

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

2008 MAR 11 PM 1 01

Joseph N. Molina, #20934
Assistant Attorney General
Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT
Division 7**

STATE OF KANSAS, ex rel.,)
STEPHEN N. SIX, Attorney General,)
)
Plaintiff,)

vs.)

RADICAL PERSSON, INC.)
d/b/a EChurch Network and Ilab Technologies,)
20422 Beach BLVD., Suite 210)
Huntington Beach, CA 92648,)

and)

LARS G. PERSSON,)
20321 Wind Cave Lane)
Huntington Beach, CA 92646-5342,)

and)

ILD TELECOMMUNICATIONS, INC,)
16200 Addison Road)
Addison, TX 75001,)

Defendants.)

Case No. 07C 423

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

Journal Entry of Consent Judgment

NOW on this 10th day of March, 2008, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Stephen N. Six, Attorney General, appears by and through Joseph N.

Molina, Assistant Attorney General. Defendant ILD Telecommunications, Inc., appears by and through Arthur E. Palmer of Goodell, Stratton, Edmonds & Palmer LLP .

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

THE PARTIES

1. Stephen N. Six is the duly elected, qualified, and acting 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, ILD Telecommunications, Inc., d/b/a ILD Teleservices, Inc., is a Delaware corporation with its headquarters located at 5000 Sawgrass Village Circle, Suite 30, Ponte Verda Beach, Florida 32802-5017..
4. ILD is a third party billing aggregator, acting as a billing and collection agent for numerous service providers of telecommunications services. As a billing aggregator, ILD acts on behalf of the Defendants by functioning as an intermediary between local phone companies or local exchange carriers and the Defendants which seek to use telephone bills as a mechanism to obtain payments from consumers.
5. At all times relevant hereto, and in the ordinary course of business, Defendant worked as a billing aggregator. ILD placed charges on Kansas consumers' telephone bills on behalf of Defendant Radical Perrson, Inc., and Defendant Lars Perrson.

JURISDICTION AND VENUE

6. Paragraphs one through five above are hereby incorporated by reference.
7. The Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*
8. ILD is subject to the jurisdiction of the court under the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a) and K.S.A. 60-308(b)(1).
9. Venue is proper in the Third Judicial District of Kansas, Shawnee County under K.S.A. 50-638(b).
10. ILD stipulates and waives any objection to venue in Shawnee County for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

ALLEGATIONS COMMON TO ALL COUNTS

11. Paragraphs one through ten above are hereby incorporated by reference.
12. The Attorney General alleges that ILD engaged in the following acts and practices:
 - a. On April 13, 2001 ILD entered into a Bill Forwarding and Collections Agreement ("B&C Agreement"), with the Defendants Radical Perrson, Inc. and Lars Perrson. Under the B&C Agreement ILD was authorized to submit charges to Local Exchange Carriers on behalf of Radical Perrson, Inc. and Lars Perrson..
 - b. On April 23, 2004, the Attorney General's Office issued a subpoena duces tecum to ILD Telecommunications, Inc. ILD responded by stating that 193 Kansas businesses, a number of which were consumers as defined by K.S.A. 50-624(b), were billed a total of \$29,692.80 by ILD on behalf of eChurch Network, while 444 Kansas telephone numbers were billed a total of \$36,918.00 by ILD on behalf of iLab Technologies. Both eChurch Network and iLab Technologies are entities run and operated by Defendant Radical Perrson, Inc.

- c. ILD knew or should have known that the RPI's business practices were deceptive in nature based upon its own records that indicated that \$7,327.49, 25% of all amounts billed on behalf of eChurch Network, was credited back by ILD, the LEC or through eChurch Network itself. Out of the 193 accounts reported by ILD, 108 received a credit from ILD, their Local Exchange Carrier and/or eChurch Network.
- d. ILD knew or should have known that the RPI's business practices were deceptive in nature based upon its own records that indicated that \$13,579.72, 36% of all amounts billed on behalf of iLab Technologies, was credited back by either ILD, their Local Exchange Carrier or through iLab Technologies itself. Out of the 444 accounts reported by ILD, 214 received a credit from ILD, their Local Exchange Carrier and/or iLab Technologies.

13. ILD denies the allegations made in paragraph 12 herein and maintains that to the extent it forwarded alleged unauthorized charges, it did so without knowledge and at the behest of Radical Perrson, Inc. ILD further alleges that to the extent this occurred, it was contrary to ILD's policy and procedures designed to detect and prevent cramming. While ILD specifically denies that it engaged in cramming, ILD is committed to strengthening its anti-cramming efforts so that should a merchant-customer for whom ILD provides bill forwarding services engage in cramming, ILD can better monitor and take action with respect to such merchant-customer. Accordingly, in order to settle this matter without further litigation and without admission of liability, the State and ILD hereby stipulate to the entry of judgment in the above matter as follows:

INJUNCTIVE RELIEF

13. ILD voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law but denies any culpability for alleged violations of the Kansas Consumer Protection Act.

