

STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	SAN PATRICIO COUNTY, TEXAS
	§	
	§	
RADIOSHACK CORPORATION,	§	
Defendant.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
AND APPLICATION FOR INJUNCTION**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of RADIOSHACK CORPORATION, hereinafter referred to as Defendant or RADIOSHACK, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. Discovery in this case should be conducted under Level 2 pursuant to Tex. R. Civ. P. 190.3.

NATURE OF THIS SUIT

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against Defendant for violations of the Texas Identify Theft Enforcement and Protection Act, Chapter 48¹ of the Tex. Bus. & Com. Code Ann § 48.001, *et seq*, (hereinafter "Chapter 48") and the Tex. Bus.

¹ In 2005, the Texas Legislature enacted three Chapters 48. The chapter cited above was titled "Identity Theft Enforcement and Protection Act" by Tex. S.B. 122, 79th Leg. R.S. (2005).

& Com. Code Ann. § 35.48 (hereinafter “Section 35.48”). Section 35.48 grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions.

DEFENDANT

3. Defendant, RadioShack Corporation, a foreign corporation organized and existing under the laws of the State of Delaware, has its principal office at 300 RadioShack Circle, Fort Worth, Texas 76102. Defendant is authorized to do business in Texas and may be served with process by serving its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at 701 Brazos Street, Ste. 1050, Austin, Texas 78701.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Section 48.201(c) of the Identity Theft Enforcement and Protection Act.

VENUE

5. Venue of this suit lies in San Patricio County, Texas, because under Section 48.201(c)(1) of the Identity Theft Enforcement and Protection Act, venue is proper in the county in which the violation occurred.

PUBLIC INTEREST

6. Plaintiff, STATE OF TEXAS, has reason to believe that RADIOSHACK is engaging in, has engaged in, or is about to engage in acts and practices, which violate Texas identity theft prevention laws, as set forth below, namely failing to protect and safeguard from unlawful use or disclosure sensitive personal information collected or maintained by RADIOSHACK in the regular course of business. Because these unlawful practices expose RADIOSHACK’s customers to the risk of identity theft, the Consumer Protection and Public Health Division of the Office of the Attorney

General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

7. The Texas Legislature in 2005 amended Section 35.48 and enacted the Identity Theft Enforcement and Protection Act to protect this public interest, noting that identity theft is one of the fastest growing crimes in the country, and Texas has one of the highest rates of identity theft in the United States.² Moreover, victims of identity theft spend an average of 600 hours over a two to four year period, as well as \$1,400 or more, trying to clear their names.³ Identity theft also imposes a substantial cost on businesses - in 2002 the total cost to businesses in the United States was estimated at almost \$50 billion⁴. The Legislature specifically recognized “dumpster diving” for discarded business records as a significant means through which identity theft is committed.⁵

ACTS OF AGENTS

8. Whenever in this petition it is alleged that Defendant did any act, it is meant that Defendant performed or participated in the act, or that the officers, agents or employees of Defendant performed or participated in the act on behalf of and under the authority of Defendant.

NATURE OF DEFENDANT’S OPERATION

9. Defendant RadioShack is one of the leading consumer electronic chains in the United States.

²See Tex. C.S.H.B. 698, 79th Leg. R.S. (2005) (Committee Report Substituted), and Tex. S.B. 122, 79th Leg. R.S. (2005) (Committee Report Unamended).

³*Id.*

⁴*Id.*

⁵See Tex. C.S.H.B. 698, 79th Leg. R.S. (2005) (Committee Report Substituted).

It primarily engages in the retail sale of consumer electronic goods including computers, televisions, telephones and electronic toys. Defendant also sells third-party services such as wireless telephone and DTH satellite activation, satellite radio service, prepaid wireless airtime and extended service plans. At the end of calendar year 2006, Defendant operated 4,467 stores under the RadioShack brand located throughout the United States, as well as Puerto Rico and the U.S. Virgin Islands and was ranked in the Fortune 500.

STATEMENT OF FACTS

10. In the ordinary course of its business operations, RADIOSHACK collects a large amount of personally identifiable information from its customers. For example, in any transaction in which a customer uses a credit card, RADIOSHACK obtains the customer's name, credit card account number, and expiration date. In addition, RADIOSHACK has maintained receipts which include the customer's name, credit card account number, and expiration date as well as the customer's address and telephone number. RADIOSHACK also offers credit cards, the application for which requires the consumer to provide his or her social security number and other sensitive personal information. Similarly, RADIOSHACK is an authorized retailer for multiple wireless telephone companies. When consumers sign up for such service, they must fill out an application that includes a host of sensitive personal information.

11. Based on information and belief, on or about March 21, 2007, thousands of Defendant's records containing sensitive personal information, including the personal identifying information of customers were found in a trash dumpster in an alley behind the RADIOSHACK Store located at 1528 Wildcat Drive in Portland, San Patricio County, Texas. The business records that were dumped included documents that contain the personal information of numerous RADIOSHACK

customers, such as credit card applications, applications for wireless telephone service plans, and copies of sales receipts. For example, one receipt that was dumped in the trash bin was from a transaction in August of 2005, in which a consumer had gone to RADIOSHACK to purchase a paper shredder and portable flash drive. The receipt included the consumer's full name, address, telephone number, credit card account number, and expiration date.

12. Although the records bore sensitive personal information that could be used to steal the identities of its customers, RADIOSHACK failed to shred, erase, or otherwise make the sensitive personal information unreadable. Instead, the records were placed in a trash dumpster that was readily accessible to the public.

BUSINESS & COMMERCE CODE VIOLATIONS

13. RADIOSHACK, as alleged above, failed to safeguard the information by shredding, erasing, or other means, to make it unreadable or undecipherable before disposing of its business records, in violation of Tex. Bus. & Com. Code Ann. § 35.48(d).

14. RADIOSHACK, as alleged above, failed to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information that it collected or maintained in the regular course of business, in violation of Tex. Bus. & Com. Code Ann § 48.102(a).

15. RADIOSHACK, as alleged above, failed to destroy or arrange for the destruction of its customer records containing sensitive personal information within its control that were not retained by it, in violation of Tex. Bus. & Com. Code Ann § 48.102(b).

PRAYER

16. WHEREFORE, Plaintiff prays that RADIOSHACK be cited according to law to appear and answer herein; and upon trial of this cause a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, its officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant from disposing of business records that contain personal identifying information or sensitive personal information unless:

a. Defendant modifies the personal identifying information by shredding or erasing it to make it unreadable or undecipherable;

b. Defendant destroys its customer records containing sensitive personal information;
or

c. Defendant arranges for the destruction of its customer records containing sensitive personal information by contracting with a business that is engaged in the disposal of confidential business records.

17. Plaintiff further prays that Defendant be required to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information collected or maintained by it in the regular course of business.

18. WHEREFORE, the STATE OF TEXAS, respectfully prays that this Court will:

a. Order RADIOSHACK to pay civil penalties in favor of Plaintiff, STATE OF TEXAS, pursuant to Tex. Bus. & Com. Code Ann. § 35.48(f) and/or Tex. Bus. & Com. Code Ann § 48.201(a); and

b. Order RADIOSHACK to pay the State's reasonable attorney's fees, investigatory costs, and court costs pursuant to Tex. Gov't. Code Ann. § 402.006(c).

19. Further, Plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which

Plaintiff, STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

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Attorney General of Texas

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First Assistant Attorney General

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VERIFICATION

STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION, and has reason to believe, based on information and belief, that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the _____ day of _____, 2007.

NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS