

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
CHRISTOPHER K. MUSYOKI,)	
SIMBA CONSULTANTS, INC., and)	
SAMUEL M. NGANGA, individually)	
and d/b/a AMAVIS ENTERPRISES,)	
)	
Defendants.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, the United States for its complaint against: 1) Christopher K. Musyoki; 2) Simba Consultants, Inc., and; 3) Samuel M. Nganga, individually and doing business as Amavis Enterprises (collectively, “the defendants”), alleges as follows:

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402(a), 7407, and 7408 to enjoin defendants, and anyone in active concert or participation with them, from:

- a. Acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves;

- b. Understating taxpayers' liabilities as prohibited by 26 U.S.C. § 6694;
- c. Using an Electronic Filing Identification Number (EFIN), Employer Identification Number (EIN), Taxpayer Identification Number (TIN), Preparer Tax Identification Number (P-TIN), social security number (SSN), or any other federally-issued identification number that belongs to another person(s) to file or remit federal tax returns or other tax-related documents;
- d. Allowing others to use a personal or business EFIN, EIN, TIN, P-TIN, SSN, or any other federally-issued identification number to prepare or file federal income tax returns or other tax-related documents;
- e. Engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, or 6701;
- f. Engaging in conduct that substantially interferes with the administration or enforcement of the internal revenue laws;

Jurisdiction and Venue

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to 26 U.S.C. §§ 7402, 7407 and 7408.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because all or a substantial portion of the activities occurred within this district.

Defendants

5. Christopher Musyoki resides in the Smyrna, Georgia area, within this judicial district, where he works as a paid tax return preparer. Since 2007, Musyoki has prepared at least 817 federal tax returns. Musyoki also owns and operates Simba Consultants, Inc.

6. Simba Consultants, Inc. (“Simba”) is a tax return preparation business owned and operated by defendant Christopher Musyoki. Simba operates in the Marietta, Georgia area, within this judicial district. Since 2007, Simba has prepared at least 820 federal tax returns.

7. Samuel Nganga resides in the Acworth, Georgia area, within this judicial district, where he works as a paid tax return preparer. Since 2007, Nganga has prepared at least 677 federal tax returns. Nganga also does business as Amavis Enterprises.

Misconduct By Christopher Musyoki and Simba Consultants, Inc.

8. The IRS audited 49 returns prepared by Musyoki and his company, Simba Consultants, Inc. On all 49 returns, the IRS discovered false information,

including claims for bogus tax credits and refunds, and understatements of income.

9. Since 2004, Musyoki and Simba Consultants, Inc. have continually and repeatedly claimed false earned income tax credits, child tax credits, education credits, telephone excise tax credits, and under-reported their customers' income.

10. To disguise his true identity when filing returns with the IRS, Musyoki improperly uses other return preparers' electronic filing identification numbers (EFIN), including EFINs belonging to defendant Samuel Nganga and to his brother, Ben Musyoki. On March 25, 2008, during an interview with the IRS, Christopher Musyoki admitted using EFINs belonging to Nganga and Ben Musyoki to file federal tax returns with the IRS.

11. On the 49 returns prepared by Musyoki and Simba Consultants, Inc., and audited by the IRS:

- a. The IRS assessed taxes against Musyoki's customers on an additional \$50,705 in unreported income;
- b. The IRS disallowed \$59,143 of earned income tax credits improperly claimed by Musyoki; and
- c. The IRS disallowed \$17,977.54 of child tax credits improperly claimed by Musyoki.

12. On at least four returns, Musyoki also claimed false fuel tax credits. The fuel tax credit under 26 U.S.C. § 6421(a) is available only to taxpayers who operate farm equipment or other vehicles for off-highway use. Additionally, the equipment or vehicles using the fuel must not be registered or be required to be registered for highway uses.

13. Fraudulently claiming entitlement to the fuel tax credit is a widespread tax scam that presents a serious enforcement problem for the IRS and is included among the IRS's "2010 'Dirty Dozen' Tax Scams" as it was in 2007 and 2008. As part of this scheme, defendants Musyoki and Simba Consultants, Inc., improperly claim the fuel tax credit for their customers' purported business fuel purchases.

14. The Internal Revenue Code provides a credit for gasoline and undyed diesel fuel used in an off-highway business use. 26 U.S.C. § 6421(a). Off-highway business use is any off-highway use of fuel in a trade or business or in an income-producing activity where the equipment or vehicle is not registered and not required to be registered for use on public highways. IRS Publication 225 provides the following examples of off-highway business fuel use: (1) in stationary machines, such as generators, compressors, power saws, and similar

equipment; (2) for cleaning purposes; and (3) forklifts trucks, bulldozers, and earthmovers. *See* IRS Publication 225, *Farmer's Tax Guide* (2008).

