

93-016

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U.S. DISTRICT COURT
FOR JUDICIAL DISTRICT

AUG 3 10 53 AM '94

LIMITED ACTIONS DIV
WYOMING, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION NINE

STATE OF KANSAS, ex rel.)
 ROBERT T. STEPHAN, Attorney General,)
)
 Plaintiff,)
)
 vs.)
)
 PINPOINT DIRECT, INC. d/b/a Cash)
 and Merchandise Claim Department,)
)
 Defendant.)

Case No. 93 CV 951

(Pd)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 3rd day of August, 1994, the plaintiff's petition for approval of consent judgment comes before the court for consideration under K.S.A. 1992 Supp. 50-632(b). The State of Kansas, ex rel. Robert T. Stephan, Attorney General, appears by and through Kathy Greenlee, Assistant Attorney General. The defendant appears by and through Harold S. Youngentob of Goodell, Stratton, Edmonds & Palmer, L.L.P.

Whereupon, the parties advise the court that they have stipulated and agreed to the following matters:

1. Robert T. Stephan is the Attorney General of the State of Kansas.
2. Defendant is a Nevada corporation with its principal place of business at 4315 S. Industrial Road, Suite 200, Las Vegas, NV 89103. Defendant admits the court has jurisdiction over it and the subject matter.

3. The Attorney General alleges that certain acts and practices by the defendant are violations of the Kansas Consumer Protection Act, K.S.A. 50-623 et seq.

4. Defendant does not admit any wrongdoing and this Consent Judgment does not constitute any evidence or admission regarding the existence or non-existence of any issue or fact alleged in the Petition or operate as an admission of ~~fact or liability~~ as to any matter or thing for any purpose by or against defendant.

5. Defendant agrees to make available and/or disclose the provisions of the consent judgment to its employees, agents and representatives.

6. Defendant agrees to refrain from and to be enjoined from doing any of the following in connection with its contest solicitations:

i. Requesting any information from consumers concerning their age or year of birth where such request would reasonably tend to show an intent to obtain names of individuals over the age of 50 years;

ii. Ordering any mailing lists from list brokers or others on the basis of the age of consumers appearing on such lists where such order would reasonably tend to show an intent to obtain names of individuals over the age of 50 years;

iii. Selling or otherwise dealing names of consumers in defendant's possession on the basis of the age of such consumers where such activity would reasonably tend to show an

intent to deal in the names of individuals over the age of 50 years;

iv. Accepting more than \$250 from any consumer in connection with a single contest unless the defendant first informs the consumer in writing the total amount the consumer has paid and thereafter receives from the consumers a written acknowledgement that such consumer wishes to submit additional entries, including at additional cost;

v. Employing among the various levels of play more than one creative puzzle format in any contest. By way of example, if the initial solicitations contains a word puzzle, then all levels of that contest shall contain word puzzles, including the final round tie-breaker. Similarly, if the initial solicitation contains a mathematical puzzle, then all levels of that contest shall contain mathematical puzzles, including the final round tie-breaker; or

vi. Sending envelopes to consumers which imitate or closely resemble or give the appearance of emanating from a governmental agency.

7. In all of its contest solicitations, Pinpoint Direct, Inc. (or such other d/b/a as PDI may operate) shall clearly and conspicuously in 10 pt. type disclose all material facts, including, but not limited to the following:

i. The number of rounds and tie-breakers in which a consumer must participate to win that specific contest and an explanation that the contest questions increase in difficulty

as the contest progresses. The following statement (or its equivalent in substance) shall be deemed in compliance with this provision upon insertion of the appropriate number of levels where indicated: "The contest consists of a maximum of [insert number] levels of increasingly difficult puzzles, the final level being extremely difficult."

ii. The maximum number of contestants to be solicited and the anticipated number of contestants who will compete in each of the preliminary rounds and the final round. The anticipated number of contestants shall be listed in whole numbers, not percentages. The following statement (or its equivalent in substance) shall be deemed in compliance with this provision upon insertion of the appropriate number of contestants for each round of the contest: "Based on prior contests, PDI anticipates that [insert number] of contestants will correctly solve the first level; [insert number] will correctly solve the second level; [insert number] will correctly solve the third level; . . ." (repeat for all levels, including final rounds).

iii. The closing date of the specific contest.

iv. An offer to refund entry fees. The following or similar statement shall be deemed in compliance with this provision: "COMPLETE SATISFACTION MONEY-BACK GUARANTEE: If you are not completely satisfied, it has been and continues to be company policy that contestants may request a refund of their entry and bonus fees at any time they are an eligible

player prior to the completion of the contest. If you have any questions, send a note and PDI will be more than happy to provide a refund or otherwise assist you. Please send all correspondence to: Customer Service, [insert address]."

