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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FEDERAL TRADE COMMISSION and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

v.

ZURIXX, LLC, *et al.*

Defendants.

**UTAH DIVISION OF CONSUMER
PROTECTION'S MEMORANDUM OF
LAW REGARDING *AMG CAPITAL***

Case No. 2:19-cv-00713-DAK-DAO

District Judge Dale A. Kimball
Magistrate Judge Daphne A. Oberg

As requested in ECF 241, the Utah Division of Consumer Protection submits this Memorandum regarding the effect in this litigation, if any, of the recent Supreme Court decision in *AMG Capital Management, LLC v. Federal Trade Commission*, 141 S. Ct. 1341, 1352 (2021). In short, *AMG* will have no effect on the Division's claims.

AMG analyzed the language of §13(b) of the FTC Act. The Division has not asserted a claim under that section. The Division brought claims under the Utah Consumer Sales Practices Act (the "CSPA"), the Utah Business Opportunity Disclosure Act ("BODA"), and the Utah Telephone Fraud Prevention Act (the "TFPA"). It also joined with the FTC in a claim under the FTC's Telemarketing Sales Rule and a claim against relief Defendant Stephenie Spangler.

The Division seeks actual damages on behalf of consumers who complain with the Division. This remedy is set out in Utah Code Ann. §13-11-17(1)(c) and is not affected by *AMG*. The Division also seeks injunctive relief, fines, and penalties under the state statutes. These remedies are likewise unaffected by *AMG*.

Defendants filed a motion to modify the preliminary injunction in this case by lifting the asset freeze (ECF 244). As the Division's forthcoming response to that motion (which will be filed June 4) will explain, the Division's state law claims are sufficient to support a preliminary injunction and asset freeze even absent any claims by the FTC, and therefore *AMG* does not impact or warrant revising the preliminary injunction. The Division's claims under the CSPA are equitable, Utah Code Ann. §13-11-17(1)(b), and claims for equitable relief justify a preliminary injunction preventing a party from disposing of its assets pending the adjudication of a legal claim. *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 61 S.Ct. 229, 85 L.Ed. 189 (1940).

A Court may impose an asset freeze in cases that seek both legal and equitable relief. *AAAG-California, LLC v. Kisana*, 2020 WL 377043 *2 (D. Utah 01/23/2020). This is such a case.

In addition, Rule 66 of the Utah Rules of Civil Procedure provides for the appointment of a receiver in any action in which property is insufficient to satisfy a judgment. Such a receiver, acting under the direction of the court, has the power to seize property. The receiver may keep possession of the property pending court resolution of the case. *Interlake Co. v. Von Hake*, 697 P.2d 238, 239 (Utah 1985). Rule 66 of the Utah Rules applies here because Rule 64 of the Federal Rules of Civil Procedure makes available in federal court every remedy providing for the seizure of property available under the law of the state where the court is located.

The Division also joins in the position of the FTC with regard to the effect of *AMG*.

Respectfully submitted this 28th day of May 2021.

/s/ Robert G. Wing

Signed by filing attorney with permission of Robert Wing

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 28, 2021, I caused a true and correct copy of the foregoing document to be filed with the Court's ECF System, which provides notice to be served electronically on all counsel.

/s/ Joni Ostler