

02-011

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KS. DISTRICT COURT
THIRD JUDICIAL DISTRICT

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GENERAL JURISDICTION
TOPEKA, KANSAS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
v.)
)
CASHABLE REBATES, INC.)
f/k/a Cashback USA, Inc.,)
)
and)
)
EuroFinance, S.A.,)
)
Defendants)

Case No. 02 C 377

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 20th day of March, 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, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James R. McCabria, Assistant Attorney General. Defendant Cashable Rebates, Inc., f/k/a Cashback USA, Inc., and Defendant EuroFinance, S.A. appear by and through their attorney Robert T. Stephan. There are no other appearances.

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

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*
3. Defendant Cashable Rebates, Inc., f/k/a Cashback USA, Inc., is a Missouri corporation with its principal place of business being located at 680 S.E. Bayberry Lane, Suite 103a, Lee's Summit, MO 64063. The president of Cashable Rebates, Inc. is James Rigsby.
4. Defendant EuroFinance, S.A. is a Corporation organized and existing under the laws of the British Virgin Islands. The sole shareholder of EuroFinance, S.A., is Adrian Roman.
5. Each of the Defendants is a supplier within the definition of K.S.A. 50-624(j)(2000 Session Laws) and has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).
6. Defendants each admit that this Court has personal and subject matter jurisdiction over all matters and parties hereto.
7. The nature of Defendants' business is to offer and manage a sales promotion service ("the program" or "Defendants' program") on behalf of the merchants with which it contracts for such services. Defendants' program works essentially as follows:
 - (a) Retail merchants use Defendants' program as an incentive to individual consumers to whom they are soliciting the sale of their property or services. Consumers are told that the program is a means by which consumers will have the ability to claim up to 100% of the purchase price back within a specified time frame.
 - (b) Upon making the sale, the merchant is required to submit a portion of the sales proceeds (currently 15%) to the Defendants (or their agents) and presents the consumer with a document setting forth terms and conditions for the consumer to follow to qualify for a payment equal to the purchase price for the original property or service (or some fraction thereof, all as set forth on the face of the document);

- (c) After the estimated time represented to the consumer, the consumer may claim the face amount set forth in the original document, provided that all conditions of eligibility have been successfully completed.

8. The Attorney General alleges Defendant engaged in the following acts and practices which acts and practices violate the Kansas Consumer Protection Act:

- (a) Defendants formerly promoted the program as the "Cashable Bond". During the time the program was so promoted, thirty-seven "Cashable Bonds" were received by Kansas residents in connection with consumer transactions. Defendants should have known that by making use of the term "Bond", such term implied the program had sponsorship, approval, characteristics or benefits that the program did not have in that the program:
 - (1) did not provide consumers with a "bond" as that term is commonly understood;
 - (2) did not have the approval of any agency or regulatory board which approves, regulates or sponsors "bonds";
 - (3) did not comply with the registration requirements of the Kansas Securities Act and
 - (4) the conditions required for a consumer to receive any benefit from the program differed materially from those conditions normally associated with those required to receive benefit from a "bond", all in violation of K.S.A. 50-626(b)(1)(A).
- (b) On and after September 29, 2001, Defendants promoted the program as the "Cashable Rebate" and since that time have presented "Cashable Rebate" vouchers to Kansas residents in connection with consumer transactions. "Rebate" is a term that is traditionally understood to refer to an offer to receive a benefit upon making a single request in the form mandated by the offer or of the rebate.
 - (1) Defendants should have known that by making use of the term "Rebate", such term implies that the program has characteristics or benefits that the program does not have in that the program requires a consumer to perform conditions that are materially different than those required in a traditional "rebate" program and relies on materially fewer persons qualifying for payment than a traditional rebate program. Use of the term "rebate" as a label for the program, unqualified by any other descriptor which notifies

consumers of these different characteristics, constitutes a violation of K.S.A. 50-626(b)(1)(A);

- (2) Defendants know the failure rate (or the statistically likely failure rate) of persons participating in the program but do not disclose that fact to consumers. When labeled as a "rebate" and offered as an incentive to enter into the underlying consumer transaction, such a fact is material and Defendants willful failure to disclose the same constitutes a violation of K.S.A. 50-626(b)(3);
 - (3) Defendants' explanation of the terms and conditions required to receive benefit from the program is in terminology that is ambiguous and likely to be confusing to consumers such that they would be unable to receive a material benefit from the program, in violation of K.S.A. 50-626(a) and 50-626(b)(2).
- (c) The program is represented to consumers as being "free of charge" when in fact merchants may have increased prices of property or services to offset the cost of the program. Such a representation, when offered as an incentive to enter the underlying consumer transaction, constitutes willful use of innuendo or ambiguity as to a material fact, in violation of K.S.A. 50-626(b)(3).
 - (d) Defendants' literature describing the program makes ambiguous representations which could reasonably be interpreted to imply, and in some instances Defendant Cashable Rebates, Inc. orally represented, that the program carries insurance which guarantees that there will be funds available for payout at or near the time frame represented to consumers, when, in truth and in fact, no such insurance for the program exists. Defendants had reason to know that such representations would imply a sponsorship, characteristic, or benefit that the program does not have, in violation of K.S.A. 50-626(b)(1)(A).
 - (e) Defendant Cashable Rebates, Inc. has orally represented that the program has received the approval or sanction of the Attorney General when, in truth and in fact, the program does not have that sponsorship or approval in violation of K.S.A. 50-626(b)(1)(A).

9. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law, but specifically deny each act, or that any described act constitutes a violation of law or that any intent to willfully commit any act or practice prohibited by the Kansas Consumer Protection Act existed.

