

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

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ATTORNEY GENERAL OF OHIO

MAR 13 2023

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

STATE OF OHIO)	
)	
IN THE MATTER OF:)	DOCKET NO. 603845
SMITHKEY AUTO INDUSTRIES, LLC.)	
AND TREVOR SMITH)	

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 10th day of March, 2023 by Smithkey Auto Industries, LLC ("Smithkey") and Trevor Smith, individually and as owner and officer of Smithkey Administration, LLC ("Smith") (collectively "Respondents") and Dave Yost, Attorney General of the State of Ohio ("Attorney General") (the "Parties"). For purposes of this Assurance, "Smithkey" means Smithkey Administration, LLC, its owners, officers, managers, employees, agents, successors, or assigns and all persons acting in concert or participation with it, directly or indirectly, through any corporate device, partnership, association, or affiliation.

WHEREAS, the Attorney General, having reasonable cause to believe that Respondents engaged in acts and practices that violate the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.*, and its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, the Telephone Solicitation Sales Act ("TSSA"), R.C. 4719.02 *et seq.*, R.C. 109.87(B) and the Telemarketing Sales Rule ("TSR"), 16 C.F.R. 310, has investigated Respondents pursuant to the authority granted him by R.C. 1345.06, R.C. 4719.11, and R.C. 109.87(C), and;

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F) and R.C. 109.87(C)(8)(b), enter into and accept an Assurance of Voluntary Compliance, and;

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WHEREAS, this is an Assurance in writing by Respondents of their intent to conduct their business in a manner designed to comply with all provisions of the CSPA, R.C. 1345.01, *et seq.* and its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, the TSSA, R.C. 4719.02 *et seq.*, R.C. 109.87(B) and the TSR, 16 C.F.R. 310; and

WHEREAS, Respondents, desiring to comply with all aspects of the CSPA, the TSSA, R.C. 109.87(B) and the TSR hereby voluntarily enter into this Assurance with the Attorney General.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

(1) The "Effective Date" shall mean the date that is indicated on the first page of this Assurance.

(2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation by his Consumer Protection Section of Respondents' business practices and actions occurring on or before the Effective Date of this Assurance.

(3) By giving this written Assurance, Respondents agree to comply with all the terms of this Assurance and to conduct business in compliance with all applicable Ohio and Federal laws, including, without limitation, the CSPA, the TSSA, R.C. 109.87(B) and the TSR.

BACKGROUND AND STATEMENT OF FACTS

1. Smithkey is a California limited liability company registered with the California Secretary of State since September 7, 2017.

2. Smithkey's principal place of business is 1290 N. Hancock Street, Suite 200, Anaheim, CA 92807.

3. Trevor Smith is an individual who holds himself out as the chief executive officer of Smithkey.

4. Respondents are “Suppliers” as that term is defined in R.C. 1345.01(C) as they have been, at all times relevant herein, engaged in the business of effecting consumer transactions by advertising, offering for sale, entering into, and selling vehicle service contracts, directly or indirectly through third parties, to individuals in the State of Ohio for purposes that were primarily personal, family, or household within the meaning specified in R.C. 1345.01(A).

5. Respondents are “Sellers” as they have, in connection with “Telemarketing” transactions, provided, offered to provide, or arranges for others to provide goods or services to individuals in exchange for consideration, as those terms are defined in 16 C.F.R. 310.2(dd).

6. Smithkey offers and administers vehicle service contracts to consumers.

7. Smithkey has contracted with dozens of companies (referred to as “Marketers”) that engaged in direct marketing of Smithkey’s vehicle service contract program to individuals nationwide, including individuals in Ohio.

8. A number of Smithkey’s Marketers are “Telephone Solicitors” as they engaged in “Telephone Solicitations” directly or through one or more salespersons either from a location in Ohio, or from a location outside of Ohio to individuals in Ohio, as those terms are defined in R.C. 4719.01.

9. While advertising or offering to sell Smithkey’s vehicle service contracts to individuals in Ohio, Smithkey’s Marketers acted as Telephone Solicitors without first having obtained certificates of registration and without having obtained and filed surety bonds with the Ohio Attorney General’s Office as required by R.C. 4719.02 and 4719.04.

