

Georgia Companies that Operate Penny Auction Websites Must Register with the Georgia Auctioneers Commission

The Georgia Governor’s Office of Consumer Protection (“Governor’s Office of Consumer Protection”)¹ has recently opened investigations of Georgia companies that operate “penny auction” websites that have not registered with the Georgia Auctioneers Commission.² Penny auction websites require consumers to purchase bids, typically for a price ranging from \$0.50 to \$1.00 each, to participate in an auction.³ When a consumer enters an auction for a product, each bid the consumer uses will increase the purchase price of the product by a set increment, usually \$0.01. As a federal court recently explained, during the penny auction, “[c]onsumers place bids on individual items until a clock – which increases when bids are placed – runs out and there is a winner.”⁴ The winning consumer will then pay the final auction price to receive the product.

Georgia companies that operate penny auction websites are auction businesses that must register with the Georgia Auctioneers Commission. Under Georgia law, a company must register with the Georgia Auctioneers Commission before it engages in the business of auctioning.⁵ A company engages in the business of auctioning when it “offer[s] or negotiat[es], by auction, the sale or exchange” of goods or merchandise.⁶ This definition includes selling products, tickets, or any other personal good via the internet auction format. Moreover, a number of recent court decisions classify penny auction websites and other forms of online auctions as auctions.⁷

Requiring Georgia companies that operate penny auction websites to register with the Georgia Auctioneers Commission ensures that statutorily mandated protections are provided to consumers. Georgia law requires an auction company to “maintain at all times an active trust account and [to] register such account with the Georgia Auctioneers Commission.”⁸ This trust account requirement provides protection to consumers who win auctions but do not receive their products in a timely manner from the company that operates the penny auction. Moreover, Georgia law requires auction companies to employ a licensed auctioneer.⁹ This requirement

¹ Information about the Governor’s Office of Consumer Protection can be found at its website: www.consumer.ga.gov.

² The Governor’s Office of Consumer Protection recently entered a settlement with Wavee US, LLC (“Wavee”), a Georgia company that operated a penny auction website. This settlement required Wavee to cease operating, pay over \$200,000.00 in consumer restitution, pay a \$35,000.00 civil penalty, and pay \$15,000.00 in administrative expenses. The details of this settlement can be found at <http://ftpcontent.worldnow.com/wgcl/WaveeAVC.pdf>.

³ *Alberta Ltd. v. Lee*, No. 1:10-CV- 02735 at *1 (N.D. Ga. July 15, 2011) (citing Phil Mulkins, ‘Free’ Home Trial Offers Cost Unwary Consumers a Bundle, *Tulsa World*, May 29,2011, at E2).

⁴ *Alberta Ltd.*, No. 1:10-CV- 02735 at *1.

⁵ O.C.G.A. § 43-6-9(c); 91 Op. Att’y Gen. 15 (1991).

⁶ 91 Op. Att’y Gen. 15 (1991) (citing O.C.G.A. § 43-6-1(2)-(3)).

⁷ *Alberta Ltd.*, No. 1:10-CV- 02735 at *1 (citing Phil Mulkins, ‘Free’ Home Trial Offers Cost Unwary Consumers a Bundle, *Tulsa World*, May 29,2011, at E2) (classifying penny auction as “online auctions”); *City of Chicago, Ill. v. StubHub, Inc.*, 622 F.Supp.2d 699, 701 (N.D. Ill. 2009) (referring to StubHub as an internet auction site); *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1067 (10th Cir. 2008) (referring to eBay as an internet auction site).

⁸ O.C.G.A. § 43-6-11.1(d).

⁹ O.C.G.A. § 43-6-11.1(a)-(b).

ensures that each company that operates a penny auction website employs someone who has “a good reputation for honesty, trustworthiness, integrity, and compliance.”¹⁰

Georgia companies that operate penny auction websites without first registering with the Georgia Auctioneers Commission violate the Fair Business Practices Act (“FBPA”) in at least three ways. First, operating a penny auction website without registering with the Georgia Auctioneers Commission violates the FBPA’s general prohibition against unfair and/or deceptive practices.¹¹ Second, this conduct violates the FBPA’s prohibition against causing actual confusion or actual misunderstanding as to the source, sponsorship, approval, or certification of services.¹² Third, this conduct violates the FBPA’s prohibition against representing that services have sponsorship or approval that they do not have.¹³

In addition to violating the FBPA, Georgia companies that operate penny auction websites without registering with the Georgia Auctioneers Commission are committing a crime. Under Georgia law, any corporation acting as an auctioneer without a license “shall be guilty of a misdemeanor.”¹⁴ Therefore, Georgia companies that operate penny auction websites need to register with the Georgia Auctioneers Commission to avoid both civil and criminal liability.

¹⁰ O.C.G.A. § 43-6-16(a).

¹¹ O.C.G.A. § 10-1-393(a).

¹² O.C.G.A. § 10-1-393(b)(2).

¹³ O.C.G.A. § 10-1-393(b)(5).

¹⁴ O.C.G.A. § 43-6-25.