



OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION
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STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Petitioner,

-VS-

**TOD SERVIS
and AMERICAN TOOL SUPPLY, LLC**

Respondents.

**CEASE AND DESIST ORDER,
NOTICE OF CIVIL PENALTY
AND NOTICE OF RIGHT
TO REQUEST A HEARING**

CPAT 100275.002

To the individual and entity identified below hereinafter "Respondents"):

TOD SERVIS
6525 W WARM SPRINGS #100
LAS VEGAS, NV 89118-4681

5596 HAWLEY CT
LAS VEGAS, NV 89118-1856

AND

AMERICAN TOOL SUPPLY, LLC
6525 W WARM SPRINGS #100
LAS VEGAS, NV 89118-4681

5596 HAWLEY CT
LAS VEGAS, NV 89118-1856

(including all of those entities' officers, directors, owners, agents, servants, employees and representatives as well as all other persons in active concert or participation with them, extending to all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

BACKGROUND

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-18, commonly referred to as the "Home Solicitation Sales Statute," ch. 51-15, commonly referred to as the "Consumer Fraud Law," and N.D.C.C. ch. 51-28, commonly referred to as the "Do Not Call Law." It is necessary and appropriate in the public interest and for the protection of consumers to restrain the Respondents' unlawful acts or practices.

2. Respondent, Tod Servis, is a Nevada resident, and is the owner, member, manager and registered agent of American Tool Supply, LLC.

3. Respondent, American Tool Supply, LLC, is a Nevada Limited Liability Company with its principal place of business at 5596 Hawley Court, Las Vegas, Nevada.

4. Tod Servis and American Tool Supply, LLC (hereinafter "Respondents") are engaged in direct marketing, solicitation and sale of merchandise, including tools, to residents in North Dakota.

5. The Attorney General has received a complaint and other information alleging that Respondents are engaged in telemarketing, and that Respondents, as part of their advertising and solicitations, use a marketing practice that involve offers of free tools upon payment of freight costs. Allegations have been made that when a

consumer agrees to try the free tool, Respondents charge the consumers additional amounts and ship additional merchandise to the consumer without authorization.

6. Allegations made against Respondents, through the consumer complaint and other information received by the Attorney General, include deceptive advertisement and sales practices and refusal to cancel and refund.

7. N.D.C.C. ch. 51-18 regulates home solicitation sales and requires, among other things, that sellers, in a home solicitation sale, provide North Dakota consumers with both oral and written notice of cancellation rights. N.D.C.C. ch. 51-18 also prohibits Respondent from soliciting or accepting any payment from a North Dakota consumer until Respondent has received an original copy of the sales contract signed by the consumer. N.D.C.C. ch. 51-15 prohibits a person from engaging in any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise. A violation of N.D.C.C. ch. 51-18 constitutes a violation of N.D.C.C. ch. 51-15.

8. Based on information the Attorney General has received, it is believed that Respondents may have engaged in deceptive practices in connection with the sale of merchandise to consumers, including use of misrepresentations during the sales transaction, charging consumers for merchandise that consumers did not order, and charging consumers without first obtaining a signed sales contract from consumers.

9. Respondents have also made phone calls to consumers in violation of the Do Not Call Law. N.D.C.C. ch. 51-28 prohibits telephone solicitations to the telephone line of any subscriber in North Dakota who, for at least 31 days before the date the call is made, has been on the North Dakota or Federal Trade Commission do-not-call list. A violation of N.D.C.C. ch. 51-28 constitutes a violation of N.D.C.C. ch. 51-15.

10. After receiving a consumer complaint and other information regarding Respondents' business activities, the Attorney General commenced an investigation into Respondents' business practices. On January 25, 2011, the Attorney General issued a Civil Investigative Demand to American Tool Supply, LLC and Tod Servis, pursuant to the Attorney General's authority under N.D.C.C. § 51-15-04. Respondents have refused to provide responses and produce documents as requested in the Civil Investigative Demand. No communication has been received from Respondents regarding the Civil Investigative Demand. Pursuant to N.D.C.C. § 51-15-07, the Attorney General may issue a cease and desist order for the Respondents' failure or refusal to file a response to the Civil Investigative Demand.

11. The Civil Investigative Demand requests documents from the company and from Tod Servis, its officer, member and agent. Mr. Servis is the person ultimately responsible for making final decisions for American Tool Supply, LLC. Mr. Servis has refused to take such actions necessary to comply with the Civil Investigative Demand, and has refused to comply with the law.

12. Each of the Respondents is engaged in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or who have agreed to act together to commit a lawful act using unlawful means to inflict a wrong or injury upon another, namely violation of Home Solicitation Sales Statute, Do Not Call law and North Dakota's Consumer Fraud Law. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

13. Respondents are liable for their own misconduct and/or for directing others to engage in misconduct. See *e.g. Zimprich v. North Dakota Harvestore Sys.*,

Inc., 419 N.W.2d 912, 914 (N.D. 1988); *Rickbeil v. Grafton Deaconess Hosp.*, 23 N.W.2d 247, 257 (N.D. 1946)("The general rule with reference to this feature is considered and set out in the great series of volumes of jurisprudence familiar to the courts. In 52 Am. Jur. 440, this rule is stated, 'It is a conceded general rule that all persons or entities are liable for torts committed by them, or by their agents while acting within the scope of their duties.'").

