

I. PARTIES TO THIS AGREEMENT

1. Plaintiff, State of Kansas, ex rel. Steve Six is the duly appointed 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. 50-632(b).
3. Defendant, Traffic Jam Events ("TJE"), is a limited liability marketing company organized and domiciled under the laws of the State of Louisiana, with a principal place of business located at 110 Veteran's Blvd., Suite 180A, Metairie, Louisiana.

II. JURISDICTION AND VENUE

4. Defendant TJE admits that, at all times relevant to the allegations set forth herein and, in the ordinary course of business, it acted as a "supplier," either individually through employees, representatives, or agents, or acting as an agent for a Kansas supplier, as defined by K.S.A. 50-624(1), by soliciting or advertising the sale of automobiles to consumers in Johnson County, Kansas.
5. TJE admits that, at all times relevant to the allegations set forth herein and, in the ordinary course of business, it engaged in consumer transactions or solicitations as defined by K.S.A. 50-624(c), either individually through employees, representatives, or agents, or acting as agent for a Kansas supplier.
6. TJE further admits and this Court determines there is personal and subject matter of jurisdiction pursuant to K.S.A. 50-623 and K.S.A. 50-638(a).
7. Venue is also proper in the Third Judicial District of Kansas (Shawnee County), pursuant to K.S.A. 50-638(b).

III. PURPOSE AND INTENT OF THIS CONSENT JUDGMENT

8. In the interest of avoiding the costs and uncertainty associated with litigation, Defendant voluntarily enters into this stipulated judgment in order to settle all claims that could potentially be asserted by Plaintiff arising out of the specific allegations set forth herein. Further, this Consent Judgment shall not be deemed to be an admission of any violation of the KCPA by Defendant, and Defendant denies any and all liability as to the claims asserted herein. Consistent with the provisions of K.S.A. 50-632(b), the parties agree this Consent Judgment shall constitute a full and final satisfaction of the claims made by Plaintiff in this action.

IV. ALLEGED KCPA VIOLATIONS

9. Plaintiff alleges that TJE committed the following acts or practices in violation of the KCPA.
10. From approximately May through September of 2008, and all periods relevant hereto, TJE acted either individually through its employees, representatives, or agents, or acted as agent for a Kansas supplier, namely, Robert Brogden's Olathe Pontiac-Buick-GMC, Inc. d/b/a Robert Brogden Auto Plaza ("RBAP"), in designing and sending approximately 100,000 promotional fliers, which solicited Kansas consumers to attend various auto sales events hosted by RBAP. Each of the fliers implied to recipients they had the "winning number" for the grand prize giveaway when, in fact, they did not.¹
11. Specifically, in large, bold-face print, the flier stated: **"FINALIST," "GRAND PRIZE GIVEAWAY," "YOU HAVE BEEN CHOSEN AS A FINALIST," CHECK YOUR NUMBER**

TO SEE IF IT MATCHES THE WINNING NUMBER!!." This language occurred in close proximity to a large scratch-off box stating: **"SCRATCH HERE TO REVEAL NUMBER. . .MATCH THE WINNING NUMBER TO SEE IF YOU'VE WON."** The winning number then readily appeared on the opposite side of each flier where a box in bold-face print stated, **"WINNING NUMBER,"** and showed an identical number to the one revealed under the scratch-off box. Consequently, every consumer receiving the flier had what impliedly was the "winning number."

