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KS. DISTRICT COURT
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TOPEKA, KS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

STATE OF KANSAS, *ex rel.*)
STEVE SIX, Attorney General,)
)
Plaintiff,)
)
v.)
)
CAMBRIDGE WHO'S WHO)
PUBLISHING, INC.)
)
)
Defendant.)

Case No. 09C1530

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 20th day of May, 2010, Plaintiffs Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, State of Kansas, *ex rel.* Steve Six, Attorney General, appears by and through Meghan E. Barnds, Assistant Attorney General. Defendant Cambridge Who's Who Publishing, Inc. appears through Clinton E. Patty.

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

PARTIES, JURISDICTION AND VENUE

1. Steve Six 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, ("KCPA") K.S.A. 50-623 *et seq.*

3. Defendant Cambridge Who's Who Publishing, Inc. (hereinafter "Defendant") is a corporation organized and existing under the laws of New York.

4. Defendant is not registered with the Kansas Secretary of State.

5. Defendant has a principal place of business at 498 RexCorp Plaza, West Tower, 4th Floor, Uniondale, New York 11556.

6. All references to Defendant herein include acts performed individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

7. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties, pursuant to K.S.A. 50-623 *et seq.*

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

9. Defendant is a supplier within the definition of K.S.A. 50-624(j).

10. Defendant is engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

DEFINITIONS

11. "Advertise," "Advertisement," or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure,

newspaper, magazine, leaflet, mailer, letter, catalogue, poster, billboard, point-of-purchase display, electronic mail, website, homepage, film, radio, television, or any other medium.

12. "Clear and Conspicuous" or "Clearly and Conspicuously," shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A clear and conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be present in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

13. "Consumer," "Client," or "Customer" shall mean any individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes, as defined in K.S.A. 50-624.

14. "Defendant" shall mean Cambridge Who's Who Publishing, Inc., its employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.

15. "Represent" means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This

definition applies to other forms of the word "represent," including without limitation "representation," "misrepresent," and "misrepresentation."

ALLEGATIONS

16. Defendant is engaged in the advertising, solicitation and sale of listings in, and memberships to, the Cambridge Who's Who Registry (hereinafter "the Registry"), including services related to members' use of the Registry.

17. The aforementioned advertisements, solicitations and sales are made to consumers across the United States, including consumers in Kansas.

18. Defendant mailed letters and application cards to consumers which state "[t]here is no charge or obligation for qualified individuals to be listed in the online registry."

19. The Plaintiff alleges that Defendant, while offering memberships for sale, engaged in acts and practices in violation of the KCPA, specifically, but not limited to, K.S.A. 50-626, 50-627, and 50-672. The Plaintiff alleges the following:

- a. Defendant willfully failed to state a material fact on the application cards mailed to consumers, specifically that membership charges may apply and that Defendant mailed the application cards with the intent to sell Cambridge memberships to consumers;
- b. Defendant failed to disclose material information over the phone, related to Defendant's refund and cancellation policies prior to submitting a membership charge to each consumer's credit card.

20. Defendant denies the allegations. More specifically, Defendant affirmatively states that (a) prospective new members can take advantage of a free membership, as many

Cambridge members take advantage of the free membership opportunity; (b) free membership is openly and notoriously advertised and made available to prospective new members; (c) Cambridge application cards disclose all material facts; (d) the members Cambridge seeks in Kansas are not "consumers" as that term is defined by K.S.A. 50-671(a), as the services and good offered by Cambridge are primarily for use by professionals and not for personal, family, or household purposes.

21. Cambridge has cooperated fully in Plaintiff's investigation of this matter.

22. While Cambridge denies the allegations, Cambridge agrees to enter into this Consent Judgment without trial or adjudication of any issue of fact or law, and does so solely for the purposes of settlement.

INJUNCTIVE RELIEF

23. Defendant agrees to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraph nineteen (19) 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. As a means to comply with this section, the parties agree that Defendant shall include as part of its sales presentation to Kansas residents the following: "All sales are final, subject to the Company refund policy, available on our website at www.cambridgeregistry.com."

24. Defendant agrees to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.* and the Kansas Telemarketing Fraud Act, K.S.A.

50-671, *et seq.*

25. Defendant agrees to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division pertaining to the KCPA violations alleged herein.

26. Defendant agrees to refrain from, and to be permanently enjoined from, using advertisements which represent that Kansas consumers may be listed on the Registry for free (the "Complimentary Listing"), unless Defendant automatically offers the Complimentary Listing to Kansas consumers who decline over the telephone to purchase a premium membership, provided that Defendant has the opportunity to offer the Complimentary Listing before the consumer ends the call.

27. Defendant shall implement policies and procedures by which all employees or independent contractors acting on behalf of Defendant will be trained in, and required to abide by, specific measures to expediently and appropriately address the following areas:

- a. prior to entering into or accepting payment under any service agreement, a clear and conspicuous explanation of Defendant's refund and cancellation policies;
- b. the intake and prompt processing of consumer complaints and requests for refunds.

28. Defendant agrees to refrain from, and to be permanently enjoined from, making oral representations that, directly or indirectly, contradict terms or language contained in Defendant's written contracts with consumers.

29. Defendant agrees to respond to all consumer complaints in good faith and in a reasonable, timely manner.

30. 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 of this Consent Judgment.

31. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment, or within fifteen (15) days after any person assumes such position or responsibilities.

INVESTIGATIVE FEES

32. Defendant agrees to pay to the Office of the Kansas Attorney General two thousand five hundred dollars (\$2,500.00) in fees intended to cover the legal costs associated with the Kansas Attorney General's investigation pursuant to K.S.A. 50-632 and 50-636. Payment shall be made by check and shall be delivered to the Office of the Kansas Attorney General at the time of signing the Consent Judgment.

33. Defendant agrees that all restitution, fees, and/or penalties shall be non-dischargeable in any filing for bankruptcy.

34. All unpaid restitution, fees, and/or penalties shall be immediately due and owing upon the sale of Cambridge Who's Who Publishing, Inc., or on the sale of the majority of its assets, or on a merger with another entity.

OTHER PROVISIONS

35. The provisions of this Consent Judgment will be applicable to the Defendant, and every

employee, agent or representative of the Defendant.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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 the Defendant. Defendant further represents that they have 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 become 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 \$2,500.00 in investigative fees.

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

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.


DISTRICT COURT JUDGE

Prepared and approved by:



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