14. ILD agrees to implement the following practices, the purpose of which is to prevent the placement of unauthorized charges on Kansas consumer's telephone bills on behalf of ILD's merchant-customers:

- a. ILD shall thoroughly screen prospective new merchant-customers seeking to use ILD's bill forwarding and collection services. In addition to detailed information regarding the types of transactions for which ILD would be providing bill forwarding services and any scripts and marketing materials to be used to solicit sales by the merchant-customers. ILD shall require new merchant-customers, among other things, to provide the following information for at least three previous three years: the number and disposition of any enforcement actions, investigations, or complaints initiated by state or federal enforcement agencies against the business or any of its directors, principles, owners or affiliates that were filed or pending; any previous names utilized by the business; and any affiliated business entities. In addition, ILD shall also conduct its own reasonable inquiry, including internet searches, into the background of proposed merchant-customer and their directors, principals, owners and affiliates, including taking reasonable steps to ascertain consumer complaints about the business practices of such person or entities.
- b. ILD shall also require its merchant-customers to notify ILD of any subsequent enforcement actions, other lawsuits, or investigations related to its business activities. Whenever ILD shall have reasonable grounds for concern about a merchant-customer's operations ILD shall be obligated to undertake its own reasonable inquiry – including Internet searches-into the existence of relevant complaints, investigations, enforcement actions or other litigation.
- c. When accepting a new merchant-customer who, in ILD's reasonable estimation, had previous year's gross revenues of less than \$10,000,000.00 ILD shall institute a probation period of at least six months beginning the month following the first billings, during which ILD shall be the primary inquiry source, I.E. ILD customer service representatives will handle all customer inquires.
- d. ILD shall at all times maintain full authority on behalf of all of its merchant-customers to issue credits or make refunds for cramming complaints and shall do so upon receipt of a cramming complaint. ILD shall use its best efforts to maintain such reserves as it reasonably calculates are necessary to resolve such complaints.

- e. ILD shall implement a record-keeping system where it is the source of primary inquiries, with the capability of logging and compiling cramming complaints on a merchant-customer specific basis. As part of this system, ILD shall add, "cramming" as one of its "reason codes" its customer service personnel have available to them for characterizing the subject matter of customer calls, and its customer service personnel shall be trained to recognize and categorize cramming complaints. A customer shall be considered to make a cramming complaint if the customer asserts that the customer did not authorize the charge or receive the good or service for which the charge was made, or misleading conduct on the part of the merchant-customer or any person soliciting on behalf of the merchant-customer, unless the merchant-customer provides ILD evidence establishing that the customer authorized the transaction and, if the customer has claimed deceptive or misleading conduct, that no such conduct occurred. ILD's record-keeping system shall also be capable of logging the number of customer calls routed to the merchant-customer or a third party customer service number without any interaction with an ILD employee.
- f. ILD shall require its merchant-customers to notify it of all cramming complaints received by the merchant-customer related to bill forwarding services performed by ILD, and shall take reasonable steps to ascertain the number and nature of all cramming complaints from any local exchange carrier which transmits bills to consumers based on billing data from one of ILD's merchant-customers forwarded by ILD, provided that such information is available from the local exchange carrier.
- g. ILD supervisors shall regularly review reports, generated by the record-keeping system, together with reports of complaints made either to the merchant-customer or to the local exchange carrier, to identify and address any problem accounts. ILD supervisors shall also monitor ILD customer service representatives to ensure that customer inquiries and customer complaints are being properly recorded in ILD's database.
- h. If during any calendar month, more than one percent (1%) of the customers being billed through ILD's bill forwarding service on half of a merchant-customer complain of cramming (regardless of the entity to whom the complaint is made), ILD shall take reasonable and appropriate measures to address the problem, which shall include the following:

- i) promptly communicate with the merchant-customer to obtain an explanation of the complaint level.
 - ii) require the merchant-customer to institute and action plan involving immediate measure to reduce the complaint level. Such plans may include modifications of telemarketing scripts or other marketing materials; enhanced monitoring of solicitations and verifications; disciplinary actions; use of mailed written notices to consumers prior to the initiation of billing notifying them of the charges and the means of canceling the service subscription; the assumption by ILD of the role of primary inquiry service for customer service contacts involving merchant-customers; and the institution of other appropriate measures to ensure that the consumer has authorized the charge; and
 - iii) enhanced scrutiny by ILD managers of the merchant-customer's billing activity for at least the next two months following each month in which the one percent (1%) threshold was exceeded
- i. ILD shall cease providing bill forwarding services on behalf of a merchant-customer if the level of cramming complaints remains above one percent (1%) for any three month period (whether consecutive or non-consecutive) during any six-month (rolling) period. Nothing in this stipulation limits ILD's ability to terminate a contract with a merchant-customer immediately if the merchant-customer's billings generate high level of cramming complaints and ILD concludes wither that the merchant-customer has engaged in fraudulent or deceptive practices or that there is no satisfactory assurance that the practices that resulted in the complaints will be promptly corrected.
 - j. To the extent that any of the foregoing obligations require modifications to ILD's standard Bill Forwarding and Collections Agreement ("B&C Agreement"), such modifications shall be implemented in the new B&C Agreements entered into after the effective date of the injunction and in existing B&C Agreements at the time of the next renewal.