10. Smithkey's Marketers are "Telemarketers" who, in connection with "Telemarketing," initiated "Outbound Telephone Calls," as those terms are defined in 16 C.F.R. 310.02(ff), (gg) and (x).

ATTORNEY GENERAL ALLEGATIONS

11. The Ohio Attorney General's office has alleged that a number of Smithkey's Marketers paid lead generators to provide them with sales leads or "live transfer leads" of individuals who may be interested in purchasing a vehicle service contract.

12. The Ohio Attorney General alleges, based off of information and belief that consumers who answered the calls may have been greeted with the following prerecorded message or a very similar version:

This is an urgent message for the vehicle owner. We have been trying to reach you about your car's extended warranty. You should have received something in the mail about your car's extended warranty. Since we have not gotten a response, we are giving you a final courtesy call before we close out your file. Press two to be removed and placed on our do not call list, press one to speak with someone about possibly extending or reinstating your car's warrant. Press one to speak with a warranty specialist.

13. The Ohio Attorney General alleges that consumers who opted to speak to a sales representative were transferred to live operators for one of Smithkey's Marketers who would attempt to sell vehicle service contracts.

14. Upon information and belief, the Ohio Attorney General alleges that Respondents' Marketers initiated, directly or indirectly, Outbound Telephone Calls to individuals in Ohio without express agreements in writing, in violation of the TSR, 16 CFR 310.4(b)(1)(v).

15. Upon information and belief, the Ohio Attorney General alleges that Respondent's Marketers initiated, directly or indirectly, Outbound Telephone Calls to individuals in Ohio whose telephone numbers were on the national Do Not Call Registry, in violation of the TSR, 16 CFR 310.4(b)(1)(iii)(B).

16. Upon information and belief, the Ohio Attorney General alleges that Respondents' Marketers engaged in abusive telemarketing acts or practices when its Marketers initiated Outbound Telephone Calls, in violation of the TSR, 16 C.F.R. 310.4(b)(1)(iii)(B) and 310.4(b)(1)(v).

COMPLIANCE PROVISIONS

17. Respondents shall not authorize any Marketer to solicit sales over the telephone either from a location in this state or to individuals in this state unless the Marketer is registered as a telephone solicitor as required by the TSSA, R.C. 4719.02 *et seq.*, and has filed a surety bond as required by R.C. 4719.04

18. Respondents shall not enter into vehicle service contracts with any individuals in Ohio or accept any contracts for administration involving any individuals in Ohio if any Marketer solicited the sale, in part or in whole, over the telephone unless:

- a) the Marketer is properly registered as required by the TSSA, R.C. 4719.02;
- b) the Marketer obtained and filed with the Ohio Attorney General a surety bond issued by a surety company authorized to do business in the State of Ohio, as required by the TSSA, R.C. 4719.04; and
- c) the sale is evidenced by a signed written confirmation which complies with TSSA, R.C. 4719.07, or is exempt from requirement pursuant to R.C. 4719.07(H).

19. Respondents shall not contract with any new or prospective consumer in Ohio without first engaging in reasonable screening procedures of each new or prospective individual in Ohio to ensure that the consumer was not solicited through the use of a telephone call that delivered a prerecorded message or in any manner that violates the CSPA, TSSA, or the TSR.

20. Respondents and Respondents' Marketers shall not engage in abusive telemarketing acts or practices by causing any Marketer to engage in initiating Outbound Telephone Calls that violate the TSR, 16 C.F.R. 310.4(b)(1).

21. No later than sixty (60) days following the Effective Date of this Assurance and then, if requested, on a semi-annual basis thereafter for a four-year period, Respondents shall provide a report to the Attorney General's Office, which includes the following information:

- a) List of all Marketers authorized by Respondents to market vehicle service contracts to individuals in Ohio. The list shall provide each Marketer's full legal business name, any and all fictitious or trade names under which solicitations are made, the name(s) of all owners, officers and managers, and each Marketer's primary physical address and main telephone number;
- b) Copies of each contract or direct marketing agreement for every Marketer, individual or company that is or has been authorized to market Respondents' vehicle service contracts in any time period since the Effective Date of this Assurance. This shall include all exhibits, addenda or attachments, including the "Seller Profile" forms or similar forms.
- c) The number of vehicle service contracts sold to individuals in Ohio in the preceding six months by each Marketer, including the number of cancellations, if applicable.
- d) Complaints or inquiries received by Respondents related to telephone solicitations purportedly made by or on behalf of Respondents or any of their Marketers.

