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THIRD JUDICIAL DIST

02-003

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 4

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
v.)
)
Richard Kaylor, individually and as an officer of)
Triad Discount Buying Service, Inc., Member Service)
of America, LLC, and other affiliated companies.)
)
Defendant.)

Case No. 01-C220

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this the 12th day of February, 2002, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff appears through counsel, Shelley H. King, Assistant Attorney General. Defendant appears pro se.

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

I. THE PARTIES

A. Carla J. Stovall is the Attorney General of the State of Kansas.

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B. 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.*

C. Defendant Richard Kaylor, is an individual and was an officer of Triad Discount Buying Services, Inc., Member Service of America, L.L.C., and other affiliated companies. Richard Kaylor was engaged in the business of membership services throughout the State of Kansas.

D. Defendant is a supplier within the definition of K.S.A. 50-624 (j) (2001Kan. Sess. Laws) and has participated in the acts and practices of Triad Discount Buying Services, Inc., Member Services of America, L.L.C., and other affiliated companies in regards to membership services and has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c) (2001Kan. Sess. Laws).

II. JURISDICTION AND VENUE

A. The Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

B. Defendant is subject to the jurisdiction of the Court under the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a), and under K.S.A. 60-308(b).

C. Venue is proper in the Third Judicial District of Kansas (Shawnee County) under K.S.A. 50-638(b).

III. ALLEGATIONS

A. The Attorney General alleges that Defendant has engaged in the following deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

1. Defendant willfully failed to state a material fact, and willfully concealed, suppressed and omitted a material fact in violation of K.S.A. § 50-626(b)(3) in that:
 - a. Defendant participated in the failure to disclose to consumers that Defendant's employer's membership services/buying club benefits are offered on an annual basis, and consumers' credit cards will automatically be charged again at the beginning of the next membership year unless consumers take affirmative action to avoid those charges.
 - b. Defendant participated in the failure to disclose to consumers that consumers will be charged for the "free trial" period offer if they do not call Defendant's employer within thirty days of receipt of the materials and notify Defendant's employer that they are canceling their membership.
 - c. Defendant participated in describing to consumers a monthly membership fee and actively participated in the failure to disclose to consumers that the total price of the membership for one year would be billed to the consumers' credit card account in one billing transaction.
 - d. Defendant participated in the failure to disclose to consumers the conditions, limitations and restrictions included in the membership services/buying club benefits being offered.
2. Defendant participated in charges to consumers' credit card accounts pursuant to verbal agreements between consumers and Defendant's employer's telemarketers prior to receiving an original copy of a confirmation, signed by the consumer, that disclosed in full the terms of the sale agreed upon in violation of K.S.A. § 50-672.

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IV. DEFINITIONS

A. Definitions. The following definitions shall be used in interpreting the terms of this Consent Judgment.

1. **"Assisting others"** means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for any person or entity; (c) performing marketing services of any kind for any person or entity, or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.
2. **"Billing information"** means any data that describes, constitutes or provides access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.
3. **"Charge"** means any amount charged or debited to a consumer's credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.
4. **"Clear(ly) and Conspicuous(ly)"**, with respect to advertisements and promotional and marketing materials, means:

a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive electronic media such as software, the Internet and online services), the disclosure must be presented simultaneously in both the audio and visual portions of the advertisement; provided, however, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the advertisement is presented; provided further, that in any advertisement disseminated by means of an interactive electronic medium such as software, the Internet, or online services, a disclosure made through the use of a hyperlink will not be deemed "clear and conspicuous" unless the hyperlink itself is clear and conspicuous, is clearly identified as a hyperlink, is labeled to convey the nature and relevance of the information it leads to, is on the same Web page, online service page, or other electronic page and proximate to the triggering representation, and takes the consumer directly to the disclosure on the click-through electronic page or other display window or panel. The audio disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure must be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it; and

b. In a print advertisement or any print promotional or marketing material, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, and in print that contrasts with the background against which it appears; and

c. The disclosure must be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement, promotional or marketing material.

5. **"Membership service(s)"** means any arrangement whereby persons who purportedly agree to the arrangement (often called "members") receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit card protection, legal services and discounts on goods and services.

6. **"Negative option"** feature contained within an offer or agreement means an offer or agreement to sell or provide any goods or services under which (a) a consumer must take an affirmative action to reject goods or services or cancel the agreement, and (b) the consumer's silence or failure to reject goods or services or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the goods or services. Agreements with negative option features include, but are not limited to, agreements in which the consumer, subsequent to agreeing to the offer, will automatically be billed or charged at the end

of a trial period (whether or not there is a fee for the trial period) unless the consumer cancels, and continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships goods or services to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods or services.

