IN THE CIRCUIT COURT OF THE STATE OF TENNESSEE
FOR THE NINETEENTH JUDICIAL DISTRICT AT MONTGOMERY COUNTY

STATE OF TENNESSEE, ex rel. ROBERT E. COOPER, JR., Attorney General,	)	
Plaintiff,	)	
v.	)	Case No. 50500795
BRITLEE, INC., d/b/a The MILITARY ZONE a/k/a MILITARYZONE.COM and LAPTOYZ COMPUTERS AND ELECTRONICS, STUART L. JORDAN, individually and d/b/a BRITLEE, INC. and MILLENIUM FINANCE, INC., MILLENIUM and ROME FINANCE COMPANY, INC.,	)	Judge Ross Hicks
Defendants.	)	

FILED
CHERYL J. CASTLE
CIRCUIT COURT CLERK
BY: _____
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ORDER GRANTING PLAINTIFF, STATE OF TENNESSEE'S MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANT ROME FINANCE COMPANY, INC.

This matter having been presented to the Court on Thursday, December 20, 2007, in connection with plaintiff, State of Tennessee's ("State") Motion to Compel and for Sanctions Against Defendant Rome Finance Company, Inc. ("Motion for Sanctions") and the Court having considered the State's submission, the filings and Orders of record and defendant's response and opposition thereto, the Court hereby GRANTS the State's Motion for Sanctions and makes the following findings and further Orders:

This civil law enforcement proceeding was filed by the State of Tennessee on September 23, 2005, alleging defendants violated various provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, in connection with

their sales and financing of computers to members of the armed services and others.

The discovery at issue concerns documents and information pertaining to defendant Rome Finance Company, Inc's ("Rome") alleged collection and credit reporting activity following this Court's entry of a Temporary Restraining Order on September 23, 2005 ("TRO").[1] Among other things, the TRO prohibits Rome from engaging in certain collection and credit reporting activity. Contempt proceedings are currently pending against Rome for its alleged violations of the TRO and the discovery at issue pertains to evidence regarding Rome's alleged contempt of the TRO. In its Motion for Sanctions, the State alleges that Rome has failed to comply with certain rulings and Orders of this Court requiring Rome to produce discovery concerning its post-injunction debt collection and credit reporting activity. The State also seeks to compel Rome to appear for deposition in the State of Tennessee, pursuant to the State's September 21, 2007 Notice of Deposition.

Rome did not produce the required discovery by the time the September 4, 2007 contempt hearing commenced. Because this Court determined that Rome was in control of all documents necessary to a full and complete resolution of the issue of Rome's contempt, and because Rome had not produced such documents, the Court adjourned the September 4, 2007 proceedings and ordered Rome to produce the outstanding discovery to the State by October 4, 2007. *See* Tr., Sept. 4, 2007 proceedings, p. 40, Ex. C, Motion for Sanctions.

On October 3, 2007, one day before Rome was to produce the ordered discovery to the

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[1] The initial Temporary Restraining Order was issued on September 23, 2005. It was later supplemented and extended by agreed Orders dated November 7, 2005 and February 24, 2006.

State, Rome filed a Notice of Removal in the United States District Court for the Middle District of Tennessee, alleging this case arose under federal law.[2] The State opposed Rome's removal, arguing Rome removed the case in bad faith and for the purpose of avoiding the pending contempt proceedings. By Order dated October 30, 2007, the federal court agreed with the State and remanded the case to state court. The federal court sanctioned Rome for filing the removal "in bad faith" and "for the apparent purpose of avoiding or delaying contempt proceedings pending against Rome Finance Company in state court." *See State of Tennessee v. Britlee, et al,* 3:07CV0988, p. 5 (Oct. 30, 2007) (Wiseman, J.), Ex. A to Motion for Sanctions.

The State submits that for at least one year now, the State has directed a number of informal discovery requests to Rome for information related to Rome's post-injunction collection activity, which Rome agreed to provide. *See* Ex. B to Motion for Sanctions. Rome admits that such informal requests have taken place, but claims that because the parties were unable to agree upon a form of protective order, it could not produce the requested discovery. *See* Tr. Sept. 4, 2007 proceedings at pp. 10-11, Ex. C, Motion for Sanctions. *See also* Response by Rome to Plaintiff's Motion to Compel and for Sanctions, p. 3.

On August 16, 2007, the State issued a discovery subpoena to Rome, formally seeking discovery related to Rome's post-injunction collection and credit reporting activity. *See* Ex. F, Motion for Sanctions. Moreover, on August 27, 2007, this Court entered an Order

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[2] This was the second time this case was removed by a defendant to federal court. Previously, defendant Millenium Services, Inc. removed this case to the same federal court for essentially the same reason, without objection by Rome. Approximately one year after Millenium first removed the case, the federal court ordered the case remanded back to this Court for lack of jurisdiction.

requiring Rome to produce discovery related to Rome's post-injunction collection and credit reporting activity in connection with certain summary judgment rulings made in favor of the State. These discovery Orders were reaffirmed by the Court at the September 4, 2007 hearing, and then again, by written Order dated September 28, 2007.

