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KING COUNTY
SUPERIOR COURT

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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

In the matter of:

MYLUVCRUSH

NO. **08-2-39322-4 SEA**
ASSURANCE OF
DISCONTINUANCE

Tatto Media, Inc. ("Respondent") is a Washington for-profit corporation that advertises various promotions on the Internet, including a promotion titled "MyLuvCrush" that has appeared on such social networking websites as Reunion.com, Facebook and MySpace. The State alleges the following:

Respondent's promotion consists of a series of representations which are part of an overarching representation that a real person in the user's geographical area has a romantic interest in him or her. The solicitation begins with a banner advertisement made to look like an email message that appears to be personally directed to the user, advising him or her that someone in the same geographic area has a "LuvCrush" on him or her, and implies that by clicking on the "email" message, the user can determine the identity of the person. Once the user opens the "email," he or she is sent to the MyLuvCrush website, where additional representations are made: that the person with the "crush" is attempting to contact the computer user; and that there is a time limit beyond which the person with the "crush" will not wait for the computer user's response or will not be identified. If the user chooses to determine the identity of the person with the "crush," he or she is taken to a screen which

1 requires the entry of the user's cell phone number and the agreement to purchase a monthly
2 subscription for \$9.99 to a text message horoscope service. Once the user has agreed to
3 subscribe to the service, a text message is sent to the user's cell phone with the name of the
4 person who has the alleged "crush." This name is fictitious—there is no real person who has
5 a "crush" on the user.

6 The State of Washington deems that Respondent has violated the Consumer Protection
7 Act, RCW 19.86.020, by engaging in the following unfair and deceptive acts:

- 8 1. Misrepresenting, in the context of Internet promotions, the existence of a real
9 person who has a romantic interest in the computer user; that the person with the
10 romantic interest lives in the same geographic location as the computer user; that
11 the person with the romantic interest is attempting to contact the computer user; that
12 there is a time limit beyond which the person with the romantic interest will not
13 wait for the computer user's response or will not be "identified;" and that in order
14 to learn the "identity" of the person with the romantic interest, the computer user
15 must pay for a subscription to a text message service.
- 16 2. Misrepresenting through the use of a simulated email message inbox on a website,
17 the existence of an email message which has been sent to the computer user that
18 will inform him or her of the existence or identity of a person who has a romantic
19 interest in the user.
- 20 3. Creating a false sense of urgency that the computer user will lose the ability to learn
21 the identity of the romantic interest if he or she exits Respondent's solicitation,
22 through the use of pop-up warning windows that appear repeatedly before a user is
23 able to exit the solicitation.
- 24 4. Further soliciting the computer user's subscription to additional text message
25 programs once the user has attempted to navigate away from the initial promotional
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1 website or conclude purchase of the services offered, by directing the user's
2 browser to a different promotional website.

3 Respondent hereby provides, pursuant to RCW 19.86.100, this Assurance of
4 Discontinuance and agrees to abide by the terms listed in Section I. below.

5 **I. ASSURANCE OF DISCONTINUANCE**
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7 1.1 Respondent will discontinue the following practices in the context of its Internet
8 promotions (1) to consumers in the State of Washington and (2) to the extent that Respondent
9 is formed or located in the State of Washington:

10 a. Misrepresenting, either explicitly or implicitly, that a real person has an existing
11 romantic interest in the computer user;

12 b. Misrepresenting, either explicitly or implicitly, that unless the computer user
13 takes a specific action (i.e. makes a purchase, subscribes to a service, navigates to a
14 specific website, etc.), he or she will lose the opportunity to learn the identity of a real
15 person who has an existing romantic interest in him or her;

16 c. Misrepresenting, either explicitly or implicitly, through the use of information
17 identifying the computer user's geographic location, that a real person in the same
18 geographic location has an existing romantic interest in the user.

19 d. Misrepresenting, either explicitly or implicitly, that an offer will expire within a
20 limited period of time, after which it will no longer be available.

21 e. Misrepresenting, either explicitly or implicitly through graphical representation,
22 the existence of a personal email message inbox that contains an email message
23 intended for the computer user; and

24 f. Once a computer user has attempted to navigate away from an initial
25 promotional website or completed the purchase of the services initially offered,
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1 misrepresenting, either explicitly or implicitly, that additional steps are required to
2 complete the transaction.

3 II. ENFORCEMENT

4 2.1 Within thirty (30) days of execution of this Assurance, Respondent will instruct
5 all appropriate agents and affiliates of the terms of this Assurance and will require them to
6 comply with the terms of this Assurance. Respondent will take appropriate disciplinary action,
7 including termination, if Respondent learns that an agent or affiliate is taking any actions not
8 consistent with this Assurance.

9 2.2 Respondent understands and agrees that this Assurance applies to Respondent,
10 Respondent's members, managers, subsidiaries, affiliates, agents, employees, representatives,
11 successors or assigns, or through any other entity, whose acts, practices, or policies are
12 directed, formulated, or controlled by Respondent. For purposes of this Assurance, any
13 corporation or other entity controlled by any member, manager, or other person who has acted
14 in a position of authority or control of Respondent, constitutes an affiliate or successor
15 organization.

16 2.3 Pursuant to RCW 19.86.080, Respondent agrees to pay attorneys' costs and fees
17 incurred in pursuing this matter in the amount of \$20,262.65.

18 2.4 The costs and fees in the amount of \$20,262.65 are to be paid in full, at the time of
19 signing of this Assurance. The payment shall be made by cashier's check, made payable to the
20 Attorney General -- State of Washington, and shall be delivered to the Office of the Attorney
21 General, 800 Fifth Ave. Suite 2000, Seattle, Washington 98104, Attention: Cynthia Lockridge.

22 2.5 Nothing in this Assurance shall be construed to limit or bar any other
23 governmental entity or consumer from pursuing available remedies against Respondent;
24 however, nothing in this Assurance shall be construed to create or expand any cause of action.
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1 Under no circumstances shall this Assurance or the name of the State of Washington, the
2 Office of the Attorney General, Consumer Protection Division, or any of their employees or
3 representatives be used by Respondent in connection with any selling, advertising, or
4 promotion of products or services as an endorsement or approval of Respondent's acts,
5 practices, or conduct of business.

6 2.6 This Assurance shall not be considered an admission of violation for any
7 purpose; however, failure to comply with this Assurance shall be prima facie evidence of
8 violation of RCW 19.86.020, thereby placing upon the violator the burden of defending against
9 the Superior Court's imposition of injunctions, restitution, civil penalties of up to \$2,000 per
10 violation, and costs including reasonable attorney's fees incurred by the Attorney General in
11 the foregoing investigation and in preparation of this Assurance.

12 DATED this 17th day of November, 2008.


13 Presented By:

14 ROBERT M. MCKENNA
15 Attorney General

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17 PAULA SELIS, WSBA #12823
18 Senior Counsel
19 Attorneys for
20 State of Washington

21 Agreed to, Approved for Entry, and
22 Notice of Presentation Waived:

23 

24 DAVID BATEMAN, WSBA #14262
25 K & L Gates, LLP
26 Attorney for Respondent
Tatto Media, Inc.