

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS,
STATE OF FLORIDA

Plaintiff,

vs.

ASAP TECH HELP, LLC
and
MICHAEL MCARDLE, *an Individual*
and
DUSTIN PILLONATO, *an Individual*

Defendants,

and

ASAP TOTAL HOME, LLC
and
KESILS MARKETING, LLC
and
ASAP HOME ENTERTAINMENT, LLC

Relief Defendants.

COMPLAINT

Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida, brings this action under the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. § 501.201 et seq., against ASAP Tech Help, LLC (ASAP), Michael McArdle, an individual, Dustin Pillonato, an individual, (collectively referred to as “Defendants”); ASAP Total Home, LLC, Kesils Marketing, LLC, and ASAP Home Entertainment, LLC (collectively referred to as “Relief Defendants”), to obtain preliminary and permanent injunctive relief, restitution, the imposition of civil penalties, an award of attorneys’ fees, and other equitable relief, for Defendants’ acts or practices in violation of FDUTPA, and further states:

I. JURISDICTION AND VENUE

1. This action is brought pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes ("FDUTPA"). This Court has jurisdiction pursuant to § 26.012, Fla. Stat., and FDUTPA.

2. Defendants at all times material to this Complaint, acting alone or in concert with others, provided goods or services within the definition of §501.208(8), Fla. Stat., solicited consumers within the definition of §501.203(7), Fla. Stat, and were engaged in a trade or commerce as defined by §501. 203(8), Fla. Stat.

3. Venue is proper in the Fifteenth Judicial Circuit as the statutory violations alleged herein occurred in or affected more than one judicial circuit in the State of Florida while the residences of Michael McArdle and Dustin Pillonato, and the principal place of business of ASAP, are in Palm Beach County, Florida.

PLAINTIFF

4. The Attorney General is an enforcing authority of FDUTPA and is authorized by § 501.207(1)(b), Fla. Stat., to bring an action to enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA and by § 501.207(3), Fla. Stat. to obtain further equitable relief, as appropriate.

5. The State of Florida has conducted an investigation, and the Attorney General has determined that an enforcement action serves the public interest, as required by § 501.207(2), Fla. Stat.

DEFENDANTS

6. ASAP Tech Help, LLC (“ASAP”), is a Florida limited liability company organized under the laws of Florida on or about September 20, 2013, and maintains a principal place of business registered as 430 South Congress Avenue, Suite 1D, Delray Beach, Florida 33445. Since its inception, ASAP has marketed, advertised, and sold products and services to consumers relating to technical support services for personal computers.

7. Defendant Michael McArdle is a Fifty Percent (50%) equity owner of ASAP. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of ASAP set forth in this Complaint. Defendant Michael McArdle resides at 269 NE 13th Street, Delray Beach, Florida 33444, is not in the military and is otherwise *sui juris*.

8. Defendant Dustin Pillonato is a Fifty Percent (50%) equity owner of ASAP. At all times materials to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of ASAP set forth in this Complaint. Defendant Dustin Pillonato resides at 1843 16th Avenue North, Lake Worth, Florida 33460, is not in the military and is otherwise *sui juris*.

9. Relief Defendant Kesils Marketing, LLC is a Florida limited liability company, organized under the laws of Florida, owned by Defendant Michael McArdle, and its principal place of business is located at 636 E. Atlantic Avenue, 201, Delray Beach, Florida 33483.

10. Relief Defendant ASAP Total Home, LLC is a Florida limited liability company, organized under the laws of Florida, owned by Defendants Michael McArdle and Dustin Pillonato, and its principal place of business is located at 2164 W. Atlantic Avenue, Delray Beach, Florida 33445.

11. Relief Defendant ASAP Home Entertainment, LLC is a Florida limited liability company, organized under the laws of Florida, owned by Defendants Michael McArdle and Dustin Pillonato, and its principal place of business is located at 430 South Congress Avenue, Suite 1D, Delray Beach, Florida 33445.