10. Defendants agree to refrain from and to be permanently enjoined from engaging in the acts and practices described in paragraph eight.

11. Defendants further agree that the following specific acts and practices are enjoined by this Order:

- (a) offering or representing the program to consumers as a "bond", or the use of any term of similar import that implies the consumer is receiving a "security" as that term is contemplated by K.S.A. 17-1252(j)
- (b) offering the program in conjunction with the use of the phrase "free of charge" or "without cost to you" or words or phrases of similar import that would suggest to a consumer that the cost of participating in the program does not affect the cost of the good or service the consumer is considering purchasing.
- (c) representing in any fashion that the program has been approved or sanctioned by the Attorney General, or any other agency or officer of the State of Kansas.

12. Defendants are further enjoined from offering or promoting the program in the future unless:

- (a) All material presented to consumers discloses in a clear and conspicuous manner that the program tests the ability of consumers to remember to follow each of the terms and conditions of the program, and the ability of the consumer to remember such details must be accomplished over a substantial period of time and that a very high percentage of people will fail to maintain a valid claim;
- (b) All material presented to consumers discloses in a clear and conspicuous manner that the program is not a mere "rebate" program for which a consumer need only complete a single registration but rather that the opportunity for a rebate is being provided if the consumer can timely fulfill all of the steps required to qualify and claim the rebate in a timely fashion. If Defendants continue to offer the program as a "rebate" after May 31, 2002 without any further descriptor or qualification to the title, Defendants shall disclose clearly to consumers the percentage of persons that will, or are expected to, maintain a valid claim.
- (c) The terms and conditions required for a consumer to maintain a valid claim are explained in plain American English, familiar to and readily understood by Kansas consumers;

13. Defendants agree that engaging in acts or similar acts to those described in Paragraph 8 hereof without adhering to the requirements of Paragraphs 9 through 12 shall constitute a violation of this Order. The parties stipulate that Defendant shall have until May 31, 2002, to distribute such vouchers or literature as may be necessary to comply with this Order, but it is understood that the injunction set forth in paragraph 11(c) shall be effective from and after the date this Order is approved by the Court.

14. Defendants agree to pay \$15,000.00 in civil penalties and investigative fees and expenses to the "Office of the Attorney General" of the State of Kansas. Payment shall be by cashier's check or by wire transfer and shall be delivered to the Attorney General of the State of Kansas upon signing this Consent Judgment.

15. Defendants agree that with regard to any Kansas consumer that has, or receives, a Cashable Rebate voucher or Cashable Bond voucher that fails to meet the terms of this Order, Defendants will contact each voucher holder and make the following offer:

- (a) give each voucher holder the opportunity to obtain an immediate payment equal to 15% of the face amount of the voucher in lieu of the right to make a claim upon the voucher, or
- (b) give each voucher holder the opportunity to continue (or, if not correctly registered at the time the offer is made, to renew) their participation in the program. All voucher holders shall be given a new voucher which contains terms and conditions described in terms which conform to the requirements of this Order.

Each consumer shall be given thirty days to respond to the written offer and Defendants shall provide evidence of service of the offer to each consumer to the Office of the Attorney General on or before May 31, 2002.

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

17. Defendants agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, where such restructuring is done for the purpose or object of avoiding compliance with the terms of this Consent Judgment.

18. 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.

19. 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.

20. 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 her jurisdiction. Each Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against these Defendants in operating this program upon belief that the program is being promoted or operated in a fashion that otherwise violates the law.

21. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendants nor shall Defendants represent the decree as such an approval. The parties further understand that any failure by the State

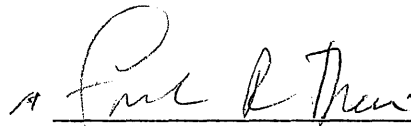
of Kansas or by the Attorney General to take any action in response to any information which the Attorney General now has in its possession and believes forms the basis for a violation of this Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

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 each of the Defendants, jointly and severally, and in favor of Plaintiff in the amount of \$15,000.00.

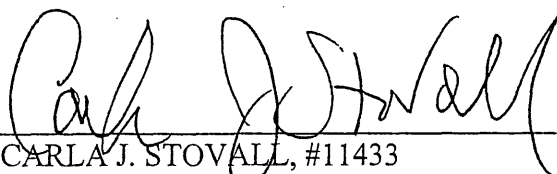
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.



Judge of the District Court

PREPARED AND APPROVED BY:

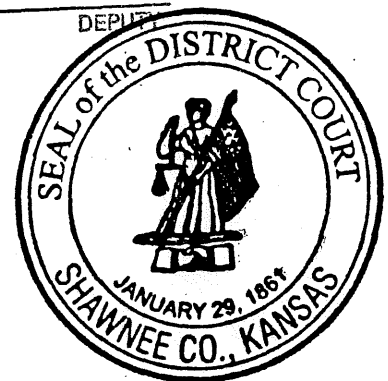


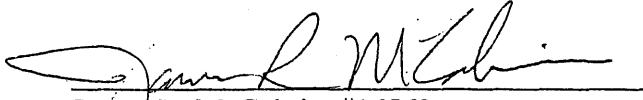
CARLA J. STOVALL, #11433
Attorney General

STATE OF KANSAS, COUNTY OF SHAWNEE, S.S.
I hereby certify the above and foregoing to be
a true and correct copy, the original of which
is filed and entered of record in the court

Dated 03/17/07
CLERK of the DISTRICT COURT
By [Signature]

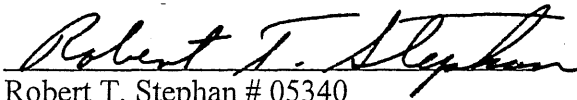
DEPUTY





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