

E-05-000026

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FILED BY CLERK  
K.S. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS.

2005 JUL 25 P 4:43

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 12

STATE OF KANSAS, ex rel.  
PHILL KLINE, Attorney General,

Plaintiff,

vs.

Case No. 05-C-925

ON-LINE YELLOW PAGES, INC., d/b/a  
YELLOWPAGESCOMPANY,

Defendant.

(Pursuant to K.S.A. Chapter 60)

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 25<sup>th</sup> day of July, 2005, the Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b) (K.S.A. 2002 Supp.). The Plaintiff, State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through Joseph N. Molina, Assistant Attorney General. Defendant On-Line Yellow Pages, Inc., d/b/a YellowPagesCompany, appears by and through Stephen L. Martino.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

**PARTIES, JURISDICTION AND VENUE**

1. Phill Kline is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from the

statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

3. Defendant is a foreign corporation organized under the laws of the State of Delaware. The principal office of the corporation is located at 1777 Newport Blvd., Costa Mesa, California 92627.

5. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

6. Defendant stipulates and admits that venue is proper in this Court.

7. Defendant is a supplier within the definition of K.S.A. 50-624(j) (K.S.A. 2002 Supp.) and engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c) (K.S.A. 2002 Supp.).

8. Defendant engaged in business as a seller of advertisements and listings, sold via telephone and direct mail solicitations to Kansas consumers.

### **ALLEGATIONS**

9. Beginning in July of 2003, Defendant, through its agents, employees and representatives, included businesses in Kansas in its direct mail program.

10. The Attorney General alleges that Defendant engaged in acts and practices in violation of the KCPA, specifically, but not limited to, K.S.A. 50-6,103 which acts and practices include, but are not limited to:

a. Employing a check, draft or other negotiable instrument that constitutes authorization to change or add to the consumer's accounts any supplemental telecommunications services.

11. Defendant, by entering into this Consent Judgment, makes no admission of

liability as to any practice set forth in paragraph ten (10). The parties agree that this Consent Judgment constitutes a full and final resolution of all claims that the Attorney General could pursue under the Kansas Consumer Protection Act relating to the acts and practices alleged in paragraph ten (10), and which occurred prior to the date of signing this Consent Judgment.

12. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

### **INJUNCTIVE RELIEF**

13. Defendant agrees to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraph ten (10), herein and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

14. Defendant agrees to be permanently enjoined from submitting or causing to employ a check, draft or other negotiable instrument that constitutes authorization to change or add to the consumer's accounts any supplemental telecommunications services, as defined in K.S.A. 50-6,103 (K.S.A. 2002 Supp.).

15. Defendant shall, at a minimum, comply with all Federal laws, statutes, rules and regulations, including but not limited to 47 C.F.R. 64.1100, *et seq.*, as they now exist or as amended in the future and all Kansas laws, statutes, rules and regulations, as they now exist or as amended in the future.

16. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms or this

Consent Judgment.

17. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director and employee of management level that is involved in Kansas operations of the Defendant within ten (10) days of signing the Consent Judgment.

18. Defendant agrees to maintain all records of authorization that have been obtained from Kansas consumers when a change or addition of any supplemental telecommunications service has been made on the Kansas consumer's account(s) for a period of three (3) years and to allow the Attorney General to inspect such records in the future.

**CONSUMER RESTITUTION**

19. Defendant agreed to provide a full refund for the entire length of time the service was received, for each customer listed in Exhibit 1, attached hereto and incorporated herein as though fully set forth herein, to the extent such full refund has not already been received by each consumer from the Defendant. Any refunds shall be provided to the Office of the Attorney General in checks made payable to such consumers within ten (10) days of signing this Consent Judgment. If the complainant has not paid the Defendant and has outstanding bills, the Defendant will credit the account so that it has a zero balance. The Defendant also agrees that no negative credit information has been or will be reported to any credit reporting agency for nonpayment of a bill from the Defendant for such complainants. The Defendant agrees to take all actions necessary to remove and correct any negative information already reported related to a switch by the Defendant and subsequent billing for such complainants, and agree to forego any collection of present

outstanding amounts owed to the Defendant by such complainants.

20. For any complaints filed with or supplied to the Office of the Attorney General within ninety (90) days of the entry of this Consent Judgment, which complaints are meritorious as determined by the Office of the Attorney General, regarding the addition of the Defendant's service to the complainant's telephone bill occurring prior to the date of this Consent Judgment, the Defendant agrees to resolve such complaints by providing relief consistent with the type of relief provided to consumers in paragraph nineteen (19) above or as provided under federal or state law, whichever provides the greatest relief for the consumer.

#### **INVESTIGATIVE FEES AND CIVIL PENALTIES**

21. Defendant agrees to pay to the "Office of the Attorney General" of the State of Kansas \$5,000.00 for investigation fees and expenses and civil penalties pursuant to K.S.A. 50-632 and 50-636 (K.S.A. 2002 Supp.). Payment shall be made in no more than four monthly installments of \$1,250.00.

22. The Defendant further agrees that this judgment shall not be dischargeable in bankruptcy pursuant to the United States Bankruptcy Code, specifically 11 U.S.C. 523(a)(2)(A) and (a)(7).

#### **OTHER PROVISIONS**

23. The provisions of this Consent Judgment will be applicable to the Defendant, and every employee, agent or representative of the Defendant.

24. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders

and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

25. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

26. Compliance with this Consent Judgment does not relieve the Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

27. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of the Defendant nor shall the Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

28. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of Defendant. Defendant further represents

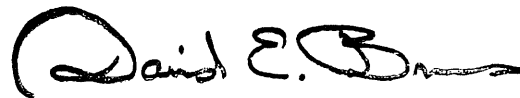
that they have each had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

**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 fact and conclusions of law of the Court and any monies owed hereunder by Defendant immediately becomes a judgment upon filing.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant and in favor of Plaintiff in the amount of \$5,000.00.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b) (K.S.A. 2002 Supp.), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

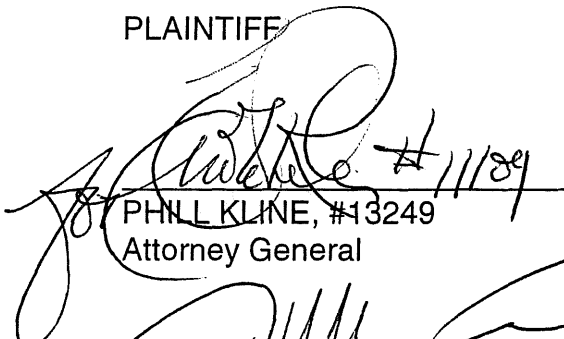
**IT IS SO ORDERED.**



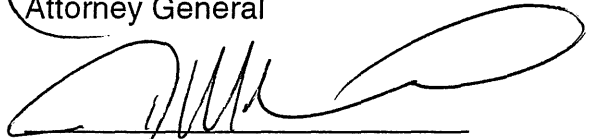
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DISTRICT COURT JUDGE

Prepared by:

PLAINTIFF



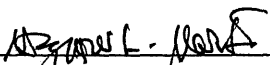
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APPROVED BY:

  
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