7. **"Partner"** of Defendant means any third party that contracts with Defendant to provide telemarketing or other marketing services in connection with any transaction wherein any of the Defendant provide, offer to provide or arrange for others to provide goods or services to consumers in exchange for consideration.

8. **"Renewal"** means an extension beyond the original term of a membership, subscription or agreement for goods or services that are offered on a periodic basis.

9. **"Telemarketing"** means any person or organization who, individually, or through salespersons, initiates the sale, lease, or rental of consumer goods or services, or offers gifts or prizes with the intent to sell, lease or rent consumer goods or services by telephonic means or by postcard or other written notice sent through the mail in which the goods and services and all the material terms of the transaction, including price and any fees or handling, shipping or delivery charges, are not fully described and which requests that the consumer contact the seller to initiate the transaction. The term "telemarketer" does not include any not-for-profit or charitable organization exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986.

10. "Third party" means (a) any entity that is not owned or controlled by Defendants, and (b) any person who is not acting in his or her capacity as an officer or employee of Defendants or any entity owned or controlled by Defendants.

V. GENERAL PROVISIONS

A. Defendant denies the allegations of the Attorney General. For the purpose of settlement of this case only, Defendant voluntarily agrees to entry of this Consent Judgment without trial or adjudication of any issue of fact or law.

B. Defendant agrees not to enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose and/or with the effect of avoiding compliance with the terms of this Consent Judgment.

C. Defendant agrees to refrain from and to permanently enjoined from representing, in any manner whatsoever and to any person or entity whatsoever, that this Consent Judgment constitutes approval by, endorsement by or authority from the State of Kansas and/or the Attorney General of the State of Kansas for the business practices of Defendant. Defendant agrees that making of any such representation, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

D. 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 hereof.

E. If any portion, provision or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reasons whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining portions, provisions, or parts.

F. Compliance with this Consent Judgment does not relieve 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 her jurisdiction.

VI. BOND

A. Defendant Richard Kaylor, whether directly, in concert with others, or through any business entity or other device, is hereby permanently restrained and enjoined from the following activities:

1. engaging or participating in initiating or receiving telephone calls to or from a customer, in connection with telemarketing;
2. engaging in; participating in, assisting others to engage or participate in, or owning, controlling or managing any entity engaged in:
 - a. the business of telemarketing,
 - b. any sales or marketing that involves offers or agreements with a negative option feature, or
 - c. causing any charges to be made or any payments to be billed to a consumer, or causing collection of, or attempts to collect, payment, directly or indirectly, from a consumer, for the purchase of any goods or services offered for sale, sold or distributed through offers or agreements with a negative option feature;

unless he complies with the requirements for obtaining a performance bond in the Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress for Defendant Richard Kaylor entered into between this Defendant and the Federal Trade Commission, a copy of which is attached hereto as Appendix A.

VII. PROHIBITED BUSINESS PRACTICES

A. Defendant Richard Kaylor, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Consent Judgment by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from making, or causing or assisting others to make, expressly or by implication, any false or misleading representation in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services in or affecting commerce, including but not limited to:

1. Falsely representing, through, *inter alia*, mailings, email, billings, video or television, credit card charges and checking account debits, that a consumer purchased or agreed to purchase goods or services, or that a transaction has been authorized by a consumer;
2. Falsely representing (1) the amount that a consumer will be charged or billed for any goods or services, (2) that a consumer will not be charged or billed for any goods or services, (3) the timing or manner of any charge or bill, or (4) that a consumer will not be charged or billed without the consumer's authorization;

3. Making any representation that a consumer will receive a trial membership, or that any information kit, good or service is offered “free,” “risk-free,” with “no obligation,” or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the information kit, good or service or to take affirmative action to avoid incurring payment obligations, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer’s authorization to be charged or billed for the offered trial membership, information kit, good or service, or any other goods or services:
 - a. Any obligation of the consumer associated with accepting the offered trial membership, information kit, good or service (including, but not limited to, payment of shipping and handling fees, the obligation to purchase other goods or services, the obligation to accept a trial membership or trial period, and the obligation to cancel or take other affirmative action to avoid incurring payment obligations and the manner in which such a cancellation request may be submitted);
 - b. The amount and number of payments (if more than one) that will or may be required, and the circumstances under which additional payments may be required; and
 - c. All conditions, limitations and restrictions on the ability of the consumer to use the offered trial membership, information kit, good or service; and

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4. Making any representation that a consumer who accepts an offer for goods or services will receive an additional good or service for “free” or with “no obligation,” or as discounted or reduced in price, or words of similar import, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer’s authorization to be charged or billed for the goods or services with which the purportedly free or discounted good or service is offered, all conditions, limitations and restrictions on the ability of the consumer to use any such purportedly free or discounted good or service.

