

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of:</b>	)	
	)	
<b>TSA Stores, Inc. (The Sports Authority)</b>	)	<b>CG Docket No. 02-278</b>
	)	
<b>Petition for Declaratory Ruling with Respect to Certain Provisions of the Florida laws and regulations</b>	)	

**PETITION FOR DECLARATORY RULING**

TSA Stores, Inc. (“TSA”), pursuant to § 554(e) of the Administrative Procedure Act, 5 USC § 554(e), and § 1.2 of the Commission’s rules, 47 CFR § 1.2, respectfully requests the Commission to issue, on an expedited basis, a declaratory ruling that § 501.059, Florida Statute, is preempted as applied to interstate telephone calls made to residential lines using a prerecorded voice, where the call is made to a person with whom the caller has an established business relationship at the time the call is made. As explained further herein, the subject section of the Florida statute is preempted by § 227 of the Telephone Consumer Protection Act (“TCPA”) and the implementing regulations of this Commission. The requested relief is necessary in order to terminate a controversy and remove uncertainty concerning TSA’s conflicting obligations under state and federal law, and should be granted on an expedited basis in order to prevent continued enforcement action against a client of TSA by the State of Florida.

## **DISCUSSION**

On or about January 7, 2004, The Sports Authority Florida, Inc. was served with a complaint for permanent injunction, civil penalties and other statutory relief (“Complaint”) by the State of Florida, Department of Agriculture and Consumer Services. (The Sports Authority Florida was merged into TSA Stores, Inc. at the end of 2003.) That document is attached hereto as “Exhibit A,” amended as per number of violations, Amended Complaint attached as “Exhibit B.” According to the Complaint, TSA violated § 501.059(4) of Florida statutes which makes it unlawful for telephone solicitors to make or cause any unsolicited telephone sales call to residents of the State of Florida if such residents’ number appears on the then quarterly “do-not-call” listing. Complaint, ¶ 8. Florida also alleged that TSA violated § 501.059(7), which makes it unlawful to knowingly allow a telephone sales call to be made if such call involves an automated system for the playing of a recorded message when a connection is completed to the number called without a live operator introducing the recorded message. Id.

TSA has hired Smart Reply to place recorded calls to customers of TSA. At all times, all calls placed by Smart Reply pursuant to this contract are placed solely to consumers with whom TSA has an “established business relationship” as that term is defined in the regulations implementing the Telephone Consumer Protection Act, 47 CFR § 64.1200(f)(3), and/or to consumers who have expressly consented to receive telephone calls from TSA providing their telephone number to TSA. 7 FCC Rcd 8752, ¶ 31.

TSA does maintain an internal “do-not-call” list as required by federal law and does not place telephone calls to persons who have made a “do-not-call” request to TSA.

At all times the messages delivered on behalf of TSA by Smart Reply complied with the disclosure requirements found in the FCC's Regulations. 47 CFR § 64.1200(b).

In its Answer to the Department's Complaint, TSA pointed out that the cited portion of the Florida statute is in direct conflict with the Commission's regulations implementing the TCPA. The Answer is attached hereto as "Exhibit C," Amended Answer attached hereto as "Exhibit D." Specifically, § 501.059(7)(a) of the Florida statute states that "[n]o person shall make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called." Although Florida law exempts calls to established customers from the definition of "unsolicited telephonic sales call," Florida Statute § 501.059(1)(c)(3), the Department has still attempted to enforce this statute against TSA despite the fact that its calls were placed solely to existing customers of TSA.

TSA has compiled spreadsheets setting forth each alleged telephone number called in violation of state law as well as the date that person made a purchase from TSA, thus meeting the federal definition of "established business relationship." These exhibits can be provided upon request but are confidential and a trade secret, and will be used in response to the above referenced lawsuit, but are not attached to this document because TSA does not wish to publish the telephone numbers of its customers. TSA is willing to provide these documents under appropriate protective provisions.

By contrast, the Commission's rules provide that a person or entity may initiate a telephone call to a residential line "using an artificial or prerecorded voice to deliver a message without the express prior consent of the called party . . ." if the call is made "to

any person with whom the caller has an established business relationship at the time the call is made.”<sup>1</sup>

In its TCPA *Order* released July 3, 2003, the Commission invited “any party that believes a state law is inconsistent with § 227 of our rules [to] seek a declaratory ruling.”<sup>2</sup> In that same Order, the Commission described the principles that would guide its resolution of such petitions:

Although section 227(e) gives states authority to impose more restrictive *intrastate* regulations, we believe that it was the clear intent of Congress generally to promote a uniform regulatory scheme under which telemarketers would not be subject to multiple, conflicting regulations. We conclude that inconsistent *interstate* rules frustrate the federal objective of creating uniform national rules, to avoid burdensome compliance costs for telemarketers and potential consumer confusion. The record in this proceeding supports the finding that application of inconsistent rules for those that telemarket on a nationwide or multi-state basis creates a substantial compliance burden for those entities.<sup>3</sup>

The provisions of the Florida statute that restrict the use of prerecorded messages, without creating an “established business relationship” exception, are inconsistent with the Commission’s rules when applied to interstate calls. The State of Florida’s attempt to enforce that prohibition as to interstate calls subjects TSA to the “multiple, conflicting regulations” that the Commission has declared its intention to avoid.<sup>4</sup> Specifically, in

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<sup>1</sup> 47 CFR § 64.1200(a)(2), (a)(2)(iv)

<sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14064-65 ¶ 84 (2003) (“TCPA Order”).

<sup>3</sup> *Id.* at 14064 ¶ 83 (emphasis added).

<sup>4</sup> The Florida statute applies to “telephone solicitors,” which are defined to include “any natural person, firm, organization, partnership, association, or a subsidiary or affiliate thereof, *doing business in this state*, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automatic dialing or recorded message devices.” Fla. Stat. § 501.059(1)(e) (emphasis added). “Doing business in this state,” in turn, is defined by the statute as “businesses who conduct telephonic sales calls from a location in Florida *or from other states or nations* to consumers located in Florida.” *Id.* § 501.059(1)(h) (emphasis added). By pursuing a complaint concerning an interstate call placed to a Florida

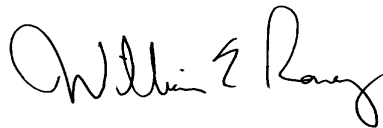
order to comply with Florida's law, TSA must block all interstate calls to Florida residents with whom it has an EBR, or must arrange not to use prerecorded messages in connection with those calls.