15. IRS Publication 510 defines a highway vehicle as any “self-propelled vehicle designed to carry a load over public highways, whether or not it is also designed to perform other functions.” A public highway includes any road in the United States that is not a private roadway. This includes federal, state, county, and city roads and streets. These highway vehicles are not eligible for the fuel tax credit. IRS Publication 510 provides the following as examples of highway vehicles, which are not eligible for the fuel tax credit: passenger automobiles, buses, motorcycles, and highway-type trucks and truck tractors. *See* IRS Publication 510, Excise Taxes, Chapter 2 (2009).

16. IRS Publication 510 provides the following example of an appropriate application of the fuel tax credit:

Caroline owns a landscaping business. She uses power lawn mowers and chain saws in her business. The gasoline used in the power lawn mowers and chain saws qualifies as fuel used in an off-highway business use. The gasoline used in her personal lawn mower at home does not qualify.

17. In short, the fuel tax credit does not apply to passenger cars or other vehicles that are registered or required to be registered to drive on public highways.

18. Using Samuel Nganga's EFIN to file it, Christopher Musyoki prepared a 2005 federal income tax return for Andrine W. Githinji. On Githinji's behalf, Musyoki claimed fuel tax credits for 16,208 gallons of off-highway business use of gasoline and 15,720 gallons of nontaxable use of undyed kerosene. Githinji, who reported wages of only \$28,200 and a business loss of \$21,233 for 2005, would have had to spend \$63,856 to purchase that amount of gasoline and kerosene at \$2 per gallon.

19. Again using Nganga's EFIN, Musyoki filed a 2005 federal income tax return on behalf of Peter N. Njoroge and Serah N. Ngethe. On their behalf, Musyoki claimed that they used 16,166 gallons of off-highway business use of gasoline on their return. To purchase that much gasoline, Njoroge and Ngethe would have had to spend \$32,332 at \$2 per gallon. The couple's reported adjusted gross income was only \$29,821 though.

Samuel Nganga's Misconduct

20. The IRS audited 17 returns prepared by Samuel Nganga. On all 17 returns, the IRS discovered false information, including bogus claims for tax credits and refunds, and understatements of income.

21. Since 2005, Nganga continually and repeatedly claimed false earned income tax credits, child tax credits, telephone excise tax credits, and under-reported his customers' income.

22. During an interview with the IRS, Nganga admitted that he allows other return preparers, including defendant Musyoki, to use his EFIN to file returns with the IRS, in exchange for a commission fee, paid to Nganga, equal to 10 percent of the return preparation fee paid by the customer.

23. On the 17 returns prepared by Nganga and audited by the IRS:

- a. The IRS assessed taxes against Nganga's customers on an additional \$27,364 in unreported income;
- b. The IRS disallowed \$21,990 of earned income tax credits improperly claimed by Nganga; and
- c. The IRS disallowed \$4,775 of child tax credits improperly claimed by Nganga.

Harm to the Public Caused by the Defendants

24. The defendants' customers have been harmed because they paid the defendants fees to prepare tax returns that substantially understate their correct tax liabilities. Many customers now face large income tax deficiencies and may be liable for sizeable penalties and interest.

25. The defendants' conduct harms the United States because their customers are under-reporting and under-paying their correct tax liabilities. On all of the returns audited by the IRS of Musyoki's, Simba's and Nganga's customers, the IRS has identified numerous problems, including continual and repeated claims of false fuel tax credits, false earned income tax credits, child tax credits, telephone excise tax credits, and underreporting of customers' income.

26. In addition to the direct harm caused by preparing tax returns that understate customers' tax liabilities, the defendants' activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

27. The defendants further harm the Government because the IRS must devote its limited resources to identifying the defendants' customers, ascertaining the correct tax liabilities, recovering any refunds erroneously issued, and collecting any additional taxes and penalties assessed.

Count I: Injunction under I.R.C. § 7407

28. The United States incorporates by reference the allegations in paragraphs 1 through 27.

29. Section § 7407 (26 U.S.C.) authorizes a district court to enjoin a tax preparer from:

- a. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695;
- b. Misrepresenting his or her eligibility to practice before the IRS, or otherwise misrepresenting his or her experience or education as a tax return preparer;
- c. Guaranteeing the payment of any tax refund or the allowance of any tax credit, and;
- d. Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that the preparer has engaged in such conduct and that injunctive relief is appropriate to prevent the recurrence of the conduct. If the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court further finds that a narrower injunction (i.e., prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal income tax preparer.

30. The defendants have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by willfully and knowingly preparing federal tax returns for customers that improperly understate customers' tax liabilities based on unreasonable, frivolous, and reckless positions, as detailed above.

31. Musyoki and Simba Consultants, Inc., have continually and repeatedly violated 26 U.S.C. § 6694 by preparing and filing federal income tax returns, claiming absurdly fraudulent fuel tax credits for customers not entitled to the credits.