12. However, various mouse print disclaimers on the inside of TJE's flier contradicted such representations, and showed that the winning number was actually printed in a small print directly under consumers' address on the front of the fliers. Such practices by TJE are alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), and (3), and K.S.A. 50-692(c)(6)(A) and (C).
13. It is further alleged the inside of the promotional flier designed by TJE and sent to consumers contained additional KCPA violations based upon the following representations: **"GRAND PRIZE GIVEAWAY** for a **"New 2008 [GMC],"** depicting various 2008 GMC automobiles along with other promotional offers, i.e., (1) **"THAT'S RIGHT 75% OFF! ORIGINAL MSRP;"** (2) **"SAVE THOUSANDS WITH 2.9% APR;"** (3) **"SAVE \$7000 OFF KELLEY BLUE BOOK;"** AND (4) **"0% DOWN PAYMENT. . .\$134 PER MONTH. . .AND NO PAYMENT FOR 3 FULL MONTHS!!."**
14. Consumers were led to believe such promotional offers referred to the primary advertisement containing text and pictures relating to the 2008 GMC vehicles. However, located in mouse print (i.e., size 8 pt. font or below) at the bottom of

¹ An example of a promotional flier is attached as Exhibit A.

the promotional flier, a paragraph containing multiple disclaimers materially altered the implied and/or express meaning of the primary offer.²

15. Specifically, the offer stated “**0% DOWN PAYMENT. . . \$134 PER MONTH,**” which was materially altered by such mouse print disclaimer stating that such offers applied only to a single 1999 Ford Taurus, sticker number of “T4583A. . . [at] a total sale price of \$4,900, for 48 months at 10% with approved credit.” Such an offer lacks clear and conspicuous disclosure. Consequently TJE’s advertisement is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3), and (7).
16. TJE’s next questionable offer stated: “**THAT’S RIGHT 75% OFF! ORIGINAL MSRP,**” however, this offer was also altered by another mouse print disclaimer at the bottom of the page stating it applied only to “1997 Pontiac Grand Prix, sticker number C863A, original MSRP \$26,800 selling price of \$6,600. . . ,” rather than the 2008 GMC vehicles actually referenced and pictured directly above in large bold-face print. Again, use of mouse print disclaimers that materially alter the implied and/or express representations of the primary offer results in a lack of clear and conspicuous disclosure; therefore, such an offer is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3) and (7).

² The following is a scanned version of TJE’s disclaimer paragraph from the September 2008 flier shown in actual size:

(1) Zero down plus tax, title, license and dealer processing fees/ \$134 per month, example: 1999 Ford Taurus, sticker #T4583A, Total sale price \$4,900, 48 months at 10% with approved credit. Bonus score 750 or above. Down payment may vary; vehicle payment totaled with your current monthly payments must not exceed 50% of your gross monthly income. Must be at least 18 years of age. Any equity deficit in your current vehicle must be paid or refinanced with new vehicle. Bankruptcies must be discharged. Vehicles may have been obtained at auction. (2) 7.5% off original MSRP, example: 1997 Pontiac Grand Prix Sticker #C863A, original MSRP \$26,800 selling price \$6,600 plus tax, title, license, and dealer processing fees. (3) No payments until December 2008 subject to lender's approval with approved credit. (4) 2.9% Interest Rate Available for this event - Available on all New 2008 GMC Sierra's and Yukon's. Financing available for 60 months through GMAC with approved credit - subject to lender's approval - see dealer for details. (5) \$7,000 off N.A.D.A. Book Retail available on select vehicles only, example: 2005 Chevrolet Corvette Sticker #T4300A N.A.D.A. retail price \$38,275 selling price \$31,275 plus tax, title, license, and dealer processing fees. * If the winning number by your address is posted at the dealership you may choose which prize to redeem. Winner has choice of the following prizes: Odds of winning #1 New 2008 Pontiac G3 sticker #P94667, Retail Value \$17,200; #2 40,100 or #3 40,100 or #4 40,100 or #5 LCD-Plasma TV Model# LC 65D93J valued at \$946. (6) \$100 Cash 1: 40,100 or #2 2008 TRX7000X ATV Base MSRP \$7,899 1: 40,100; #4 \$1,000 Shipping Space. Certificate permits you to obtain merchandise with a manufacturer suggested retail price equivalent to the value of the certificate stated above from www.selectyourgifts.com. In connection with your use of the certificate, you will be required to pay shipping handling, and processing fees per item ranging from \$1.95 up to \$29.95 based upon the per item value of the merchandise that you select. You may view the merchandise available for selection and pre-determine the costs for shipping, handling, and processing by visiting www.selectyourgifts.com. Other terms and conditions regarding the use of the certificate are set forth on the website. #40,100 #5 \$100 Cash 1: 40,100. A winning number will definitely be mailed in combination with other promotional invitations. While supplies last, no purchase necessary, one prize per winner. Must be present to win. Winners must be 18 years or older, have a valid driver's license and social security card and are responsible for all taxes. Contest begins September 16th, 2008 and ends September 20th, 2008. Purchase does not increase chance of winning. Void where prohibited. See complete rules available at Robert Brogden Pontiac GMC. Robert Brogden Pontiac GMC employees and associates, mail house, AHMO associated sponsors or agencies, and their family members and members of same household are ineligible. Addressee must redeem original prize in person by close of business on September 20th, 2008. In the event of permit/mechanical errors or duplicate winning numbers disclosed in error, then the number match contest is void and no prizes will be awarded. All validly claimed prizes will be awarded. Any unclaimed prizes will not be awarded. Sponsor not responsible for lost, misdirected or damaged mail. All vehicles are for illustration purposes only; all vehicle examples are subject to prior sale. Pictures may not resemble exact prize models. Void where prohibited by law. All offers end September 20th, 2008.