The State of Florida's action also creates a controversy and subjects TSA to uncertainty concerning its obligations, thereby satisfying the standard for declaratory relief under the Administration Procedure Act and the Commission's rules.<sup>5</sup> Accordingly, TSA requests that this Commission declare that § 501.059(7)(a) of the Florida statute is preempted. Because interruption of TSA's ability to leave prerecorded messages in Florida will disrupt TSA's operations and is likely to cause significant loss of revenue TSA asks that the requested relief be granted on an expedited basis.

Dated: February 1, 2005

Respectfully submitted,

**COPILEVITZ & CANTER, LLC**



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William E. Raney  
423 West Eighth Street, Suite 400  
Kansas City, Missouri 64105  
816-472-9000  
816-472-5000 (Facsimile)

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resident, the Department has signaled its intention to rely upon this statutory grant of interstate authority to prohibit conduct that is lawful under the TCPA, contrary to congressional intent and this Commission's announced policy.

<sup>5</sup> "The Commission may, in accordance with § 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty." 47 CFR § 1.2.

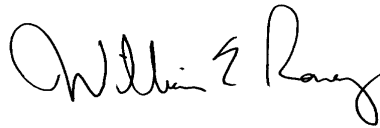
**CERTIFICATE OF SERVICE**

I, William E. Raney, do hereby certify that I have on this 1st day of February, 2005, had copies of the foregoing delivered to the following, via Electronic Mail, as indicated:

Louis Stolba  
Florida Department of Agriculture & Consumer Services  
Division of Consumer Services  
2005 Apalachee Parkway  
Tallahassee, FL 32399-6500  
*Via Email: [Stolbal@doacs.state.fl.us](mailto:Stolbal@doacs.state.fl.us)*

Erica McMahon  
Consumer & Governmental Affairs Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
*Via Email: [Erica.McMahon@fcc.gov](mailto:Erica.McMahon@fcc.gov)*

Best Copy and Printing, Inc.  
Portals II  
445 12<sup>th</sup> Street, S.W., Room CY-B402  
Washington, DC 20554  
*Via Email: [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM)*



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William E. Raney

**EXHIBIT A**

IN THE CIRCUIT COURT FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,  
DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES,

Plaintiff,

vs.

CASE NO.

THE SPORTS AUTHORITY FLORIDA  
INC., a Florida corporation,

Defendant.

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RECEIVED SHERIFF  
2003 DEC -4 PM 2:31  
BROWARD COUNTY, FLORIDA

**Complaint For Permanent Injunction,  
Civil Penalties and Other Statutory Relief**

Plaintiff, State of Florida Department of Agriculture and Consumer Services, sues the Defendant, The Sports Authority Florida, Inc., a Florida corporation, and alleges as follows:

**ALLEGATION COMMON TO ALL COUNTS**

1. This is an action for permanent injunction, civil penalties and other statutory relief, brought pursuant to Section 501.059, Florida Statutes.
2. This Court has jurisdiction pursuant to the provision of said statute.
3. Plaintiff, State of Florida, Department of Agriculture and Consumer Services, is the enforcing authority pursuant to Section 501.059(8) Florida Statutes, and is authorized to seek the relief sought herein pursuant to the provisions of said statute and such other statutes authorizing such relief. Plaintiff has performed all conditions precedent to be performed by Plaintiff or such conditions have occurred.
4. The amount in controversy exceeds the minimum jurisdictional limit of this Court.



5. Defendant, The Sports Authority Florida, Inc., is a Florida corporation with its principal place of business in Broward County, Florida. Defendant is doing business within the State of Florida as defined in Section 501.059(1)(h), Florida Statutes. This cause of action accrued in Orange County, Florida by virtue of Defendant making, or causing to be made, a telephonic sales call to consumers in Orange County, Florida and Defendant playing, or causing to be played, a recorded message when the number called is answered.

6. Defendant at all times material hereto, has engaged in the business of selling consumer goods or services, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services. Defendant in conducting its business is making telephonic sales calls and playing a recorded message when the number called is answered to citizens of the State of Florida.

7. From, on or before November 2002 Defendant has been making unsolicited telephonic sales calls to citizens of the State of Florida whose names appear on the then-current quarterly no-sales solicitation calls listing published by the department. A list of the consumers called and the dates of such calls are described on Exhibit "A" attached hereto and by reference made a part hereof. Further, as a separate and distinct violation of Florida Statutes, Defendant made or knowingly allowed a telephonic sales call to be made with an automated system for the playing of a recorded message when a connection is completed to a number called without having a live operator introduce the recorded message.

8. Section 501.059(4), Florida Statutes, makes it unlawful for a telephone solicitor to make or cause to be made any unsolicited telephonic sales calls to residents of the State of Florida if such residents number appears on the then-current quarterly listing. Section 501.059(7), Florida

Statutes, makes it unlawful to make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the playing of a recorded message when a connection is completed to a number called without a live operator introducing the recorded message.

9. Unless the Defendant is enjoined from engaging further in the acts and practices herein complained, the continued activities of Defendant will result in damage to the consuming public.

**COUNT I**  
(Injunctive Relief)

10. Plaintiff realleges paragraphs 1 through 9, above.

11. Section 501.059(8), Florida Statutes, that the department may seek injunctive relief to prohibit the improper telephonic solicitations in violation of said statute. This is an action for permanent injunction.

12. The Defendants acts and practices as set forth herein constitute a violation of Section 510.059, Florida Statutes.

13. Unless Defendant is permanently enjoined from engaging further in such acts and practices as herein described, the activities of the Defendant will cause injury to the consuming public.

**COUNT II**  
(Civil Penalties)

14. Plaintiff realleges paragraphs 1 through 9, above.

15. Defendant had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that its acts, as described above, were in violation of Section 501.059, Florida Statutes.

16. Defendant is therefore liable for civil penalties in the amount up to \$10,000.00 per violation under Section 501.059(8), Florida Statutes.

WHEREFORE, the Plaintiff, State of Florida, Department of Agriculture and Consumer Services, requests this Court to grant the following relief:

A. Grant a permanent injunction against Defendant, through their officers, agents, employees or any other persons who act under, by through or on behalf of Defendant, prohibiting such persons from violating Chapter 501.059, Florida Statutes;

B. Grant such further relief as follows:


(i) Assess against Defendant civil penalties in the amount of \$10,000.00 for each act or practice found to be in violation of Chapter 501.059, Florida Statutes;

(ii) Waive any posting of bond in the action;

(iii) Award reasonable attorney fees and costs to Plaintiff herein should the Court find there is a complete absence of justiciable issue of either law or fact raised by the Defendant or if the Court finds bad faith on the part of the Defendant; and

(iv) Grant such other and further relief as this Court deems just and proper.

