

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

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

2010 AUG 17 P 3: 38

STATE OF KANSAS, *ex rel.*)
STEVE SIX, Attorney General,)
)
Plaintiff,)
)
v.)
)
ACTIVE PERIODICALS, INC.)
and)
DONALD W. CAPUTO, an individual)
)
Defendant.)

Case No. 10 C 535

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

JOURNAL ENTRY CONSENT JUDGMENT

NOW on this ____ day of _____, 2010, Plaintiff's 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. Defendants appear through the undersigned counsel.

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

PARTIES, JURISDICTION AND VENUE

1. Steve Six is the duly appointed, qualified and acting Attorney General for 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 Active Periodicals, Inc. (“Defendant API”) has a principal place of business at 450 SW 12th Avenue in Deerfield Beach, Florida 33442.

4. Defendant Donald W. Caputo (“Defendant Caputo”) is an individual and serves as the president for Defendant API.

5. As president for Defendant API, Defendant Caputo controls or possesses the authority to control API’s acts and practices.

6. Defendant Caputo resides at 7311 Annapolis Lane in Parkland, Florida 33067.

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

8. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

9. Defendants stipulate and admit that venue is proper in this Court.

10. Defendants are suppliers within the definition of K.S.A. 50-624(j).

11. Defendants engage in “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

12. Defendants act as “telephone solicitors” in Kansas, as that term is defined by K.S.A. 50-670(a)(3).

13. Defendants engage in “consumer telephone calls” in Kansas, as that term is defined by K.S.A. 50-670(a)(1).

ALLEGATIONS

14. Defendants engage in the advertising, solicitation and sale of magazine subscriptions and services related to the fulfillment of such subscriptions.

15. Defendants contact Kansas consumers over the phone to solicit the sale of the aforementioned products and services.

16. Plaintiff alleges that Defendants, while offering the aforementioned products for sale in Kansas, engaged in deceptive and unconscionable acts and practices in violation of the KCPA, which acts and practices include, but are not limited to:

- a. Making, or causing to be made, unsolicited consumer telephone calls to Kansas consumers whose telephone numbers are listed on the national Do-Not-Call registry, in violation of K.S.A. § 50-670a;
- b. Failing to immediately identify the purpose of the telemarketing calls made to Kansas consumers, in violation of K.S.A. § 50-670(b)(3).

17. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement. Defendants neither admit nor deny the foregoing allegations and admit no liability, directly or indirectly, to the allegations or for any damages that may have resulted from their actions. Notwithstanding, Plaintiff and Defendants stipulate and agree that this Consent Judgment resolves the alleged violations set forth herein.

INJUNCTIVE RELIEF

18. Defendants agree to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph sixteen (16), and Defendants agree that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

19. Defendants agree 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 No-Call Act, K.S.A. § 50-670, *et seq.*

20. Defendants agree 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.

21. Defendants agree 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.

22. Defendants agree 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.

PAYMENT TO THE ATTORNEY GENERAL

23. Defendants agree to pay to the Office of the Kansas Attorney General twenty-five thousand dollars (\$25,000.00), pursuant to K.S.A. § 50-632(a)(4) and K.S.A. § 50-670a(m).

24. Defendants agree to pay the aforementioned amount in four (4) installments as follows:

- a. Defendants shall pay \$7,000.00 to the Office of the Kansas Attorney General at the time of signing this Consent Judgment. The remaining \$18,000.00 shall be paid in three (3) equal installments of \$6,000.00.
- b. Defendants shall pay \$6,000.00 to the Office of the Kansas Attorney General on or before September 24, 2010, another \$6,000.00 on or before October 24, 2010, and the remaining \$6,000.00 on or before November 29, 2010.

25. Payment shall be made in the form of a cashier's check, money order or check disbursed through an attorney's trust account, payable to the Office of the Kansas Attorney General, mailed to:

Office of the Kansas Attorney General
ATTN: Meghan E. Barnds, Assistant Attorney General
120 SW 10th Ave, 2nd Floor
Topeka, Kansas 66612

26. Defendants agree to be held jointly and severally liable for the amounts sets forth in paragraphs twenty-three (23) through twenty-four (24).

27. Defendants agree that pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid restitution, penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

OTHER PROVISIONS

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

29. 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.

30. 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.

31. Compliance with this Consent Judgment does not relieve the Defendants 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.

32. The parties understand that this Consent Judgment shall not be construed to limit or reduce any method of cancellation provided by law, or any obligation by Defendants to comply therewith, and no waiver or reduction of a consumer's rights of cancellation under law shall result.

33. 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 Defendants nor shall the Defendants 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.

34. Each of the Defendants' 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. Defendants further represent 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 Defendants immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants and in favor of Plaintiff in the amount of \$25,000.00

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

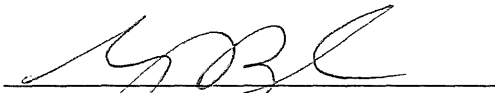
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. § 50-632(b), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

DISTRICT COURT JUDGE

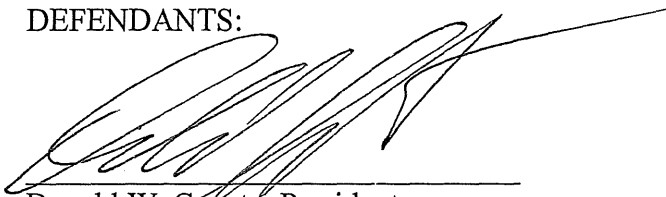
Prepared and approved by:

PLAINTIFF:



Meghan E. Barnds, KS #23685
Assistant Attorney General
Office of Kansas Attorney General
120 Southwest 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751
Attorney for Plaintiff

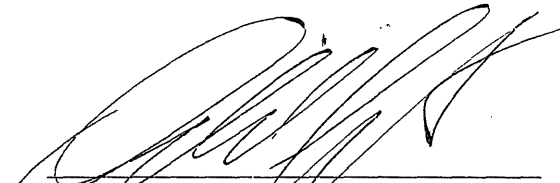
DEFENDANTS:



Donald W. Caputo, President
Active Periodicals Inc.



Alan E. Streit, Esq.
Larson & Blumreich, Ch.
5601 SW Barrington Ct. S.
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Attorney for Defendant Active Periodicals Inc.



Donald W. Caputo