VIII. VIOLATIONS OF TELEMARKETING SALES RULE

A. Defendant Richard Kaylor, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Consent Judgment by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as in effect now or as it may be amended.

IX. PROHIBITED FAILURES TO DISCLOSE

A. Defendant Richard Kaylor, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Consent Judgment by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services by means of telemarketing

or the Internet, by or on behalf of Defendant, or any entity controlled, owned, directly or indirectly, or managed, by Defendant, must affirmatively disclose, clearly and conspicuously, before obtaining the consumer's express authorization to bill or charge the consumer for any such goods or services, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

1. That a purpose of the call or other solicitation is to sell goods or services;
2. The fact, if true, that a good or service is offered on behalf of a seller that is a separate entity from the seller doing the telemarketing, and, if so, the name of the separate seller and the entity to which payment will be made;
3. The number of payments (if more than one), the date(s) or time period(s) at which the payment(s) will be required or charged, the amount of the payment(s), and the total cost;
4. The fact, if true, that the billing information the seller already possesses, either because the consumer previously provided it to the seller or the seller obtained it from another source, will be used to bill or charge the consumer, in compliance with K.S.A. 50-672 as applicable;
5. The terms of the seller's refund, cancellation, exchange, or repurchase policies;
6. If the consumer will be automatically billed at the end of a trial period unless the consumer cancels: this fact; the length of the trial period; the manner in which a cancellation request may be submitted; the date or time period by which a cancellation request must be received; and either a telephone

number or address to which a cancellation request may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which a cancellation request must be received; and

7. If the seller automatically ships goods to a consumer or automatically renews a membership, subscription or agreement for goods or services that is offered on a periodic basis, unless the consumer notifies the seller within a certain time not to ship or renew: this fact; the manner in which a notice not to ship or renew may be submitted; the date or time period by which a notice not to ship or renew must be received to avoid shipment or renewal; and either a telephone number or address to which such a notice may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which such a notice must be received;

provided that, if Defendant Richard Kaylor, or any entity controlled, owned, directly or indirectly, or managed, by Defendant, obtains a consumer's billing information to purchase any goods or services and then further solicits the purchase of other goods or services, Defendant, or such entity, must affirmatively disclose all material terms and conditions for the purchase of each additional good or service, including but not limited to those set forth in this Part, and act in compliance with K.S.A. 50-672 as applicable and provided further, that, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services pursuant to an offer or agreement with a negative option feature, Defendant, prior to billing or charging the consumer for

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such goods or services, must provide the consumer with a document disclosing, clearly and conspicuously, all material terms and conditions of the sale, including but not limited to those set forth in this Part.

X. EXPRESS VERIFIABLE AUTHORIZATION FOR SALES

A. Defendant Richard Kaylor, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Consent Judgment by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services by means of telemarketing or the Internet, by or on behalf of Defendant, or any entity controlled, owned, directly or indirectly, or managed, by Defendant, are hereby permanently restrained and enjoined from submitting billing information for payment, transferring billing information to a third party, or collecting or attempting to collect payment for goods or services, directly or indirectly, unless acting in full compliance with K.S.A. 50-672 and K.S.A. 50-617 as applicable.

XI. LIMITATION ON DISSEMINATING OR OBTAINING CONSUMERS' INFORMATION (OPT-IN PROVISION)

A. Defendant Richard Kaylor, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Consent Judgment by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services by means of telemarketing or the Internet, by or on behalf of Defendant, or any entity controlled, owned, directly or indirectly, or managed, by Defendant, are permanently restrained and enjoined from providing or disclosing to

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any third party, whether or not in exchange for payment or other consideration, any of the following consumer information:

1. Billing information;
2. Unique identifying information, such as social security number, date of birth, place of birth and mother's maiden name;
3. Credit information;
4. Income information; and
5. Asset and liability information;

unless Defendant has clearly and conspicuously disclosed to such consumer in writing what information Defendant proposes to provide or disclose, the intended use of the information, and the person or entity to whom Defendant proposes to provide or disclose the information; provided, however, that this Part does not apply to the disclosure of consumer information pursuant to Section 623 of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s-2, to a "consumer reporting agency" as defined by Section 603(f) of the FCRA, 15 U.S.C. §1681a(f); or (3) to a law enforcement agency either voluntarily, or as required by any law, regulation, or court order.