CHARLES H. BRONSON  
COMMISSIONER OF AGRICULTURE

By:   
Louis E. Stolba, Senior Attorney  
Florida Department of Agriculture and  
Consumer Services  
Room 520 - Mayo Building  
407 South Calhoun Street  
Tallahassee, Florida 32399-0800  
Telephone No. (850) 245-1000

Facsimile No. (850) 245-1001  
FBN 121249

Do Not Call (for Legal)  
Parent Case Number: 0310-33992

Report Name: Do\_Not\_Call  
Report Date: 10/20/2003 05:31 PM  
Report Generated by: ROBERT CARRUTHERS

Business: THE SPORTS AUTHORITY, INC., 3383 N ST RD 7, FORT LAUDERDALE, FL 33319  
E-Mail:

List Purchased:		Received	Order Period	No. Sales List Purchase Request	Area Codes Ordered	Format Type		
Date of Call	RM	Identified Caller	Consumer Number	Case Number	Consumer Name / Address	Quarter	Date of Division Letter	Business Reply
	805		407-282-3489	0308-30989	PFISTER, NANCY, 531 PINAR DR, ORLANDO, FL 32825-7817		313 - 08/21/2003	09/02/2003
09/03/2003	805		561-826-8227	0308-31349	TARR, WILLIAM F., 8695 CITATION DR, PALM BEACH GARDENS, FL 33416-6063	YES	313 - 08/29/2003	10/10/2003
08/27/2003	805		305-448-3432	0309-31975	DUDLEY, CHRISTOPHER, 1247 ANASTASIA AVE, CORAL GABLES, FL 33134-6358	YES	301 - 09/10/2003	
08/19/2003	805	800-556-5387	727-544-6750	0309-31843	DUNNING, ROBERT, 5660 80TH ST N APT D302, SAINT PETERSBURG, FL 33709-5899	YES	313 - 09/11/2003	
08/19/2003	805	800-556-5387	561-844-6369	0309-31742	MUSH, JAMES & LINDA, 1190 GULFSTREAM WAY, SINGER ISLAND, FL 33404-2735	YES	313 - 08/25/2003	09/02/2003
08/19/2003	805	800-556-5387	561-750-0973	0308-31224	ZACCARDI, STEPHEN, 23200 CAMINO DEL MAR APT 309, BOCA RATON, FL 33433-7156	YES	313 - 08/25/2003	09/02/2003
08/19/2003	805	800-556-5387	321-631-0587	0308-31121	FRICK, ROBBIN C, 1296 TROON WAY, ROCKLEDGE, FL 32955-2247	YES	313 - 08/21/2003	09/02/2003
08/19/2003	805	800-556-7777	407-656-8911	0308-30988	HERBERT, MERRY A, 12098 WINDERMERE CROSSING CIR, WINTER GARDEN, FL 34787-5518	YES	313 - 09/10/2003	
08/19/2003	805	800-556-5387	321-777-4762	0308-31306	GREEN, HOLLIS & MARJ, 499 SHERIDAN AVE, SATELLITE BEACH, FL 32937-3047	YES	313 - 08/27/2003	
08/19/2003	805	800-556-5387	727-867-2845	0308-31344	HOYER, FRED, 5810 3RD ST S, SAINT PETERSBURG, FL 33705-5304	YES	313 - 08/25/2003	
08/06/2003	805	800-556-5387	772-336-8899	0308-30383	MARTIN, DIANE M, 1725 SE CLEARMONT ST, PORT SAINT LUCIE, FL 34983-4605		313 - 09/17/2003	
06/26/2003	801	800-566-5387	352-684-1941	0307-25745	BRADY, TERRY, 4610 SE 47TH PL, OCALA, FL 34480-8880	YES	301 - 07/03/2003	07/15/2003
06/26/2003	801	877-872-3909	239-353-7700	0307-25757	LEVITT, GERALD M., 3280 5TH AVE SW, NAPLES, FL 34117-4102	YES	301 - 07/14/2003	
06/25/2003	805	800-566-5387	941-929-9323	0306-25193	RAUCHLE, STEPHEN J, 4114 PINE MEADOW TER, SARASOTA, FL 34233-3639	YES	313 - 06/27/2003	07/15/2003
06/25/2003	805	xxx-727-3334	727-939-0498	0306-25203	HENDERSON, BARBARA, 4953 KYLEMORE CT, PALM HARBOR, FL 34685-2649	YES	313 - 06/26/2003	07/15/2003
06/25/2003	805	800-566-5387	941-921-2134	0307-25839	BASS, NEIL W., 4679 HACKAMORE RD, SARASOTA, FL 34241-2201	YES	313 - 07/14/2003	
2/21/2003	805	904-725-9181	904-292-9666	0302-06756	ORR, JOAN A, 12555 JODA LN E, JACKSONVILLE, FL 32258-1347	YES	313 - 02/24/2003	03/14/2003
2/19/2002	805	954-568-6226	954-564-7723	0212-86530	DUKE, HR, GEORGE B., 1649 POINSETTIA DR, FORT LAUDERDALE, FL 33305-3263	YES	313 - 12/30/2002	01/13/2003
12/04/2002	805	407-686-4849	407-686-4849	0212-64095	WAKED, MAUREEN, 1108 EAGLES WATCH TRL, WINTER SPRINGS, FL 32708-5092	YES		
12/04/2002	805	321-799-3140	321-799-3140	0212-64573	VAN ETTEN, PETER, 1005 TRINIDAD RD, COCOA BEACH, FL 32931-3051	YES	313 - 12/12/2002	12/31/2002
11/26/2002	801	239-598-5054	239-455-5895	0212-65879	SANDERLIN, FRAN, 271 LOGAN BLVD S, NAPLES, FL 34119-2842	YES	301 - 12/19/2002	

CONFIDENTIAL

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

STATE OF FLORIDA,  
DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES

Plaintiff,

vs.

CASE NO. 6:04-CV-115-Orl-18JGG  
Circuit Court Case No. 03-CA-10535

THE SPORTS AUTHORITY FLORIDA  
INC., a Florida corporation,

Defendant.