32. Musyoki and Simba Consultants, Inc., have continually and repeatedly violated 26 U.S.C. § 6695 by failing to furnish the correct return preparer identification numbers as required by 26 U.S.C. § 6109(a)(4). During an interview with the IRS, Musyoki admitted using EFINs assigned to other return preparers.

33. The defendants have continually and repeatedly engaged in fraudulent or deceptive conduct which substantially interferes with the proper administration of the federal tax laws. Nganga admitted to the IRS that he allows Musyoki (and others) to use his EFIN to file returns with the IRS in exchange for a 10 percent commission fee.

34. The defendants' repeated and continual violations of 26 U.S.C. §§ 6694 and 6695 fall within 26 U.S.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under 26 U.S.C. § 7407.

35. If the defendants are not enjoined, they are likely to continue to file false and fraudulent federal tax returns and engage in additional fraudulent conduct.

36. Defendants' continual and repeated conduct subject to an injunction under 26 U.S.C. § 7407, including the flagrant misuse of the fuel tax credit and fraudulent use of identifying numbers on returns, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent their interference with the proper administration of the internal revenue laws. Thus, the defendants should be permanently barred from acting as return preparers.

Count II: Injunction under I.R.C. § 7408

37. The United States incorporates by reference the allegations in paragraphs 1 through 36.

38. Section 7408 (26 U.S.C.) authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either 26 U.S.C. § 6700 or § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

39. Section 6701(a) (26 U.S.C.) penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

40. By claiming false fuel tax credits, Musyoki and Simba Consultants, Inc., knowingly and willfully prepared false federal income tax returns for customers that they knew would understate the customers' correct tax liabilities. This conduct, therefore, is subject to penalty under 26 U.S.C. § 6701.

41. By under-reporting their customer's income, claiming false earned income tax credits, telephone excise tax credits, and child tax credits, the defendants knowingly and willfully prepared false federal income tax returns for customers that they knew would understate the customers' correct tax liabilities. This conduct, therefore, is subject to penalty under 26 U.S.C. § 6701.

42. If the Court does not enjoin defendants, they are likely to continue to engage in conduct subject to penalty under 26 U.S.C. § 6701. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

Count III: Injunction Under 26 U.S.C. § 7402(a) Necessary to Enforce the
Internal Revenue Laws

43. The United States incorporates by reference the allegations of paragraphs 1 through 42.

44. Section 7402 (26 U.S.C.) authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

45. The defendants, through the actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Defendants have intentionally filed false fuel tax credits, under-reported income, claimed false tax credits, and failed to furnish the proper return preparer identification numbers, as required by 26 U.S.C. § 6109(a)(4).

46. Unless enjoined, the defendants are likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If the defendants are not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them.

47. The United States will suffer irreparable injury if the defendants are not enjoined, which outweighs the harm to the defendants of being barred from acting as a return preparers.

48. Enjoining the defendants is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop the defendants' illegal conduct and the harm it causes the United States.

49. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the United States prays for the following:

A. That the Court find that the defendants have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and have continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting the defendants from acting as federal tax return preparers;

C. That the Court find that the defendants have engaged in conduct subject to a penalty under 26 U.S.C. § 6701, and that injunctive relief under 26 U.S.C. § 7408 is appropriate to prevent a recurrence of that conduct;

D. That the Court find that the defendants have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and 26 U.S.C. § 7402(a);

E. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting the defendants, and all those in active concert or participation with them, from:

1. Acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves;
2. Understating taxpayers' liabilities as prohibited by 26 U.S.C. § 6694;
3. Using an Electronic Filing Identification Number (EFIN), Employer Identification Number (EIN), Taxpayer Identification Number (TIN), Preparer Tax Identification Number (P-TIN), social security number (SSN), or any other federally-issued identification number that belongs to another person(s) to file or remit federal tax returns or other tax-related documents;
4. Allowing others to use a personal or business EFIN, EIN, TIN, P-TIN, SSN, or any other federally-issued identification number to

prepare or file federal income tax returns or other tax-related documents;

5. Engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, or 6701;
6. Engaging in conduct that substantially interferes with the administration or enforcement of the internal revenue laws;

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring the defendants to contact, within fifteen days of the Court's order, by United States mail and, if an e-mail address is known, by e-mail, all persons for whom they prepared federal tax returns since January 1, 2004 to inform them of the permanent injunction entered against them;

G. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring the defendants to produce to counsel for the United States, within fifteen days of the Court's order, a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom they prepared federal tax returns since January 1, 2004;

H. That the Court retain jurisdiction over the defendants and over this action to enforce any permanent injunction entered against them;

I. That the United States be entitled to conduct discovery to monitor the defendants' compliance with the terms of any permanent injunction entered against them; and

J. That the Court grant the United States such other and further relief, including costs, as is just and reasonable.

DATED: August 26, 2010

Respectfully submitted,

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