PAYMENT TO THE STATE

22. As part of the consideration for the termination of this investigation, Respondents shall, on or before March 31, 2023, pay Fifty Thousand Dollars (\$50,000) to the Attorney General's Office as reimbursement for investigative and administrative costs associated with this matter. This payment shall be placed in the Ohio Attorney General's Consumer Protection Enforcement Fund, for use by the Attorney General as provided in R.C. 1345.51.

23. This payment shall be made by delivering a certified check or money order, made payable to the "Ohio Attorney General's Office" and containing "Docket 603845" in the memo line to:

Financial Specialist
Consumer Protection Section
30 E. Broad St., 14th Fl.
Columbus, OH 43215

24. Respondents are hereby notified that if they fail to timely pay the amount set forth in paragraph 22 above that the unpaid amount may be referred to the Ohio Attorney General's Collection Enforcement Section for collection. Should the unpaid amount be referred for collection, the Collections Enforcement Section will assess additional collection fees and interest, pursuant to Ohio law, including, but not limited to R.C. 131.02, 109.08, and 109.081.

COOPERATION

25. Respondents shall fully cooperate with the Attorney General in any investigation related to or associated with the transactions or the occurrences that are subject of this investigation. Respondents must appear for interviews, discovery, hearings, trials, and any other proceedings that the Attorney General may reasonably request upon seven (7) days' written notice, or other reasonable notice, at such places and times as the Attorney General may designate, without the service of a subpoena.

26. Respondents must retain, for five (5) years, any and all records currently in their possession including, without limitation, contracts, call detail records, invoices, communications, and all records necessary to demonstrate full compliance with paragraphs 17, 18, 19 and 21 of this Assurance.

GENERAL PROVISIONS

27. By accepting this written Assurance, the Attorney General agrees to terminate his current investigation into Respondents' business practices occurring prior to the Effective Date of this Assurance.

28. Respondents understand and agree that this Assurance applies to Smithkey's owners, officers, managers, employees, agents, independent contractors, successors, or assigns and all persons acting in concert or participation with it, directly or indirectly, through any corporate device, partnership, association, or affiliation.

29. This Assurance shall be governed by laws of the State of Ohio.

30. This Assurance is entered into by Respondents of their free and voluntary act, upon advice of counsel and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance.

31. This Assurance does not constitute an approval by the Attorney General of any of Respondents' business practices, and they shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of their business practices.

32. This Assurance sets forth the entire agreement between the Attorney General and Respondents and supersedes any and all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel regarding the subject matter hereof. This

Assurance may be amended by written agreement of the Parties, subject to any further requirements under state law.

33. The Parties hereto acknowledge that no other promises, representations, or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

34. Respondents shall negotiate in good faith, through the Office of the Attorney General, any consumer complaints filed with this Office regarding Respondents' conduct as it relates to vehicle service contracts.

35. This Assurance shall in no way exempt Respondents from any other obligation imposed by law, and nothing contained herein shall relieve them of any legal responsibility for any acts or practices they engaged in other than those specifically addressed by this Assurance.

36. Nothing in this Assurance shall in any way preclude any investigative or enforcement action(s) against Respondents under any legal authority granted to the Ohio Attorney General:

- a) With respect to the transactions which are the subject of this enforcement action if the terms of the Assurance are not fully obeyed, or,
- b) With respect to transactions or occurrences which are not the subject of this Assurance.

WHEREFORE, the Parties hereto affix their signatures in recognition and acceptance of the terms contained herein and warrant and represent that by affixing their signatures below they have the legal right to do so.

SIGNATURES

ACCEPTED BY:

DAVE YOST
OHIO ATTORNEY GENERAL

By: Lisa M. Treleven

Date: 3/10/2023

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TREVOR SMITH

By: 

Date: 03/10/2023

Trevor Smith, Individually
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Anaheim, CA 92807


SMITHKEY AUTO INDUSTRIES, LLC

By: 

Date: 03/10/2023

Trevor Smith, CEO
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COUNSEL FOR RESPONDENTS

By: 

Date: 03/10/2023

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