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DATE: 4/11/17 PAGES: 5, including cover

COMMENTS: Agreed Order (Case #17-307-IV)

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APR 10 2017

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY
PART IV, AT NASHVILLE

David. Co. Chancery Court

AMERICAN CATALOG MAILERS)
ASSOCIATION and NETCHOICE,)

Plaintiffs,)

v.)

TENNESSEE DEPARTMENT OF)
REVENUE and DAVID GERREGANO,)
in his capacity as the Commissioner of the)
Tennessee Department of Revenue,)

Defendants.)

NF
No. 17-307-IV

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**AGREED ORDER GRANTING JOINT MOTION FOR ENTRY OF
AGREED ORDER PREVENTING ENFORCEMENT OF RULE 129**

The parties have submitted a Joint Motion for Entry of Agreed Order (“Joint Motion”) pursuant to Tenn. R. Civ. P. 7.02. Upon consideration of Plaintiffs’ Verified Complaint, the parties’ Joint Motion, and the legal authorities cited therein, the Court hereby FINDS and ORDERS as follows:

1. Defendants promulgated Tenn. Comp. R. & Regs. 1320-05-01.-129(2) (“Rule 129”), which requires out-of-state dealers making sales in excess of \$500,000 to Tennessee customers in the previous twelve months to register with the Department of Revenue by March 1, 2017, and to begin collecting and remitting Tennessee sales and use taxes after July 1, 2017. This Rule became effective on January 1, 2017.

2. Plaintiffs contend that Rule 129 is unconstitutional because it is at odds with the “substantial nexus” requirement for state taxes under the Commerce Clause and is inconsistent

with the U.S. Supreme Court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). Plaintiffs allege that, under the Commerce Clause and *Quill*, a State may not require a seller to collect and remit the State's sales and use taxes unless the seller has a physical presence in the State.

3. Defendants disagree that Rule 129 is inconsistent with *Quill*. Defendants contend that *Quill* did not address whether the current methods employed by online sellers to penetrate a State's market are sufficient to satisfy the physical presence requirement. Defendants contend that the sellers subject to Rule 129 have a "substantial nexus" with the State of Tennessee within the meaning of *Quill* and *Scholastic Book Clubs, Inc. v. Roberts*, 373 S.W.3d 558 (Tenn. Ct. App. 2011), *appeal denied* (Tenn. 2012), *cert. denied*, ___ U.S. ___, 133 S. Ct. 663 (2012).

4. The parties agree that Rule 129 presents a substantial legal issue under the U.S. Constitution and may create uncertainty for the sellers subject to Rule 129.

5. The parties agree that an Agreed Order preventing the State from enforcing Rule 129 pending the entry of a final judgment in this action would alleviate uncertainty in the marketplace.

6. The parties agree that entry of the Agreed Order does not preclude Plaintiffs' members or other sellers who are subject to Rule 129 from voluntarily complying with Rule 129. While this action is pending, Defendants may proceed with registration by and collection from sellers who voluntarily comply with Rule 129's requirements.

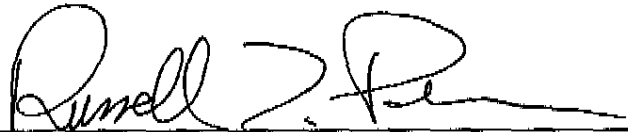
7. The parties agree that entry of the Agreed Order does not constitute a decision on the merits with respect to the legal issues raised in this action and does not make Plaintiffs prevailing parties with respect to any issue or issues.

8. The parties agree that Plaintiffs are not be required to post bond in connection with the Agreed Order.

9. The parties' Joint Motion is GRANTED.

10. It is hereby ORDERED that (a) Defendants are prohibited from enforcing Rule 129 pending a final judgment in this action; (b) Plaintiffs' members and other sellers subject to Rule 129 are not precluded from voluntarily complying with Rule 129 pending a final judgment in this action; (c) while this action is pending, Defendants may proceed with registration by and collection from sellers who voluntarily comply with Rule 129's requirements; (d) entry of this Agreed Order does not constitute a decision on the merits with respect to the legal issues raised in this action and does not make Plaintiffs prevailing parties with respect to any issue or issues; and (e) Plaintiffs are not required to post bond in connection with this Agreed Order.

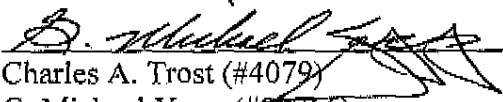
It is so ORDERED.



RUSSELL T. PERKINS, Chancellor, Part IV

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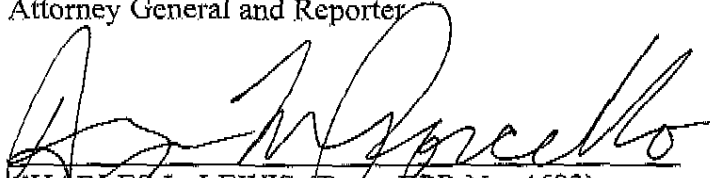
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