On November 19, 2007, the State filed the instant Motion for Sanctions. Rome, in turn, noticed two of its pending motions for hearing on November 28, 2007: a Motion to Reconsider Grant of Leave to File a Second Amended Complaint and a Motion for Leave to File Interlocutory Appeal. On November 27, 2007, one day before Rome's motion hearings were scheduled for hearing, Rome advised the State that a box of responsive discovery documents was being produced and would be available to the State in the Chattanooga offices of Rome's present counsel.

The following day, at the November 28, 2007 motion hearings, Rome advised the Court that it had produced the outstanding discovery to the State. *See* Tr. Nov. 28, 2007, pp. 8-9, Ex. D, State's Reply in Support of Motion to Compel and for Sanctions. The Court again, on the record, explicitly confirmed that the scope of Rome's discovery production was not limited to Britlee sales only, but included all Tennessee related transactions, including all contracts with "Tennessee consumers and contracts that were entered into in Tennessee, whether they were a Tennessee consumer or not." *Id.*

On December 13, 2007, Rome filed a response to the State's Motion for Sanctions. In its response, Rome made *written representations of record* that "Rome has complied" with this Court's discovery orders. *See, e.g.* Response by Rome to Plaintiff's Motion to Compel and for Sanctions, pp. 1, 10 and 12.

On December 20, 2007, the State presented the instant Motion for Sanctions. The State argued that notwithstanding this Court's Orders and explicit record clarifications regarding the scope of discovery, Rome continued to evade discovery and had not complied with this Court's discovery Orders. The State asserted that Rome was "playing games" and "playing semantics" because Rome had deliberately limited its discovery production to Britlee Kiosk Sales, and even then, excised and redacted those documents.

Upon a review of the submissions of the parties, arguments of counsel and discovery of record, the Court agrees with the State that Rome's discovery production is deficient and in violation of this Court's August 27 and September 28, 2007 Orders. The documents produced by Rome have been improperly limited to Britlee kiosk sales only and have been excised and redacted. The Court further finds that Rome has knowingly and repeatedly evaded discovery in violation of this Court's Orders.

It is clear to the Court and the Court expressly finds that Rome Finance Company, Inc. is indeed playing games and playing semantics in responding to the State's discovery. It could not have been clearer to Rome, at least for the three week period immediately preceding the December 20, 2007 hearing on the State's Motion for Sanctions, what this Court expected Rome to do and that Rome has not done it.

IT IS THEREFORE HEREBY ORDERED that Plaintiff, State of Tennessee's Motion to Compel and for Sanctions is **GRANTED**.

IT IS FURTHER ORDERED that sanctions against defendant Rome Finance Company, Inc. are warranted and shall be imposed due to Rome's conduct and disregard of this Court's previous orders in this case.

IT IS FURTHER ORDERED that pursuant to Tenn. R. Civ. P 37.02(D), in addition to the other orders and sanctions entered against defendant Rome Finance Company, Inc., this Court finds based on all the facts and evidence of record that defendant Rome Finance Company, Inc. is in Contempt of this Court's Orders of August 27 and September 28, 2007.

IT IS FURTHER ORDERED that pursuant to Rule 37.02, defendant Rome Finance Company, Inc. shall immediately and forthwith, and in any event, not later than **Tuesday, January 15, 2008**, produce all documents responsive to all outstanding discovery requests made by the State to date, whether formal or informal. Such discovery shall include at least the following:

A. That for the period November 4, 2005 through the date of Rome's response, Rome shall provide to the State un-redacted copies of all documents that relate in any way to the collection of payments under a Rome Finance Company, Inc. "Confidential Credit Application and Credit Agreement" that was signed by an applicant/consumer in Tennessee, was entered into by an applicant/consumer in whole or in part in Tennessee, and/or in any way involved a Tennessee vendor or entity, including, but not limited to:

1. Complete payment history for each "Confidential Credit Application and Credit Agreement" described above, showing the funding source of each payment (electronic transfer from First Citizens Bank, electronic transfer from another source, credit card, debit care or check);

2. Each collection letter sent to an applicant/consumer who signed a "Confidential Credit Application and Credit Agreement" described above;

3. All documents that refer to any telephone call made to a consumer/applicant who signed a "Confidential Credit Application and Credit Agreement" described above;

4. All documents relative to each referral, of an account of a consumer/applicant who signed a "Confidential Credit Application and Credit Agreement" described above, to a collection agency;

5. All documents filed as part of any legal action taken against a consumer/applicant who signed a "Confidential Credit Application and Credit

Agreement" described above;

6. All documents that in any way relate to any consumer/applicant who signed a "Confidential Credit Application and Credit Agreement" described above, that were provided to any credit reporting agency.

7. All documents that pertain, in any way, to Rome's rejection of consumers/applicants for financing purchases made through Britlee or through any other vendor or entity based in whole or in part in Tennessee.