XII. MONETARY RELIEF

Defendant Richard Kaylor must comply with the requirements for Monetary Relief for consumers in the Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress entered into between Defendant and the Federal Trade Commission, a copy of which is attached hereto as Appendix A.

XIII. DISTRIBUTION OF ORDER

A. For a period of ten (10) years from the date of entry of this Consent Judgment, Defendant Richard Kaylor must provide:

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1. A copy of this Consent Judgment to, and obtain a signed and dated acknowledgment of receipt from, each officer and director of any business entity controlled, majority owned, directly or indirectly, or managed, by Defendant;

2. A copy of this Consent Judgment to, along with a signed and dated acknowledgment of receipt from:

- a. Each individual serving in a management capacity, and
- b. all sales and marketing personnel and all personnel involved in responding to consumer complaints or inquiries, whether such persons are designated as employees, consultants, independent contractors or otherwise, of Defendant or of any business entity controlled, majority owned, directly or indirectly, or managed, by Defendant, and
- c. each partner of any business entity controlled, majority owned, or managed, by Defendant, which engages in telemarketing, sales or marketing via the Internet, or sales or marketing that involves offers or agreements with a negative option feature;

provided however, that nothing in Subparts (A)(1) or (A)(2)(a) and (b) of this Part requires Defendant to provide a copy of the Consent Judgment to any business entity or its personnel unless he controls, majority owns, directly or indirectly, or manages, such entity; provided further, that the Defendant must deliver the copy of the Consent Judgment, as appropriate, to current personnel and partners within thirty (30) days after the date of entry of the Consent Judgment, and to future personnel and partners within thirty (30) days after the person assumes such position or responsibilities; and

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B. Defendant Richard Kaylor must provide for a period of three (3) years after creation, and, within fifteen (15) days of receipt of a written request, make available to representatives of the Plaintiff the original signed and dated acknowledgments of the receipt of the Consent Judgment, as required in Subpart A of this Part.

XIV. PLAINTIFF'S AUTHORITY TO MONITOR COMPLIANCE

A. Plaintiff is authorized to monitor compliance with this Consent Judgment by all lawful means, including but not limited to the following means:

1. Plaintiff, without further leave of court, may obtain discovery from any person in the manner provided the rules and statutes of the State of Kansas, for the purpose of monitoring and investigating compliance with any provision of this Consent Judgment by Defendant;
2. Plaintiff is authorized to use representatives posing as consumers and suppliers to (1) Defendant, (2) Defendant's employees, or (3) any entity managed or controlled in whole or in part, directly or indirectly, by any of the Defendant, without the necessity of identification or prior notice; and
3. Nothing in this Consent Judgment limits Plaintiff's lawful use of compulsory process to investigate whether any of the Defendant have violated any provision of the law enforced by Plaintiff.

XV. NOTIFICATION

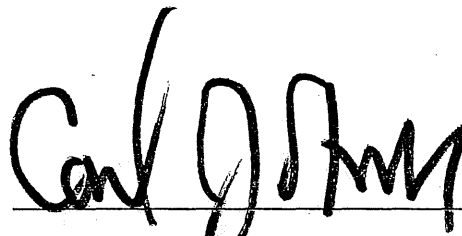
A. Defendant Richard Kaylor must, unless otherwise directed by the Plaintiff or its representatives, mail all written notifications to the Plaintiff to: Shelley H. King, Assistant Attorney General, Consumer Protection/Antitrust Division, 120 S.W. Tenth Avenue, Second Floor, Topeka, Kansas 66612-1597, Re: Richard Kaylor and Triad.

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 the Court.

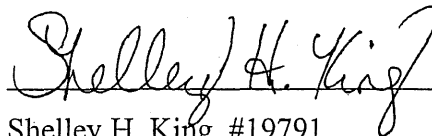
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

PREPARED AND APPROVED BY:



CARLA J. STOVALL, #11433
Attorney General

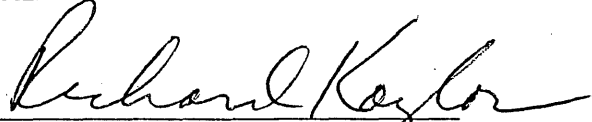


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Attorneys for Plaintiff State of Kansas

APPROVED BY:

DEFENDANT:



Richard Kaylor, Individually, appearing pro se.

SO ORDERED, this 12th day of February 2002

131
Honorable _____