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K.S. DISTRICT COURT
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TOPEKA, KS. ✓

2010 DEC 30 P 2:56

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

D.N. 7

STATE OF KANSAS, *ex rel.*)
STEVE SIX, ATTORNEY GENERAL,)
)
Plaintiff,)

v.)

Case No. 10C1829

ACCELERATED DEALER)
SERVICES, LLC,)
)
Defendant.)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 30th day of December, 2010, the above-captioned matter comes

before this Court for approval of a stipulated Journal Entry of Consent Judgment pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Steve Six, Attorney General, appears by and through counsel, Emilie Burdette, Assistant Attorney General. Defendant, Accelerated Dealer Services, LLC, appears by and through counsel, *(insert local counsel)*.

THEREUPON the Court, being fully advised in the premises and taking notice of the parties' stipulations, makes the following findings of fact and conclusions of law:

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, Accelerated Dealer Services, LLC, is an Oklahoma corporation, with a principal place of business located at 700 North Main Street in Newcastle, Oklahoma.
4. All references to Defendant herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.
5. At all times relevant to the allegations set forth herein and in the ordinary course of business, Defendant acted as a "supplier" as defined by K.S.A. 50-624(j), by creating and providing advertising campaigns and sales promotions utilized by Kansas automotive dealerships and directed toward Kansas consumers.
6. The Court has personal and subject matter jurisdiction pursuant to the Kansas Consumer Protection act, K.S.A. 50-623 and K.S.A. 50-638(a).
7. Venue is proper in the Third Judicial District of Kansas (Shawnee County), pursuant to K.S.A. 50-638(b).
8. Plaintiff alleges that in October of 2009, Defendant acted either individually through its employees, representatives, or agents, or acted as agent for Randy Curnow Buick Pontiac, GMC, a Kansas automobile dealership, in sending or causing to be sent approximately 56,000 promotional fliers soliciting Kansas consumers to attend a special sales event at that dealership.
9. Plaintiff alleges Defendant engaged in deceptive and unconscionable acts or practices in violation of the Kansas Consumer Protection Act in connection with that sales event. Plaintiff alleges the following:

- a. The solicitation represented the circumstance or reason for the sales event to be a "Nationwide Unclaimed Vehicle Event" in which Defendant was liquidating "unclaimed vehicles" due to automobile dealers going out of business and that the vehicles would be available at a "fraction of their original price". This language implied special circumstances for the sales event existed and suggested urgency for consumers to make a purchase, when in truth no special circumstances existed. Such misrepresentations constitute deceptive and unconscionable acts in violation of K.S.A. 50-626(b)(1)(A), (B), (D) and 50-627(b)(1), (6).
- b. The solicitation represented specific financing, down payment and interest terms yet failed to provide appropriate disclaimers of neither limitation under the Kansas Consumer Protection Act nor disclosures under Regulation Z of the Truth in Lending Act. Such failures to disclose material facts constitute deceptive and unconscionable acts in violation of K.S.A. 50-626(b)(1)(A), (B), (D) and 50-627(b)(1), (6).
- c. As an inducement to sale, the solicitation referenced a "Cash for Clunkers on Used Vehicles" promotion and implied consumers who may not have otherwise qualified for the United States Government's "Cash for Clunkers" program would qualify for a similar rebate during Defendant's sales event. The solicitation contained on its face a blank check or "cash rebate" to be completed by Defendant at time of sale. The solicitation failed to disclose the distinction between the U.S. Government program and the sales event program, failed to indicate the cash rebate had no actual cash value, failed to disclose the nature or source of such a rebate, and failed to disclose that said rebate was merely an element of an otherwise negotiated sale. Such failures to disclose material facts constitute deceptive and unconscionable acts in violation of K.S.A. 50-626(b)(1)(A), (D) and 50-626(b)(2), (5), (6), (7) and 50-627(b)(1).
- d. The solicitation contained language implying that all individuals who applied for credit through Defendant during the sales event would be approved and receive "Credit Amnesty" when in fact not all consumers who applied for financing during the sales event were approved. Such misrepresentations constitute deceptive and unconscionable acts in violation of K.S.A. 50-626(b)(1)(A), (B) and 50-626(b)(2), (5), (6), (7), (10) and 50-627(b)(1) and (6).
- e. The solicitation contained statements triggering the Prize Notification statute, K.S.A. 50-692. The solicitation implied consumers had won an enumerated prize, yet it failed to state in close proximity to the offer the "verifiable retail prices" for the items purportedly being given away or the "odds of winning" the advertised prizes, unconscionable acts in violation of K.S.A. 50-692 and 50-627.

10. Defendant voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and without admitting any allegation contained herein.
11. Defendant agrees to be permanently enjoined from utilizing any reference to the sales event described in paragraph 8 above or to any Kansas sales event conducted by Defendant prior to the date of this Judgment in materials promoting Defendant's business, including but not limited to testimonials, return on investment analysis, direct marketing results diagrams or charts, response or success guarantees, or any other promotional materials attempting to solicit business from any suppliers.
12. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive and/or unconscionable in paragraph 9 above. Defendant further agrees that its agents, employees, and representatives are also permanently enjoined from committing the acts or practices described above in any ongoing or future consumer transactions in this State.
13. Defendant agrees that engaging in such acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order and civil penalties will be imposed for each subsequent violation pursuant to K.S.A. 50-636.
14. Defendant agrees to entry of judgment in the amount of \$7,000.00 and agrees to pay said amount at the time of the filing of this Consent Judgment in the form of a cashier's check, directly to the Office of the Kansas Attorney General.
15. 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.

16. 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 of 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.
17. 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 through a private cause of action.
18. 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 payment plans set forth herein, shall be treated as a violation of the Court's order and shall be subject to further penalties under the law as set forth in K.S.A. 50-636.
19. 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.
20. 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.

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.

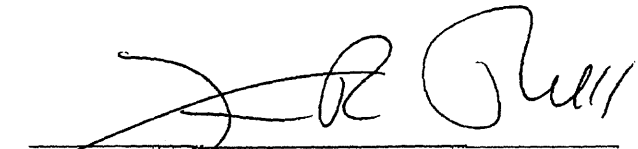
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulations and agreements of the parties contained herein are found to be reasonable and are hereby adopted and approved as the findings of fact and conclusions of law of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby entered against Defendant Accelerated Dealer Services, LLC in favor of Plaintiff in the amounts 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

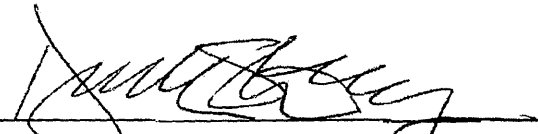


Judge of the District Court

Respectfully submitted and approved by:
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