v. If a solicitation has a multi-level prize structure in which the amount of the prize is dependent upon the amount the consumer pays, the total amount the consumer must pay in order to compete for each prize.

vi. A statement describing the nature of bonus prize money opportunities, including the fact that bonuses are not required to compete and have no bearing on final scores or contest eligibility.

vii. A statement indicating that although contestants may receive more than one invitation into the contest, multiple entries do not increase the odds of winning and are allowed but not recommended.

viii. The following or similar statement with regards to the use of consumers names and demographic data: "IMPORTANT CONSUMER INFORMATION: The information you give about yourself (name, phone number, credit card status, etc.) may be sent to companies not affiliated with PDI and you will receive other promotional materials and solicitations from other companies. If you prefer that your name and other information not be given to other companies, please let us know by mail or by telephone and we will remove your name from this group."

ix. If a consumer requests that his or her name not be given to other companies as stated in the disclosure provided above, defendant shall use its best efforts to remove such consumer's name from its records within sixty days following such request. Upon being made aware of such additional mailings, defendant will use its best efforts to purge the consumer's name from its mailing records.

x. Words like "semi-finalist" or "finalist" may not be used to describe consumers in later rounds or levels of a contest solicitation, unless the number of persons [or people] with whom they are tied is disclosed. The following statement (or its equivalent in substance) shall be deemed in compliance with this provision: "As a [insert finalist, semi-finalist, etc] you are tied with [insert number] people."

8. The disclosures in paragraph 7 of this Consent Judgment must be printed in no smaller than 10 pt. type and may appear in the Official Rules accompanying a solicitation. The main text of any solicitation must contain the following or similar statement in a typesize not less than the predominant type size used in the main text of the solicitation: "Please read the Official Rules. They contain important consumer information."

9. Defendant shall, within sixty days following court approval of this Consent Decree, mail the attached letter (Exhibit A to this Consent Decree) to each Kansas resident who had paid more than \$250.00 to defendant from April 1, 1991 through the entry date of this Consent Decree. For purposes of verification, defendant

shall provide the Office of the Attorney General with an affidavit of mailing indicating the date upon which copies of the attached letter have been mailed.

10. Defendant shall refund all fees paid to defendant by a Kansas resident within sixty days of receiving a request by any such Kansas resident for a refund pursuant to paragraph 9 of this Consent Decree. For purposes of verification, defendant shall provide the Office of the Attorney General with a copy of each refund provided pursuant to the provisions of paragraphs 9 and 10.

11. Defendant agrees to use its best efforts to resolve all consumer complaints to the reasonable satisfaction of the Office of the Attorney General after the date of this consent judgment whether brought to defendant's attention by the State of Kansas or by consumer complaining directly to the defendant. Defendant shall apprise the State of Kansas, through the plaintiff, in a simple and concise manner, of the disposition of those complaints and disputes within thirty days after resolution.

12. The obligations contained herein shall apply to Pinpoint Direct, Inc. and any entities through which it operated under an assumed name together with their respective agents, successors and/or assigns.

13. Defendant agrees and is obligated to pay \$20,000 in investigation fees and expenses to the Attorney General of the State of Kansas, pursuant to K.S.A. 1993 Supp. 50-636(c). Defendant agrees and is obligated to pay \$10,000 to the State of Kansas, pursuant to K.s.A. 1993 Supp. 50-636(a). Defendant agrees

and is obligated to make voluntary contributions totaling \$10,000 to charitable organizations which are to be designated by the Attorney General.

14. Defendant agrees to pay the amounts listed above by certified check according to the following schedule: \$10,000 upon signing the agreement, \$10,000 to be paid within 30 days after this order is filed, and thereafter payment of \$5,000 a month for four months. Monthly payments are due on the first business day of the month, beginning September 1, 1994.

15. The provisions of this Consent Decree govern the actions of defendant only insofar as defendant mails or otherwise offers its contest solicitations to consumers residing within the State of Kansas.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of the court.

IT IS FURTHER ORDER, ADJUDGED AND DECREED that pursuant to the Kansas consumer protection act, and the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the consent judgment and adopts the same as the order of the court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendant will pay all court costs and filing fees.

IT IS SO ORDERED.

/s/ District Court Judge
District Court Judge

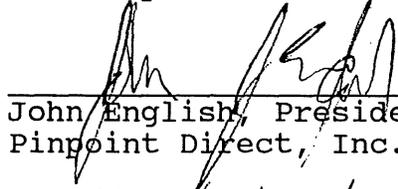
Approved by:



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Attorney General



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