---

**Amended and Supplemental Complaint for Permanent  
Injunction, Civil Penalties and Other Statutory Relief**

Plaintiff, State of Florida Department of Agriculture and Consumer Services, sues the Defendant,  
The Sports Authority Florida, Inc., a Florida corporation, and alleges as follows:

**ALLEGATIONS COMMON TO ALL COUNTS**

1. This is an action for permanent injunction, civil penalties and other statutory relief, brought pursuant to Section 501.059, Florida Statutes.
2. This Court has jurisdiction pursuant to the provision of said statute.
3. Plaintiff, State of Florida Department of Agriculture and Consumer Services, is the enforcing authority pursuant to Section 501.059(8) Florida Statutes, and is authorized to seek the relief sought herein pursuant to the provisions of said statute. Plaintiff has performed all conditions precedent to be performed by Plaintiff or such conditions have occurred.
4. The amount in controversy exceeds the minimum jurisdictional limit of this Court.
5. Defendant, The Sports Authority Florida, Inc., is a Florida corporation with its principal place of business in Broward County, Florida. Defendant is doing business within the State of Florida as defined

in Section 501.059(1)(h), Florida Statutes. This cause of action accrued in Orange County, Florida by virtue of Defendant making, or causing to be made, unlawful telephonic sales calls to consumers in Orange County, Florida and Defendant playing, or causing to be played, a recorded message when the number called is answered.

6. Defendant, at all times material hereto, has engaged in the business of selling consumer goods or services, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services. Defendant in conducting its business is making telephonic sales calls and playing a recorded message when the number called is answered to citizens of the State of Florida.

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8. Section 501.059(4), Florida Statutes, makes it unlawful for a telephone solicitor to make or cause to be made any unsolicited telephonic sales calls to residents of the State of Florida if such residents number appears on the then-current quarterly listing. Section 501.059(7), Florida Statutes, makes it unlawful to make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the playing of a recorded message when a connection is completed to a number called without a live operator introducing the recorded message.

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(Injunctive Relief)

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**COUNT II**  
(Civil Penalties)

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15. Defendant had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that its acts, as described above, were in violation of Section 501.059, Florida Statutes.

16. Defendant is therefore liable for civil penalties in the amount up to \$10,000.00 per violation under Section 501.059(8), Florida Statutes.

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A. Grant a permanent injunction against Defendant, through their officers, agents, employees or any other persons who act under, by through or on behalf of Defendant, prohibiting such persons from violating Chapter 501.059, Florida Statutes;

B. Grant such further relief as follows:

(i) Assess against Defendant civil penalties in the amount of \$10,000.00 for each act or practice found to be in violation of Chapter 501.059, Florida Statutes;

(ii) Waive any posting of bond in the action;

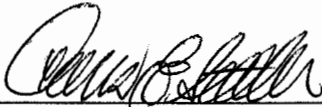
(iii) Award reasonable attorney fees and costs to Plaintiff herein should the Court find there is a complete absence of justiciable issue of either law or fact raised by the Defendant or if the Court finds bad faith on the part of the Defendant; and

(iv) Grant such other and further relief as this Court deems just and proper.

**Certificate of Service**

I HEREBY CERTIFY that a true copy of the foregoing has been served on Daniel N. Brodersen, Esq., 2601 Technology Drive, Orlando, FL, 32804 and William E. Raney, 423 W. Eighth Street, Suite 400 Kansas City, MO 64105 by regular U.S. Mail, postage prepaid, on this 19<sup>th</sup> day of May, 2004

By: \_\_\_\_\_

  
Louis E. Stolba, Esq.  
FBN 121249  
Room 520 - Mayo Building  
407 South Calhoun Street  
Tallahassee, Florida 32399-0800  
Telephone No. (850) 245-1000  
Facsimile No. (850) 245-1001

Attorney for State of Florida Department  
of Agriculture and Consumer Services

**Do Not Call (for Legal)**  
**Parent Case Number: 0310-33992**  
**Number of Complaints: 66**

Report Name: Do\_Not\_Call  
 Report Date: 05/14/2004 09:24 AM  
 Report Generated by: ROBERT CARRUTHERS

**Business: THE SPORTS AUTHORITY, INC., 3383 N ST RD 7, FORT LAUDERDALE, FL 33319**  
**E-Mail:**

<u>Date of Call</u>	<u>Desc</u>	<u>Received</u>	<u>Order Period</u>	<u>No Sales List Purchase Request</u>	<u>Area Codes Ordered</u>	<u>Subscriber List</u>	<u>Date of Division Letter</u>	<u>Business Reply</u>
<u>Date of Call</u>	<u>Desc</u>	<u>Identified Caller</u>	<u>Consumer Number</u>	<u>Case Number</u>	<u>Consumer Name / Address</u>	<u>List</u>	<u>Letter</u>	<u>Reply</u>
805			407-282-3489	0308-30989	PFISTER, NANCY, 531 PINAR DR, ORLANDO, FL 32825-7817		313 - 08/21/2003	09/02/2003
805			561-626-9227	0308-31349	TARR, WILLIAM F., 8695 CITATION DR, PALM BEACH GARDENS, FL 33418-6063		313 - 08/29/2003	10/13/2003
05/07/2004	805	800-556-5387	941-351-2100	0405-10718	CHERNICK, WARREN & MARSHA, 9811 SWEETWATER AVE, BRADENTON, FL 34202-4043	State Federal	313 - 05/13/2004	
05/07/2004	805	800-556-5387	407-260-8674	0405-10627	SIMMONS, CATHERINE, 629 RED OAK CIR UNIT 111, ALTAMONTE SPRINGS, FL 32701-6399	State Federal	313 - 05/13/2004	
05/07/2004	805	941-746-3446	941-746-3446	0405-10653	PERSING, JOSEPH A., 1411 40TH STREET CT W, BRADENTON, FL 34205-1562	State Federal	313 - 05/13/2004	
05/07/2004	805		941-907-0934	0405-10536	WALKER, ROBERT, 12319 LOBELIA TER, BRADENTON, FL 34202-2934	Federal	313 - 05/13/2004	
05/07/2004	805	800-556-5387	561-649-9796	0405-10543	TROBAUGH, JOACHIM, 9890 MANTOVA DR, LAKE WORTH, FL 33467-6153	State Federal	313 - 05/13/2004	
05/07/2004	805	800-556-5387	954-452-9556	0405-10537	ROULEAU, WILLIAM & VIVIAN, 10071 NW 14TH ST, PLANTATION, FL 33322-6562	State Federal	313 - 05/12/2004	
05/07/2004	805	800-556-5387	863-646-8212	0405-10534	JOWERS, LEON C, 5813 PINEDALE LN, LAKE LAND, FL 33811-1993	Federal	313 - 05/13/2004	
05/06/2004	805	800-556-5387	239-434-9316	0405-10720	CRANSTON, LOREN, 1270 LASTRADA LN, NAPLES, FL 34103-8943	State Federal	313 - 05/13/2004	
05/06/2004	805	800-556-5387	904-264-2016	0405-10606	MORAN, SUE J., 176 OLD HARD RD, ORANGE PARK, FL 32003-7946	State Federal	313 - 05/13/2004	
05/06/2004	805	800-556-5387	813-677-5458	0405-10647	DUNN, BOBBIE LYNN, 12508 SHADOW RUN BLVD, RIVERVIEW, FL 33569-6419	State Federal	313 - 05/13/2004	
05/06/2004	805	800-556-5387	352-854-2542	0405-10531	CALVALLARO, CHRISTEL, 5001 SW 20TH ST APT 1403, OCALA, FL 34474-8544	State Federal	313 - 05/13/2004	
05/06/2004	801		727-847-9366	0405-10538	SCHMIDT, MICHAEL A., PO BOX 803, ODESSA, FL 33556-0803	State Federal	301 - 05/12/2004	
05/06/2004	805	800-556-5387	904-215-2062	0405-10532	CREWS, RICHARD, 1722 GUMTREE DR, ORANGE PARK, FL 32073-2751	State Federal	313 - 05/12/2004	

