protection Law and desires to comply with the civil laws of the Commonwealth; and

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to § 201-5 of the Consumer Protection Law in lieu of commencing statutory proceedings under § 201-4.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, the Respondent agrees for itself, its successors, assigns, officers, partners, agents, representatives, employees, franchisees, retail divisions or stores and all other persons acting on its behalf, jointly or individually, directly or indirectly, or through any corporate or business device, as follows:

I. Injunctive and Affirmative Relief

A. The Respondent shall comply with any and all provisions of the Consumer Protection Law, the *Vehicle Code*, the *Unauthorized Practice of Law Act*, the *Fictitious Names Act* and the *False Marking of Patents Act* and any amendments thereto; and, are permanently enjoined from any violation thereof.

B. The Respondent agrees to voluntarily cease conducting business within the Commonwealth of Pennsylvania to include but not limited to specifically:

- 1). Refraining from direct marketing and any and all advertising in the Commonwealth of Pennsylvania;
- 2). Prominently displaying and disclosing in all of its advertising materials that the use of its products is unlawful in Pennsylvania and that it has voluntarily agreed not to sell its products in Pennsylvania; and,
- 3). Implementing business practices to prohibit Pennsylvania sales.

II. Monetary Relief—Upon signing this Assurance of Voluntary Compliance, Respondent shall be liable for and further agrees to pay by certified check, cashiers check, or money order, made payable to the Commonwealth of Pennsylvania, Office of Attorney General, and forwarded to the Office of Attorney General, Bureau of Consumer Protection, 301 Chestnut Street, Suite

105, Harrisburg, Pennsylvania 17101, the sum of Twenty Five Thousand and 00/100

(\$25,000.00), which shall be allocated and paid as follows:

A. A civil penalty in the amount of Five Thousand and 00/100 Dollars (\$5,000.00), to be distributed to the Commonwealth of Pennsylvania, Treasury Department;

B. The sum of Twenty Thousand and 00/100 Dollars (\$20,000.00) in costs, to be distributed to the Commonwealth of Pennsylvania, Office of Attorney General and deposited into an interest-bearing account from which both principal and income shall be used for future public protection and educational purposes; and,

C. Respondent shall pay the amount of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) upon signing this Assurance of Voluntary Compliance. Respondent shall pay the balance of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) within sixty (60) days of signing this Assurance of Voluntary Compliance. Failure to comply with the terms pertaining to these payments shall be deemed a violation of the Assurance of Voluntary Compliance.

III. Miscellaneous Terms

A. The Court shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over the Respondent for the purpose of enforcing the terms of this Assurance of Voluntary Compliance.

B. Nothing contained herein shall be construed to waive any individual right of action by a consumer or a local, state, federal, or other governmental entity.

C. Time shall be of the essence with regards to Respondent's obligations hereunder.

D. Yoseph Seyoum, as an officer of Respondent Innovative Media, Inc., d/b/a www.PhantomPlate.com, hereby states that he is authorized to enter into and execute this Assurance of Voluntary Compliance on its behalf.

E. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance.

F. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

G. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

H. The parties hereby stipulate that this Assurance of Voluntary Compliance shall have the same force and effect as a permanent injunction issued under § 201-4 of the Consumer Protection Law, so that any violation of this Assurance of Voluntary Compliance shall be

sufficient cause for the Attorney General of this Commonwealth to seek penalties as provided in §§ 201-8, 201-9 and 201-9.1 of the Consumer Protection Law and any other equitable relief which the Court deems necessary or proper.

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

FOR THE PETITIONER

COMMONWEALTH OF PENNSYLVANIA
THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

Date: _____

By: _____

Jodi L. Zucco
Deputy Attorney General
Attorney I.D. No. 58131

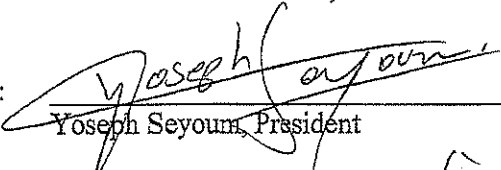
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FOR THE RESPONDENT:

INNOVATIVE MEDIA, INC.

Date: 5/12/2008

By: _____


Joseph Seyoum, President

Date: 5/12/2008

By: _____


Renardo L. Hicks, Esquire
Stevens & Lee
Counsel for Respondent