8. To the extent not already produced with respect to item 7, above, all documents that pertain, in any way, to Rome's notification to Britlee or to any other vendor or entity based in whole or in part in Tennessee, that financing was being denied to a consumer/applicant.

9. To the extent not already produced with respect to item 7, above, all documents that pertain, in any way, to Rome's notification to any consumer/applicant that financing was being denied to such consumer/applicant in connection with any transaction involving Britlee or any other vendor or entity based in whole or in part in Tennessee.

10. A sworn affidavit confirming Rome's representation that Rome would have loaned each consumer the same amount of money specified in their contract if the consumer had not purchased from Britlee or any other Tennessee vendor or entity and did not have the purchased good(s) as security.

11. An list showing the amount of each Britlee contract or contract with any other vendor or entity based in whole or in part in Tennessee, financed by Rome and the amount of payments made to date pursuant to such contract.

12. An list showing the total amount of Britlee contracts or contracts with any other vendor or entity based in whole or in part in Tennessee, financed by Rome.

B. That, for the period September 23, 2005 though August 31, 2007, Rome shall provide to the State un-redacted copies of all documents that relate in any way to the collection of payments under a Rome Finance Company, Inc. "Confidential Credit Application and Credit Agreement" that was signed by an applicant/consumer in Tennessee, was entered into by an applicant/consumer in whole or in part in Tennessee, and/or in any way involved a Tennessee vendor or entity, including, but not limited to:

1. A record of each computer programming change, including the date of that change, made between September 23, 2005 and August 31, 2007, that in any

way relates to the collection of payments from any applicant/consumer who signed a "Confidential Credit Application and Credit Agreement" described above.

2. An alphabetical list, by last name, of all consumer against whom allotments continued to be collected, collection efforts were attempted, adverse credit reports were sent, and/or funds were debited from or withdrawn from their bank accounts by, or on behalf of Rome, including the dates thereof. Such list shall include the amounts paid toward the contract and the consumer's last known address and telephone number.

3. All documents pertaining to any and all lawsuits or legal proceedings that Rome has filed against any consumers based upon the financing of purchases made in whole or in part in Tennessee, or with a Tennessee vendor or entity.

C. A sworn affidavit describing and defining the key to any codes, abbreviations, forms or other similar designations of any nature which appear or may be used by Rome in connection with any documents responsive this the instant production.

IT IS FURTHER ORDERED that pursuant to Tenn. R. Civ. P 37.02, defendant Rome Finance Company, Inc. shall pay the plaintiff, State of Tennessee, the State's full costs and attorneys' fees incurred in connection with all of the effort it expended in having to obtain the outstanding discovery at issue, including court costs. This sanction is being ordered and assessed against Rome Finance Company, Inc., especially because of the amount of work and effort undertaken by the State of Tennessee to establish Rome's noncompliance with discovery and to secure such outstanding discovery from Rome - *information that Rome should have produced to the State long ago.*

IT IS FURTHER ORDERED that pursuant to Tenn. R. Civ. P. 37.02(D), and as an additional partial sanction for Rome Finance Company, Inc.'s failure to comply with this Court's previous Orders, Rome is hereby compelled and ordered to appear for deposition in the State of Tennessee and to produce and designate one or more persons to testify as set forth

in the State's previously served Notice of Deposition.

IT IS FURTHER ORDERED that decision with respect to all other issues related to additional sanctions to be assessed against Rome, is hereby reserved. The Court again emphasizes that it wishes to ensure that Rome Finance Company, Inc. *clearly understands* that plaintiff, State of Tennessee will be given *full and immediate possession of all of the above ordered information.* The Court notes for the record that among other things, it is specially considering and specifically reserves the right to Order further injunctive relief against Rome, including an Order prohibiting Rome from conducting business in Tennessee during the pendency of these proceedings and until such time as the trial in this matter has concluded and final judgment has been entered.

IT IS SO ORDERED AND DECREED.

2/15/05

Judge Ross H. Hicks

SUBMITTED FOR APPROVAL:
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CERTIFICATE OF SERVICE

I, OLHA N.M. RYBAKOFF, Assistant Attorney General, do hereby certify that on FEBRUARY 1, 2008 I caused a copy of the foregoing ORDER GRANTING PLAINTIFF, STATE OF TENNESSEE'S MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANT ROME FINANCE COMPANY, INC. to be served by electronic mail and facsimile and the same was servied on FEBRUARY 4, 2008 via first class, postage perpaid United States mail upon counsel as follows:

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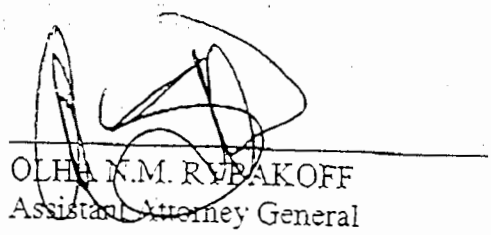

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