**Note: 'Desc' is subject category 3 of subject code - Recorded Message**

Report Prepared by: The Florida Department of Agriculture and Consumer Services, Division of Consumer Services  
 Data Source: Division of Consumer Services (DOCS) Oracle Database

**Do Not Call (for Legal)**  
**Parent Case Number: 0310-33992**

Report Name: Do\_Not\_Call  
 Report Date: 05/14/2004 09:24 AM  
 Report Generated by: ROBERT CARRUTHERS

**Number of Complaints: 66**

**Business: THE SPORTS AUTHORITY, INC., 3383 N ST RD 7, FORT LAUDERDALE, FL 33319**

<u>Date of Call</u>	<u>Desc</u>	<u>Identified Caller</u>	<u>Consumer Number</u>	<u>Case Number</u>	<u>Consumer Name / Address</u>	<u>Subscriber List</u>	<u>Date of Division Letter</u>	<u>Business Reply</u>
05/06/2004	805	800-556-5387	954-571-2913	0405-10528	JURGENS, JOHN, 2371 SW 15TH ST APT 103, DEERFIELD BEACH, FL 33442-7540.....	State Federal	313 - 05/13/2004	
05/06/2004	805	800-556-5387	321-242-2656	0405-10650	ROBINSON, RICHARD H., 3375 ARABIAN CT, MELBOURNE, FL 32934-8150.....	State Federal	313 - 05/13/2004	
05/06/2004	805	800-556-5387	352-332-5221	0405-10610	KAPEC, MR. DAVID N., 8436 NW 6TH AVE, GAINESVILLE, FL 32607-1406.....	State Federal	313 - 05/13/2004	
02/11/2004	805	800-310-8307	727-345-6952	0402-02886	WELDON, RAYMOND H., 7050 SUNSET DR S APT 1203, SOUTH PASADENA, FL 33707-6409.....	State Federal	313 - 02/13/2004	02/25/2004
02/11/2004	805	800-310-8307	239-267-9446	0402-03242	GROENLEER, WILMA & ROBERT, 17625 VILLAGE INLET CT, FORT MYERS, FL 33908-7106.....	State Federal	313 - 02/18/2004	03/04/2004
12/22/2003	805	800	561-483-3921	0401-00031	SANSBURY, JOHN, 9260 SW 14TH ST # 509, BOCA RATON, FL 33428-6878.....	State		
12/22/2003	805	800-556-5387	561-736-5736	0401-01032	BRUEGGEMANN, DOUGLAS, 713 SE 4TH ST APT C, BOYNTON BEACH, FL 33435-5604.....	State	313 - 01/28/2004	02/03/2004
12/21/2003	801	800-556-5387	407-343-5583	0312-40969	RODRIGUEZ-IVANSTOV, MARISSA, PO BOX 452477, KISSIMMEE, FL 34745-2477.....	State	301 - 12/24/2003	
12/19/2003	805	813-654-7500	813-933-4108	0312-41052	PATRICK, THOMAS W, 10508 HOMESTEAD DR, TAMPA, FL 33618-4008.....	State	313 - 01/02/2004	01/16/2004
12/19/2003	805	800-556-5387	941-355-7232	0312-40797	MEYRICH, ANNE, 3623 75TH DR E, SARASOTA, FL 34243-3444.....	State	313 - 12/24/2003	01/09/2004
12/19/2003	805	800-556-5387	727-865-2379	0312-40799	PINO, MS. CYNTHIA J., 1375 PINELLAS BAYWAY S APT 34, TIERRA VERDE, FL 33715-2135.....	State	313 - 12/23/2003	01/09/2004
12/19/2003	805	800-556-5387	561-737-8294	0312-40802	COOK, ROSS, 901 SW 36TH AVE, BOYNTON BEACH, FL 33435-8515.....	State	313 - 12/23/2003	01/09/2004
12/18/2003	805	800-556-5387	941-966-9377	0312-40849	IRWIN, KIRK & JUDITH, 285 LOOKOUT POINT DR, OSPREY, FL 34229-9733.....	State	313 - 12/24/2003	01/09/2004
12/17/2003	805	727-393-8805	727-393-8805	0312-41091	BRANDT, CHESTER M, 5631 OAKHURST DR, SEMINOLE, FL 33772-7042.....	State	313 - 12/31/2003	01/16/2004
12/17/2003	805	800-556-5387	813-839-4369	0401-00715	JENNIS, DAVE, 3324 W BARCELONA ST, TAMPA, FL 33629-7104.....	State	313 - 01/23/2004	02/02/2004
12/05/2003	805	800-556-5387	904-722-8796	0312-41265	LAWRENCE, MATT, 5327 NOBLE CIR N, JACKSONVILLE, FL 32211-6904.....	State	313 - 01/06/2004	01/16/2004

**Note: 'Desc' is subject category 3 of subject code - Recorded Message**

Report Prepared by: The Florida Department of Agriculture and Consumer Services, Division of Consumer Services  
 Data Source: Division of Consumer Services (DOCS) Oracle Database