12. ASAP, Michael McArdle, and Dustin Pillonato on numerous occasions moved money freely back and forth between ASAP Tech Help and Kesils Marketing, LLC, ASAP Total Home, LLC, and ASAP Home Entertainment, LLC without valid negotiated consideration.

II. DEFENDANTS' UNFAIR, DECEPTIVE, AND UNCONSCIONABLE BUSINESS PRACTICES

a. Overview.

13. ASAP operates a multi-million dollar scam, deceiving thousands of consumers into purchasing costly and unnecessary software support services and products, by exploiting their fears about viruses, malware, and other security threats on their computers. ASAP began operating an inbound call center in September 2013, which at all times material to this Complaint, has been located in Delray Beach, Florida.

14. ASAP sells technical support services and products to consumers who are lured to contact the ASAP call center through deceptive internet marketing tools. ASAP has employed anywhere between sixty and one-hundred and fifty sales agents at any given time that sell technical support services, and whose responsibilities entail answering inbound consumer calls.

15. Once consumers make contact with the ASAP sales agents, the agents gain remote access to consumers' computers and offer to perform a free "diagnostic" check. After showing consumers various windows, and falsely claiming that their computers are in immediate need of repair, consumers are duped into spending hundreds of dollars on unnecessary services and products.

b. Defendants Lure Consumers To Call Their Inbound Call Center Through Deceptive Marketing Tools.

16. ASAP uses deceptive marketing through the internet to drive consumer calls to its call center. This is accomplished by partnering with, or creating and marketing software, that generates advertisements that direct consumers to contact ASAP.

17. Sometimes ASAP utilizes marketing through “activation calls,” where a consumer is directed to call ASAP in order to activate a scanning software. In other instances, consumers are directed to contact ASAP due to a pop-up window on their computer screen, mimicking a warning of computer errors.

18. ASAP lures consumer calls to its call center from the United States, Australia, United Kingdom, Ireland, and Canada.

19. Activation calls are the result of consumers downloading a software registry cleaner offering to scan a consumer’s computer in order to diagnose computer-related issues. These “registry cleaners” are really used as lead generators and only meant to drive calls to the ASAP call center, not to clean consumers’ computers. The Attorney General is aware of at least two registry cleaners used by ASAP to drive calls to its call center: Fast Clean Pro and Optimizer Pro.

20. Fast Clean Pro was purchased by ASAP for \$40,000.00. ASAP contracted with a company, called After Download, to market the registry cleaner Fast Clean Pro. One way Fast Clean Pro operates to drive calls to ASAP’s call center is by offering to scan a consumer’s computer for free.

21. Upon downloading the scan, it categorizes many common and innocuous items, including temporary files and web browsing cookies as “errors” that need fixing.

22. After the consumer is shown that their computer is in need of cleaning by Fast Clean Pro, they are given the option to purchase the software for a nominal fee. If the consumer purchases

the software, they get a pop-up window that directs them to contact ASAP Tech Help to activate the software.

23. If the consumer chooses to close the window at that time, and not purchase the software, the consumer will be bombarded with pop-up windows warning them that there is something wrong with their computer. These pop-up windows direct the consumer to contact a toll-free number, which leads them to the ASAP call center. The pop-up windows are deceptive in that they mimic warnings of computer issues, scaring consumers into contacting the ASAP call center

24. ASAP also partnered with the company, Reimage, to market the PC Cleaner, Optimizer Pro. Reimage and ASAP have a revenue sharing agreement, where both companies evenly split the revenue generated as a result of a call driven to the ASAP call center. Optimizer Pro operates similarly to Fast Clean Pro as a lead generator.

25. ASAP also partnered with the company, RevenueWire, to receive calls through its Callstream; the Callstream is a portal, delivering inbound calls to RevenueWire's affiliate call centers. ASAP was one of RevenueWire's affiliate call centers.