14. Respondents who are natural persons will additionally be subject to personal liability for corporate misconduct. *Hilzendager v. Skwarok*, 335 N.W.2d 768 (N.D. 1983)(quoting *Schriock v. Schriock*, 128 N.W.2d 852, 866 (N.D. 1964)("... but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.' Fletcher, Private Corporations Sec. 41 (1963 rev. vol.)"). The crime/fraud exception to the protections of corporate form has long been recognized in North Dakota, "neither law nor equity will ever recognize the right of a corporate entity to become the receptacle or cover for fraud or wrong based on deception for the purpose of defeating the right of innocent parties." *McFadden v. Jenkins*, 169 N.W. 151, 163 (N.D. 1918). See also *Danks v. Holland*, 246 N.W.2d 86 (N.D. 1976); *Family Center Drug v. North Dakota St. Bd. of Pharm.*, 181 N.W.2d 738, 745 (N.D. 1970).

ORDER

Respondents having failed or refused to respond to a Civil Investigative Demand as required by N.D.C.C. §51-15-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents, individually, and where applicable their officers, directors, owners, agents, servants, employees, contractors, representatives (extending to all "doing business as" names, formal corporate names, aliases, fictitious names of

any kind or any variations of the same) as well as all other persons in active concert or participation with them, whether directly or indirectly, immediately **CEASE AND DESIST** from: 1) advertising, soliciting or selling merchandise to North Dakota consumers; 2) advertising, soliciting or selling merchandise to North Dakota consumers through telemarketing or other home solicitation sale; 3) advertising, soliciting, or selling to North Dakota consumers merchandise without complying with N.D.C.C. chs. 51-18 and 51-28; and 4) engaging in any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, in violation of N.D.C.C. ch. 51-15. Respondents also shall immediately **CEASE AND DESIST** from taking, collecting, charging, billing or accepting any payment from any North Dakota consumers, including, but not limited to, cash, check, direct credit, debits or withdrawals from North Dakota consumers' credit cards, debit cards or bank accounts for any past or future sale of merchandise or other services related to the sale of merchandise.

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 12.1-09-03 a person is guilty of a criminal offense if he or she intentionally "alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution.

NOTICE OF CIVIL PENALTIES

YOU ARE FURTHER NOTIFIED that pursuant to N.D.C.C. § 51-15-07 any violation of this Cease and Desist Order is subject to civil penalties not to exceed \$1,000 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-15 may result in additional civil penalties of not more than \$5,000 per violation. Any violation of this

Order that also is a violation of N.D.C.C. ch. 51-18 may result in additional civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-28 may result in additional civil penalties of not more than \$2,000 per violation and additional civil penalties of not more than \$5,000 per violation as a separate violation of N.D.C.C. ch. 51-15. Nothing in this Order is intended to limit or waive any rights and remedies available to the State of North Dakota or consumers.

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be represented by legal counsel at the hearing.

Dated this 18th day of March, 2011.

STATE OF NORTH DAKOTA
Wayne Stenehjem
Attorney General

BY: 

Parrell D. Grossman, ID No. 04684
Assistant Attorney General
Director, Consumer Protection and
Antitrust Division
Office of Attorney General
Gateway Professional Center
1050 East Interstate Avenue Ste. 200
Bismarck, ND 58503-5574
(701) 328-3404

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Petitioner,

**AFFIDAVIT OF SERVICE BY
MAIL, CERTIFIED MAIL AND
EMAIL**

-VS-

**TOD SERVIS
and AMERICAN TOOL SUPPLY, LLC**

Respondents.

CPAT 100275.002

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

Corinne Small states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct and made upon personal knowledge.

2. I am of legal age and on the 18th day of March, 2011, I served the CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING upon the following by placing true and correct copy thereof in an envelope addressed as follows:

FIRST CLASS MAIL

TOD SERVIS
AMERICAN TOOL SUPPLY, LLC
6525 W WARM SPRINGS #100
LAS VEGAS NV 89118-4681

CERTIFIED MAIL RECEIPT # 7009 2820 0002 9227 2550

TOD SERVIS
AMERICAN TOOL SUPPLY, LLC
6525 W WARM SPRINGS #100
LAS VEGAS NV 89118-4681

FIRST CLASS MAIL

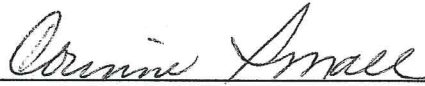
CERTIFIED MAIL RECEIPT # 7009 2820 0002 9227 2543

TOD SERVIS
AMERICAN TOOL SUPPLY, LLC
5596 HAWLEY CT
LAS VEGAS NV 89118-1856

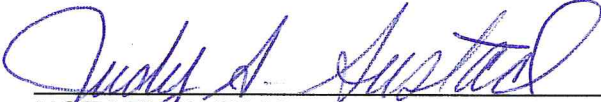
TOD SERVIS
AMERICAN TOOL SUPPLY, LLC
5596 HAWLEY CT
LAS VEGAS NV 89118-1856

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota, as first class mail and as CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

3. On the 18th day of March, 2011, I also served the CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING upon American Tool Supply, LLC and Tod Servis, individually, by attaching a true and correct copy thereof to an e-mail and sending it to the following e-mail address: americantoolsupply@gmail.com.


CORINNE SMALL

Subscribed and sworn to before me
this 18th day of March, 2011.


NOTARY PUBLIC

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