**Do Not Call (for Legal)**

Parent Case Number: **0310-33992**

Number of Complaints: **66**

Business: **THE SPORTS AUTHORITY, INC., 3383 N ST RD 7, FORT LAUDERDALE, FL 33319**

<u>Date of Call</u>	<u>Desc</u>	<u>Identified Caller</u>	<u>Consumer Number</u>	<u>Case Number</u>	<u>Consumer Name / Address</u>	<u>Subscriber List</u>	<u>Date of Division Letter</u>	<u>Business Reply</u>
12/05/2003	805	800-556-5387	813-685-9454	0312-39900	CALVANI, JAMES, 5202 PINE ST, SEFFNER, FL 33584-4442	State	313 - 12/15/2003	12/22/2003
12/05/2003	805		561-744-7885	0312-39802	MOLLE, THERESA, 12623 153RD CT N, JUPITER, FL 33478-6652	State	313 - 12/09/2003	12/22/2003
12/04/2003	805	800-556-5387	772-337-5269	0312-39469	LIFLAND, DONALD B, 2504 SE ANCHORAGE CV # 2, PORT SAINT LUCIE, FL 34952-6223	State	313 - 12/08/2003	12/16/2003
12/04/2003	801	800-556-5387 800-714-9064	772-287-7710	0312-39601	STOLL-SCOTT, PAT, 8699 SW CRUDEN BAY CT, STUART, FL 34997-4206	State	301 - 12/12/2003	12/22/2003
12/04/2003	805	800-556-5387	407-324-3713	0312-39804	WILCOX, PATRICK K, 366 WOLDUNN CIR, LAKE MARY, FL 32746-3941	State	313 - 12/12/2003	12/22/2003
12/04/2003	805		904-636-0083	0312-40633	BABCOCK, JR., W. B., 3142 SECRET WOODS TRL W, JACKSONVILLE, FL 32216-7130	State	313 - 12/30/2003	03/02/2004
12/04/2003	805		352-371-2939	0312-39822	LANGELAND, KENNETH AND MARY, 3505 NW 13TH AVE, GAINESVILLE, FL 32605-4819	State	313 - 12/12/2003	12/22/2003
12/04/2003	805	800-556-5387	727-773-1948	0312-39818	WARE, GARY, 2200 PORTSIDE PSGE, PALM HARBOR, FL 34685-1523	State	313 - 12/15/2003	12/22/2003
12/04/2003	805		863-644-7609	0312-39600	MARKHAM, RUDY & CHARLETTE W, 6315 FERN LN, LAKELAND, FL 33813-3530	State	313 - 12/09/2003	12/22/2003
12/03/2003	805		813-972-0643	0312-39359	BURSACK, BRUCE, 16010 WYNDOVER RD, TAMPA, FL 33647-1046	State	313 - 12/04/2003	12/22/2003
12/03/2003	805		352-629-8774	0312-39363	SMITH, STEPHEN, 1923 NE 6TH ST, OCALA, FL 34470-6122	State	313 - 12/04/2003	01/05/2004
12/03/2003	801	800-556-5387	904-880-7702	0312-39807	ARMSTRONG, WILLIAM S, 4472 CAROLYN COVE LN N, JACKSONVILLE, FL 32258-1352	State	301 - 12/10/2003	12/22/2003
12/03/2003	805		321-773-8804	0312-39360	VANREENEN, EUGENE L, 1239 SEMINOLE DR, INDIAN HARBOUR BEACH, FL 32937-4142		313 - 12/10/2003	12/22/2003
12/03/2003	805		239-561-8349	0312-39572	VARNUM, ROBERT, 12866 KEDLESTON CIR, FORT MYERS, FL 33912-6603	State	313 - 12/15/2003	12/22/2003
12/03/2003	805	800-556-5387	407-352-2912	0312-39583	BOURGUIGNON, ROGER L, 4912 WATERVISTA DR, ORLANDO, FL 32821-5518	State	313 - 12/09/2003	12/16/2003
10/22/2003	805		904-646-9508	0310-35871	SPANOPOULOS, STEVEN, 12240 CHIPPENHAM CT, JACKSONVILLE, FL 32225-3784	State	313 - 11/04/2003	11/18/2003

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Report Prepared by: The Florida Department of Agriculture and Consumer Services, Division of Consumer Services  
Data Source: Division of Consumer Services (DOCS) Oracle Database

**Do Not Call (for Legal)**  
**Parent Case Number: 0310-33992**

Report Name: Do\_Not\_Call  
 Report Date: 05/14/2004 09:24 AM  
 Report Generated by: ROBERT CARRUTHERS

**Number of Complaints: 66**

**Business: THE SPORTS AUTHORITY, INC., 3383 N ST RD 7, FORT LAUDERDALE, FL 33319**

<u>Date of Call</u>	<u>Desc</u>	<u>Identified Caller</u>	<u>Consumer Number</u>	<u>Case Number</u>	<u>Consumer Name / Address</u>	<u>Subscriber List</u>	<u>Date of Division Letter</u>	<u>Business Reply</u>
09/03/2003	805		305-448-3432	0309-31975	DUDLEY, CHRISTOPHER, 1247 ANASTASIA AVE, CORAL GABLES, FL 33134-6358.....	State	313 - 09/04/2003	10/10/2003
08/27/2003	801	800-556-5387	727-544-6750	0309-31843	DUNNING, ROBERT, 5660 80TH ST N APT D302, SAINT PETERSBURG, FL 33709-5899.....	State	301 - 09/10/2003	
08/27/2003	805		561-844-6369	0309-31742	MUSH, JAMES & LINDA, 1190 GULFSTREAM WAY, SINGER ISLAND, FL 33404-2735.....	State	313 - 09/11/2003	10/10/2003
08/19/2003	805	800-556-5387	561-750-0973	0308-31224	ZACCARDI, STEPHEN, 23200 CAMINO DEL MAR APT 309, BOCA RATON, FL 33433-7156.....	State	313 - 08/25/2003	09/02/2003
08/19/2003	805	800-566-5387	321-631-0587	0308-31121	FRICK, ROBBIN C, 1296 TROON WAY, ROCKLEDGE, FL 32955-2247.....	State	313 - 08/25/2003	09/02/2003
08/19/2003	805	800-556-7777	407-656-9911	0308-30988	HERBERT, MERRY A, 12098 WINDERMERE CROSSING CIR, WINTER GARDEN, FL 34787-5	State	313 - 08/21/2003	09/02/2003
08/19/2003	805		727-867-2845	0308-31344	HOYER, FRED, 5810 3RD ST S, SAINT PETERSBURG, FL 33705-5304.....	State	313 - 08/27/2003	10/10/2003
08/19/2003	805	800-556-5387	321-777-4762	0308-31306	GREEN, HOLLIS & MARJ, 499 SHERIDAN AVE, SATELLITE BEACH, FL 32937-3047.....	State	313 - 09/10/2003	
08/06/2003	805	800-556-5387	772-336-8899	0308-30383	MARTIN, DIANE M, 1725 SE CLEARMONT ST, PORT SAINT LUCIE, FL 34983-4605.....	State	313 - 08/25/2003	
06/26/2003	801	800-566-5387	352-694-1941	0307-25745	BRADY, TERRY, 4610 SE 47TH PL, OCALA, FL 34480-8880.....	State	313 - 09/17/2003	
06/26/2003	801	877-872-3909	239-353-7700	0307-25757	LEVITT, GERALD M, 3280 5TH AVE SW, NAPLES, FL 34117-4102.....	State	301 - 07/03/2003	07/15/2003
06/25/2003	805	800-566-5387	941-929-9323	0306-25193	RAUCHLE, STEPHEN J, 4114 PINE MEADOW TER, SARASOTA, FL 34233-3639.....	State	301 - 07/14/2003	
06/25/2003	805	xxx-727-3334	727-939-0498	0306-25203	HENDERSON, BARBARA, 4953 KYLEMORE CT, PALM HARBOR, FL 34685-2649.....	State	313 - 06/26/2003	07/15/2003
06/25/2003	805	800-566-5387	941-921-2134	0307-25839	BASS, NEIL W, 4679 HACKAMORE RD, SARASOTA, FL 34241-2201.....	State	313 - 07/14/2003	
02/12/2003	805	904-725-9181	904-292-9666	0302-06756	ORR, JOAN A, 12555 JODA LN E, JACKSONVILLE, FL 32258-1347.....	State	313 - 02/24/2003	03/14/2003
12/19/2002	805	954-568-6226	954-564-7723	0212-66530	DUKE, HR., GEORGE B., 1649 POINSETTIA DR, FORT LAUDERDALE, FL 33305-3263.....	State	313 - 12/30/2002,	01/13/2003