26. RevenueWire acted as a broker between the marketing companies driving the calls and the call centers. RevenueWire charged ASAP 6.95% of everything ASAP generated in revenue resulting from calls driven to its call center from its Callstream.

c. **Defendants Scare Consumers Into Buying Unnecessary Technical Support And Security Software Products.**

27. Once the consumer contacts the ASAP call center, they are subjected to the carefully crafted deceptive sales tactics of the ASAP sales agents. The ASAP sales agents are not permitted to go off script and they are required to go through each and every step of the diagnostic for every consumer calling in, despite the consumer's specific computer issue.

28. The first thing the ASAP sales agent does is seek permission to gain remote access to the consumer's computer in order to diagnose computer related issues. The consumer is directed to go to a remote access system, LogMeIn, and type in a code.
29. The consumer is told to run the program that is downloaded. This provides remote access to the virtual system and allows the ASAP sales agent to look through the system while narrating what he sees. Once the sales agent has gained remote access to the consumer's computer, the consumer is led through the scripted diagnostic of their computer to point out computer issues that either don't exist or are grossly exaggerated.
30. In reality, this process is not a diagnostic test designed to identify the source of computer problems. Rather, it is a scripted sales pitch that inevitably leads to the same conclusion every time that the consumers' computers are severely compromised and in need of immediate repair.
31. The script dictates that the sales agents open up various windows, such as the Task Manager and the Event Viewer, to show the consumer supposed issues with their computers.
32. For example, the Event Viewer is a Windows component that displays logs and events within the operating system. The sales agent will point out events that are marked with a red flag and explain that they are signs of malware infections or the remains of malware on the system.
33. The consumer is told that they should sign up for ASAP's services to fix issues that are indicated in the Event Viewer before the computer is "unfixable." Notably, the events shown in the Event Viewer are normal and do not pose any threat to the consumers' computers.
34. From inception until mid-November of 2014, ASAP showed consumers the Event Viewer as part of the diagnostic, and only changed this specific step in the diagnostic after the Federal Trade Commission brought suit against some of ASAP's competitors.

35. The sales agent then tells the consumer that Microsoft recommends three simple steps: (1) quality real-time protection such as a PCWatchDog, (2) A PC Cleaner, and (3) two tunes ups a year.

36. The consumers are told that they need to sign up for services to fix the issues pointed out during the diagnostic, as they are a sign of trace damage from malware, and that only a “Microsoft Level 3 Certified Technician” can remedy these computer problems.

37. In fact, Microsoft does not recommend using PC cleaners as they can actually cause issues with the running system. Additionally, the designation, “Level 3 Certified Technician,” does not exist.

38. While Microsoft offers a variety of certifications, such as the Microsoft Certified System Engineer or the Microsoft Certified Technology Specialist, these certifications do not have levels within the specific certification.

39. The sales agent then recommends that the consumer take their PC to a well-known retailer, but advises them that the repairs will be costly and that they will be without a PC for several days.

40. The sales agent then advises that if the consumer purchases tech support directly from ASAP, the consumer can have the computer repaired remotely.

41. Once the consumer is convinced to purchase the recommended services and software, they are told to leave their computer running to allow ASAP to complete the services. They are told that a Level 3 Certified Technician will repair any issues on their system by removing the trace damage and improving the security and performance of their system, and install any programs they have purchased.

42. At times, as the consumers do not have the computer issues pointed out by the ASAP sales agents to begin with, nothing significant is performed on their computers after the remote session

is transferred to the purported “Level 3 Certified Technician,” aside from the removal of the software ASAP had installed on their computer that deceptively lured the consumer to initially contact ASAP.

**III. COUNT I
(Violation Of The Florida Deceptive And Unfair Trade Practices Act)**

43. § 501.204 of FDUTPA, Chapter 501, Part II, Florida Statutes, prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.”

44. As set forth in Paragraphs 1-42, which allegations are incorporated as if set forth herein, in numerous instances, in the course of marketing, offering for sale, and selling computer security or technical support services, the Defendants represent or have represented, expressly or by implication, through a variety of means, including through telephone calls and internet communications, that they have identified problems on consumers’ computers that affect the performance or security of consumers’ computers.