17. Next, TJE's flier stated: "**SAVE THOUSANDS WITH 2.9% APR;**" however, the bottom of the page contained a mouse print disclaimer stating the offer applied only to "new 2008 GMC Sierras and Yukons," with approved credit under certain financing terms. The offer did not apply to any of the other vehicles referenced or pictured in the advertisement. Use of mouse print disclaimers that materially alter the implied and/or express representations of the primary offer results in a lack of clear and conspicuous disclosure; therefore, such an offer is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3), and (7).
18. TJE's flier also stated: "**SAVE \$7000 OFF KELLEY BLUE BOOK;**" however, this representation contained another disclaimer stating that its application was limited to a single, "2005 Chevrolet Corvette, sticker number T4500A, N.A.D.A. retail price \$38,275, selling price \$31,275. . . ." The offer did not apply to any of the 2008 GMC vehicles referenced and pictured directly above the offer, nor did it apply to any other used vehicles. Use of mouse print disclaimers that materially alter the implied and/or express representations of the primary offer results in a lack of clear and conspicuous disclosure; therefore, such an offer is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3), and (7).
19. TJE's flier contained another misleading representation stating that a "**JACKPOT ROLLS OVER EACH DAY UNTIL CLAIMED!!**." This representation by TJE implied there was a jackpot with an accumulation each day that, if not claimed, would be paid to another participant who comes forward to claim the prize if a winner failed to come forward. This representation promoted event attendance by implying to consumers there were additional chances to win. According to the

flier's mouse print, however, there was only one potential winner who was already identified by number on each flier, and that person could choose only one of the prizes offered, i.e., (1) a "New 2008 Pontiac G5;" (2) a "65-inch Plasma TV;" (3) a "Honda TRX 700 XX" four-wheeler; (4) a "\$1,000 Shopping Spree;" or, (5) "\$100 Cash." In sum, there was no jackpot, nothing to accumulate or "roll-over," even if a winning number failed to come forward. Such an ad is alleged to be deceptive pursuant to K.S.A. 50-626(b)(1), (2), (3), and (7).

20. TJE's flier also advertised several "gifts" or prize giveaways (i.e., "MP3 Player"), which amounted to multiple *per se* violations of the KCPA under K.S.A. 50-692. These offers failed to provide consumers with proper notice of a "*verifiable retail value*" for each of the prizes listed, failed to delineate the *costs of shipping/handling* and other limitations for claiming the prizes, and none of the offers were printed in size or type of font required by the statute, nor were they printed in "*immediate proximity*" to the prize listed.