**Note: 'Desc' is subject category 3 of subject code - Recorded Message**

**Do Not Call (for Legal)**  
**Parent Case Number: 0310-33992**

Report Name: Do\_Not\_Call  
 Report Date: 05/14/2004 09:24 AM  
 Report Generated by: ROBERT CARRUTHERS

**Number of Complaints: 66**

**Business: THE SPORTS AUTHORITY, INC., 3383 N ST RD 7, FORT LAUDERDALE, FL 33319**

<u>Date of Call</u>	<u>Desc</u>	<u>Identified Caller</u>	<u>Consumer Number</u>	<u>Case Number</u>	<u>Consumer Name / Address</u>	<u>Subscriber List State</u>	<u>Date of Division Letter</u>	<u>Business Reply</u>
12/04/2002	805		407-696-4949	0212-64095	WAKED, MAUREEN, 1108 EAGLES WATCH TRL, WINTER SPRINGS, FL 32708-5092.....	State	304 - 12/10/2002	
12/04/2002	805		321-799-3140	0212-64573	VAN ETTEEN, PETER, 1005 TRINIDAD RD, COCOA BEACH, FL 32931-3051.....	State	313 - 12/12/2002	12/31/2002
11/26/2002	801		239-455-5895	0212-65879	SANDERLIN, FRAN, 271 LOGAN BLVD S, NAPLES, FL 34119-2842.....	State	301 - 12/19/2002	

**Note: 'Desc' is subject category 3 of subject code - Recorded Message**

**EXHIBIT C**



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

STATE OF FLORIDA,  
DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES

Plaintiff,

vs.

Circuit Court Case No. 03 CA 10535

THE SPORTS AUTHORITY FLORIDA, INC.,  
A Florida corporation,

Defendant.

---

**ANSWER**

COMES NOW, Defendant The Sports Authority Florida, Inc., by and through counsel,  
and hereby answers Plaintiff's Complaint as follows:

1. Defendant neither admits nor denies the allegations set forth in paragraph 1 of Plaintiff's Complaint.
2. Defendant denies the allegations set forth in paragraph 2 of Plaintiff's Complaint.
3. Defendant denies the allegations set forth in paragraph 3 of Plaintiff's Complaint.
4. Defendant denies the allegations set forth in paragraph 4 of Plaintiff's Complaint.
5. Defendant denies the allegations set forth in paragraph 5 of Plaintiff's Complaint.
6. Defendant denies the allegations set forth in paragraph 6 of Plaintiff's Complaint.
7. Defendant denies the allegations set forth in paragraph 7 of Plaintiff's Complaint.
8. Defendant denies the allegations set forth in paragraph 8 of Plaintiff's Complaint.
9. Defendant denies the allegations set forth in paragraph 9 of Plaintiff's Complaint.

## COUNT I

10. Defendant incorporates by reference its responses to paragraphs 1 through 9 as set forth above.

11. The allegation set forth in paragraph 11 is a legal conclusion and does not require a response from Defendant.

12. Defendant denies the allegations set forth in paragraph 12 of Plaintiff's Complaint.

13. Defendant denies the allegations set forth in paragraph 13 of Plaintiff's Complaint.

## COUNT II

14. Defendant incorporates by reference its responses to paragraphs 1 through 13 as set forth above.

15. Defendant denies the allegations set forth in paragraph 15 of Plaintiff's Complaint.

16. Defendant denies the allegations set forth in paragraph 16 of Plaintiff's Complaint.

## AFFIRMATIVE DEFENSES

### **I. Plaintiff's claims are preempted by federal law.**

1. Defendant restates its responses to the previous paragraphs and incorporates same herein.

2. All of the telephone calls relevant to the allegations in the Complaint were placed from The Sports Authorities's calling company, Smart Reply's, phone center in California, and therefore were interstate calls.

3. At all times Defendant placed telephone calls only to consumers with whom it had an established business relationship.

4. The FCC has passed regulations allowing businesses to place telephone calls to consumers with whom it has an established business relationship using recorded voice messages.

47 C.F.R. § 64.1200(a)(2)(iv). “Established business relationship” is defined as:

A prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

47 C.F.R. § 64.1200(f)(3).

5. Defendant complies with these federal laws.

6. Four federal appellate cases and one state appellate case have repeated the finding that states have no jurisdiction over interstate calls due to preemption by the TCPA. Chair King, Inc., v. Houston’s Cellular Corp., 131 F.3d 507, 513 (5<sup>th</sup> Cir. 1997); Int’l Sci. Tech. Inst., Inc. v. Inacom Communications, Inc., 106 F.3d 1146, 1154 (4<sup>th</sup> Cir. 1997); Moser v. FCC, 46 F.3d 970, 972 (9<sup>th</sup> Cir. 1995); Nicholson v. Hooters of Augusta, 136 F.3d 1287, 1288 (11<sup>th</sup> Cir. 1998); and Omnibus Int’l, Inc. v. AT&T, Inc., 111 S.W.3d 818, 823 (Tex. Ct. App. 2003) (“States have no independent regulatory power over interstate telemarketing activities....”).

7. The FCC has repeatedly ruled that this forum and laws, such as this Florida law, do not apply to interstate calls and are preempted by the TCPA and FCC. See, e.g., FCC Report and Order, CG Docket No. 02-278, ¶ 84 (July 3, 2003).