15. ILD shall promptly provide refunds to all Kansas consumers who have filed complains about RPI with the State, using the funds ILD is holding that were

generated by payments collected from RPI customers. Except for the payment of its reasonable attorney's fees incurred in the defense of this litigation and other deductions to which ILD is entitled pursuant to the terms of the B&C Agreement entered into between ILD and RPI. ILD shall hold the remainder of such funds pending resolution of this lawsuit, stipulations of the parties as to the proper disposition of the funds, or order of the court.

16. ILD also agrees to pay to the Kansas Attorney General's Office \$2,500.00 for investigative fees and expenses pursuant to K.S.A. 50-632 and 50-636 (K.S.A. 2002 Supp.). Payment shall be made by a cashier's check and shall be delivered to the Attorney General of the State of Kansas at the time of signing the Consent Judgment.

17. The terms of this agreement shall apply to ILD as well as its officers, employees, agents, assigns, successors and affiliates. ILD also agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives within five (5) days of signing the Consent Judgment.

18. ILD agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure for the purpose of avoiding compliance with the terms of this Consent Judgment.

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

20. 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.

21. 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.

22. Compliance with this Consent Judgment does not relieve 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.

23. 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 Defendant, nor shall 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.

24. The terms of this injunction shall expire after four years from the entry of this Judgment, unless during this period ILD no longer provides billing and collection services for Kansas consumers doing business with ILD's merchant-customers. During

any period in which ILD is not engaged in any billing and collection services involving Kansas consumers, it shall not be bound to comply with the terms of this injunction.

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.

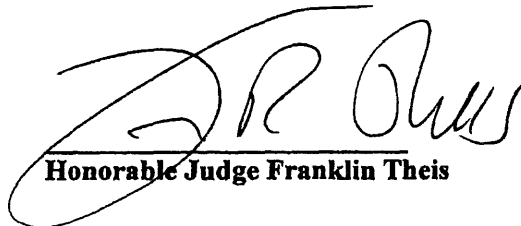
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ILD is enjoined from the violative acts and practices set out above and that the ILD agrees to implement the corrective and preemptive requirements as outlined.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ILD pay all costs associated with this action.

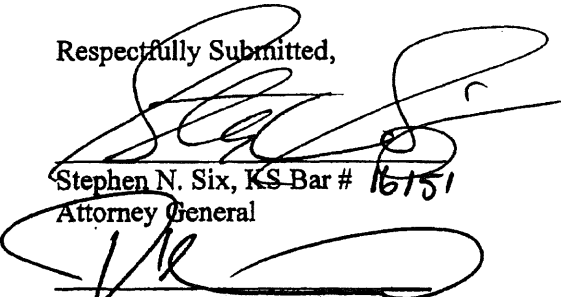
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ILD also agreed to pay to the Kansas Attorney General's Office \$2,500.00 for investigative fees and expenses pursuant to K.S.A. 50-632 and 50-636.

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), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

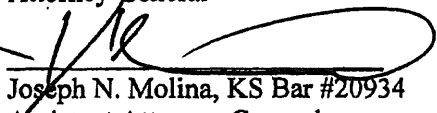
IT IS SO ORDERED


Honorable Judge Franklin Theis

Respectfully Submitted,

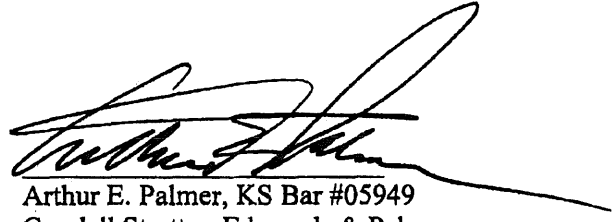


Stephen N. Six, KS Bar # 16151
Attorney General



Joseph N. Molina, KS Bar #20934
Assistant Attorney General
Office of the Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
785.296.3751

Attorneys for Plaintiff



Arthur E. Palmer, KS Bar #05949
Goodell Stratton Edmonds & Palmer
515 S. Kansas Ave.
Topeka, KS 66603

Attorney for Defendant