45. In truth and in fact, in numerous instances in which the Defendants have made the representations set forth in Paragraph 44, many purported problems that the Defendants have identified do not affect the performance or security of consumers’ computers.

46. The Defendants’ representations as set forth in Paragraphs 1-42 of this Complaint are false and misleading and likely to mislead consumers acting reasonably, and/or consumers within the State of Florida were actually misled by the Defendants’ misrepresentations in violation of § 501.204 of FDUTPA.

47. Florida Statutes § 501.207, § 501.2075, and § 501.2077 authorize this Court to grant such relief as this Court finds necessary to redress injury to consumers resulting from Defendants’

violation of FDUTPA, including injunctive relief, the refund of monies paid, the disgorgement of ill-gotten monies, and civil penalties.

IV. CONSUMER INJURY

48. Defendants' above-described acts and practices have injured and will likely continue to injure and prejudice the public and consumers in the State of Florida.

49. In addition, Defendants have been unjustly enriched as a result of their deceptive acts or practices.

50. Unless Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of Defendants will result in irreparable injury to the public and to consumers in the State of Florida for which there is no adequate remedy at law.

V. DEMAND FOR JURY TRIAL

51. Pursuant to Rule 1.430 of the Florida Rules of Civil Procedure, the Attorney General demands a trial by jury.

VI. PRAYER FOR RELIEF

WHEREFORE, the Attorney General requests that this Honorable Court enter Judgment against Defendants ASAP, Michael McArdle, and Dustin Pillonato to:

- A. Permanently **ENJOIN** Defendants ASAP, Michael McArdle, Dustin Pillonato, as well as their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Court's Order, whether acting directly or indirectly, from the following:

1. Any acts or practices that violate the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes; including without limitation:
2. deceptive marketing or advertising, including the dissemination of any advertisement or promotion that is meant to lure consumers under false pretenses;
3. internet advertising or marketing meant to direct consumer traffic to any website, webpage, or secondary advertisement, related to any technical and/or software support entity where ASAP, Michael McArdle, or Dustin Pillonato conduct business;
4. engaging in any business that markets or sells software support services or products;
5. receiving payment or any other benefit through any partnership, alliance, joint venture, or agreement with any business that offers consumers technical support services and/or software products;
6. using any false or misleading statement to induce any person to pay for goods or services in connection with the marketing, advertising, promotion, distribution, offering for sale of any goods or services;
7. selling, renting, leasing, transferring, using, disclosing, or obtaining any pecuniary benefit from the consumer information, including name, address, telephone number, credit card number, e-mail address, or other identifying information of any person, that ASAP, Michael McArdle, or Dustin Pillonato obtained prior to the entry of this Court's Order in connection with any activity that pertains to the subject matter of the Attorney General's investigation of ASAP; and

8. failing to disclose in inbound telephone calls from consumers, promptly and in a clear and conspicuous manner, the nature of the goods or services and/or any other fact material to consumers concerning any good or service.
- B. **AWARD** restitution to all consumers who are shown to have been injured, pursuant to § 501.207, Fla. Stat.; and such equitable or other relief as is just and appropriate pursuant to § 501.207, Fla. Stat., including but not limited to, disgorgement of ill-gotten gains and repatriation of assets necessary to satisfy any judgment.
 - C. **ASSESS** civil penalties in the amount of Ten Thousand Dollars (\$10,000.00) as prescribed by § 501.2075, Fla. Stat. or Fifteen Thousand Dollars (\$15,000.00) for victimized senior citizens as prescribed by § 501.2077, Fla. Stat. for each act or practice found to be in violation of Chapter 501, Part II, of the Florida Statutes.
 - D. **AWARD** attorneys' fees and costs pursuant to § 501.2075, Fla. Stat. or as otherwise authorized by law.
 - E. **GRANT** such other relief as this Honorable Court deems just and proper.

Dated this 5th day of March, 2015

Respectfully Submitted,

**PAMELA JO BONDI
ATTORNEY GENERAL**

/s/ Michelle Pardoll

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