**II. Defendant has made a good faith effort to comply with applicable Florida law.**

8. Defendant restates its responses to the previous paragraphs and incorporates same

herein.

9. Defendant has implemented, with due care, reasonable procedures to prevent telephone calls in violation of this Florida law. Any errors with regard to this process were made in good faith and have been corrected as shown by lack of subsequent complaints.

**III. The Complaint fails to state a claim upon which relief may be granted.**

10. Defendant restates its responses to the previous paragraphs and incorporates same herein.

11. The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays that this Court dismiss this action with prejudice and for such other relief as the Court deems just and proper.

Dated: February \_\_\_, 2004

Respectfully submitted,

**BOGIN, MUNNS & MUNNS**

By: \_\_\_\_\_

Daniel N. Brodersen, Esq.  
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Kansas City, MO 64105  
Telephone: (816) 472-9000  
Facsimile: (816) 472-5000

**ATTORNEYS FOR DEFENDANT  
THE SPORTS AUTHORITY  
FLORIDA, INC.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via facsimile transmission and U.S. mail to: Louis E. Stolba, Esquire, Florida Department of Agriculture and Consumer Services, Room 520 – Mayo Building, 407 South Calhoun Street, Tallahassee, Florida 32399-0800 this \_\_\_\_\_ day of February, 2004

---

Attorney

**EXHIBIT D**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

STATE OF FLORIDA,  
DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES

Plaintiff,

vs.

Case No. 6:04-CV-115-Orl-18JGG  
Circuit Court Case No. 03 CA 10535

THE SPORTS AUTHORITY FLORIDA, INC.,  
A Florida corporation,

Defendant.

---

**DEFENDANT'S ANSWER**

COMES NOW, Defendant The Sports Authority Florida, Inc., by and through counsel,  
and hereby answers Plaintiff's Amended Complaint as follows:

1. Paragraph 1 does not state an allegation which requires a response by Defendant.
2. Defendant admits the allegations set forth in paragraph 2 of Plaintiff's Amended Complaint.
3. Defendant neither admits nor denies the allegations set forth in paragraph 3 of Plaintiff's Amended Complaint.
4. Defendant neither admits nor denies the allegations set forth in paragraph 4 of Plaintiff's Amended Complaint.
5. Defendant admits the allegations set forth in paragraph 5 of Plaintiff's Amended Complaint.
6. Defendant admits the allegations set forth in paragraph 6 of Plaintiff's Amended

Complaint.

7. Defendant denies the allegations set forth in paragraph 7 of Plaintiff's Amended

Complaint.

8. The cited sections of Florida law speak for themselves and require no response from Defendant.

9. Defendant denies the allegations set forth in paragraph 9 of Plaintiff's Amended

Complaint.

10. Defendant incorporates by reference its responses to paragraphs 1 through 9 as set forth above.

11. The cited sections of Florida law speak for themselves and require no response from Defendant.

12. Defendant denies the allegations set forth in paragraph 12 of Plaintiff's Amended

Complaint.

13. Defendant denies the allegations set forth in paragraph 13 of Plaintiff's Amended

Complaint.

14. Defendant incorporates by reference its responses to paragraphs 1 through 13 as set forth above.

15. Defendant denies the allegations set forth in paragraph 15 of Plaintiff's Amended

Complaint.

16. Defendant denies the allegations set forth in paragraph 16 of Plaintiff's Amended

Complaint.

### **AFFIRMATIVE DEFENSES**

**I. Plaintiff's claims are preempted by federal law.**



1. Defendant restates its responses to the previous paragraphs and incorporates same herein.

2. All of the telephone calls relevant to the allegations in the Complaint were placed from The Sports Authority's calling company, Smart Reply's, phone center in California, and therefore were interstate calls.

3. At all times Defendant placed telephone calls only to consumers with whom it had an established business relationship.

4. The FCC has passed regulations allowing businesses to place telephone calls to consumers with whom it has an established business relationship using recorded voice messages.

47 C.F.R. § 64.1200(a)(2)(iv). "Established business relationship" is defined as:

A prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

47 C.F.R. § 64.1200(f)(3).

5. Defendant complies with these federal laws.

6. Four federal appellate cases and one state appellate case have repeated the finding that states have no jurisdiction over interstate calls due to preemption by the TCPA. Chair King, Inc., v. Houston's Cellular Corp., 131 F.3d 507, 513 (5<sup>th</sup> Cir. 1997); Int'l Sci. Tech. Inst., Inc. v. Inacom Communications, Inc., 106 F.3d 1146, 1154 (4<sup>th</sup> Cir. 1997); Moser v. FCC, 46 F.3d 970, 972 (9<sup>th</sup> Cir. 1995); Nicholson v. Hooters of Augusta, 136 F.3d 1287, 1288 (11<sup>th</sup> Cir. 1998); and Omnibus Int'l, Inc. v. AT&T, Inc., 111 S.W.3d 818, 823 (Tex. Ct. App. 2003) ("States have no

independent regulatory power over interstate telemarketing activities....”).

7. The FCC has repeatedly ruled that this forum and laws, such as this Florida law, do not apply to interstate calls and are preempted by the TCPA and FCC. See, e.g., FCC Report and Order, CG Docket No. 02-278, ¶ 84 (July 3, 2003).

**II. Defendant has made a good faith effort to comply with applicable Florida law.**

8. Defendant restates its responses to the previous paragraphs and incorporates same herein.

9. Defendant has implemented, with due care, reasonable procedures to prevent telephone calls in violation of this Florida law. Any errors with regard to this process were made in good faith and have been corrected as shown by lack of subsequent complaints.

**III. The Complaint fails to state a claim upon which relief may be granted.**

10. Defendant restates its responses to the previous paragraphs and incorporates same herein.

11. The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, having fully answered Plaintiff’s Complaint, Defendant prays that this Court dismiss this action with prejudice and for such other relief as the Court deems just and proper.

Dated: June \_\_, 2004

Respectfully submitted,

**BOGIN, MUNNS & MUNNS**

By: \_\_\_\_\_  
Daniel N. Brodersen, Esq.  
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Facsimile: (816) 472-5000

**ATTORNEYS FOR DEFENDANT  
THE SPORTS AUTHORITY  
FLORIDA, INC.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via facsimile transmission and U.S. mail to: Louis E. Stolba, Esquire, Florida Department of Agriculture and Consumer Services, Room 520 – Mayo Building, 407 South Calhoun Street, Tallahassee, Florida 32399-0800 this \_\_\_\_\_ day of June, 2004

\_\_\_\_\_  
Attorney