V. AGREED REMEDIES

21. Defendant agrees to entry of judgment against it in the amount of \$25,000.00, and agrees to pay said amount at the time the filing of this Consent Judgment or as follows:
22. Pursuant to K.S.A. 50-636(a), Defendant shall pay the stipulated judgment amount of Twenty-Five Thousand Dollars (\$25,000.00) in settlement of this matter, in the form of a cashier's check, directly payable to the Office of the Kansas Attorney General. Said funds shall be distributed in accordance with the provisions of K.S.A. 50-632.

23. After payment of this judgment in full, the Attorney General shall file with the court a satisfaction of judgment and provide the Defendant with a file-stamped copy.
24. Defendant agrees to be permanently enjoined from committing the acts or practices set forth herein in any ongoing or future consumer transactions in this State. Defendant further agrees its agents, employees, and representatives are also permanently enjoined from committing the acts or practices described above in any ongoing or future consumer transactions within this State.
25. 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.
26. The parties understand this Consent Judgment shall not be construed as an approval or sanction by the Kansas Attorney General of the business practices of Defendant, nor shall Defendant represent the decree as such 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.
27. Nothing in this Consent Judgment shall be construed to limit the rights of any consumers from pursuing any and all legal remedies they may be entitled to assert individually against Defendant through a private cause of action.

28. Defendant acknowledges and agrees this Court has continuing jurisdiction over this matter pursuant to K.S.A. 50-632(b) and, any breach any of the terms, conditions, or payments set forth herein, shall be treated as a violation of the Court's order and shall be subject to further penalties under the law.
29. This Court shall also retain such jurisdiction 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 relief as may be necessary or appropriate for the modification or compliance of any provisions contained herein. This Court shall also retain jurisdiction if any violation of any term of this Consent Judgment is committed.
30. Defendant further acknowledges and agrees that, pursuant to the United States Bankruptcy code, specifically 11 U.S.C 523(a)(2)(A) and (a)(7), and due to the nature of the conduct underlying this agreement and the violations set forth herein, this judgment shall not be dischargeable in any federal court bankruptcy proceeding commenced after the entry of this judgment.
31. 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.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulations and agreements of the parties contained herein are found to be reasonable and just, and are hereby adopted and approved as the findings and conclusions of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Plaintiff against Defendant Traffic Jam Events, LLC, in the amount set forth herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of rendering any additional equitable relief, orders, decrees, or judgments as may be requested by the parties or may be deemed appropriate by the Court.

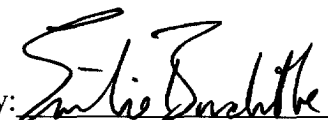
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED



Judge of the District Court

Respectfully submitted and approved by:
STEVE SIX, Attorney General,

By: 

EMILIE BURDETTE, #22094
Assistant Attorney General
Office of the Attorney General
Consumer Protection & Antitrust Division
120 SW 10th Ave., 4th Floor
Topeka, Kansas 66612-1597
Tel: 785-368-8453
Email: emilie.burdette@ksag.org
Attorney for Plaintiff, State of Kansas

By: Terry Ales

Terry A. Iles, KS# 17133
Law Office of Terry A. Iles
The Liberty Building
214 SW 6th Avenue, Suite 305
Topeka, KS 66603
Tel. 785-232-7777
Email: terryiles@ileslawoffice.com
Attorney for Defendant, Traffic Jam Events

AND

By: _____

Authorized Agent or Officer of Defendant
Traffic Jam Events, LLC

By: _____
_____, KS# _____

(Law Firm)
(Address)
Tel. ____ - ____ - ____
Email: _____
Attorney for Defendant, Traffic Jam Events

AND

By:  _____
Authorized Agent or Officer of Defendant
Traffic Jam Events, LLC