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Stacy A. Jeffress, #12460  
Assistant Attorney General  
Office of the Attorney General  
120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612-1597  
(785) 296-3751

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division 6

STATE OF KANSAS, *ex rel.* )  
CARLA J. STOVALL, Attorney General, )  
 )  
Plaintiff, )

v. )

Case No. 02 C 1203

CONTEST AMERICA PUBLISHERS, INC., )  
a Nevada corporation; OPPORTUNITIES )  
UNLIMITED PUBLICATIONS, INC., )  
a Missouri corporation d/b/a NORTH )  
AMERICAN AWARD CENTER, Inc. )  
 )  
 )  
Defendants. )

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this the 17<sup>th</sup> day of September, 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, Stacy A. Jeffress, Assistant Attorney General. Defendant appears through counsel, R. Pete Smith of McDowell, Rice, Smith & Gaar.

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

**I. THE PARTIES**

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

1.2. 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.*

1.3 Defendant Contest America Publishers, Inc. ("Contest America") is a Nevada corporation with its principal place of business at 1401 Armour Road, North Kansas City, Missouri 64116, and is engaged in the business of direct mail marketing contests of skill throughout the State of Kansas.

1.4 Defendant Opportunities Unlimited Publications, Inc. ("Opportunities Unlimited") is a Missouri corporation with its principal place of business at 1401 Armour Road, North Kansas City, Missouri 64116, and is engaged in the business of direct mail marketing contests of skill throughout the State of Kansas. Defendant Opportunities Unlimited Publications, Inc. does business as North American Award Center, Inc.

1.5 The registered agent of Contest America, Opportunities Unlimited, and North American Award Center, Inc. is M.R.S. Service Corp., 605 W. 47<sup>th</sup> Street, Suite 350, Kansas City, MO 64112.

1.6 Defendants are suppliers within the definition of K.S.A. 50-624(j) (2001 Supplement) and are solicitors within the definition of K.S.A. 50-692(a)(3). Defendants have mailed skill contests and engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

## II. JURISDICTION AND VENUE

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

2.2. Defendants are 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).

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

2.4. Defendants are responsible for the acts of their agents and employees under the legal theory of *respondeat superior*.

2.5. Defendants enter their voluntary general appearances.

2.6. Defendants admit the Court has jurisdiction over the parties and the subject matter.

2.7. Defendants admit venue is proper in the Third Judicial District of Kansas (Shawnee County).

## III. DEFINITIONS

3.1. The following definitions shall be used in interpreting this Judgment.

1. A statement is "Clear and Conspicuous" if it is Readily Understandable and presented in such size, color, contrast, and location, compared to the other matter with which it is presented, that it will be noticed and understood. If such statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information it modifies and it may not be obscured or minimized in any manner.

2. "Covered Communication" includes any direct mail (including electronic mail) communication made by or on behalf of Defendants in any medium that offers an opportunity to

consumers in this state to enter a Skill Contest, refers to an opportunity to enter a Skill Contest, or is used during the course of a Skill Contest.

3. "Effective Date" means the date this Consent Judgment is entered, provided that the provisions of this Consent Judgment shall apply to those Covered Communications that are released for printing after thirty (30) days after the Effective Date (the Implementation Date for new advertisements) but in all events shall apply to any Covered Communication mailed by Contest America after ninety (90) days from the date this Consent Judgment is entered regardless of the date such materials were released for printing (the Implementation Date for all existing advertising). All other terms of this Consent Judgment are effective on the Effective Date.

4. A statement is "Equally Prominent" to another statement if it is Clear and Conspicuous, and presented immediately adjacent to the statement, in a typeface, size, color, and style identical to the statement, and in language as equally comprehensible as the statement.

5. "Official Rules" means the formal printed statement, however designated, of the rules for a Skill Contest appearing in a Covered Communication.

6. A statement is "Readily Understandable" if it: (a) is expressed in common words, phrases, or expressions, used in accordance with their common or ordinary usage and meaning; and (b) is easily understood.

7. "Recipient" means a natural person to whom a communication is made by any Defendant.

8. "Represent" means to state, or to imply through statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or through any other manner or means by which meaning might be conveyed. For purposes of this Consent Judgment, this definition applies to other forms of the word "Represent," including without limitation "representation,"

“misrepresent,” and “misrepresentation.” In determining the express or implied meaning of a Representation that appears from the outside of a mailing envelope, only matter visible without opening the envelope shall be considered. State law shall govern the standard of deception that applies to this Judgment.

9. The term “Skill Contest” means a puzzle, game, competition, or other Skill Contest in which: (a) a Prize is awarded or offered; (b) the outcome depends predominately on the skill of the contestant; and (c) a purchase, payment, or donation is required, or implied to be required, to enter the Skill Contest.

10. “Skill Contest Prize,” “Contest Prize,” or “Prize” means an item or cash amount awarded in a Skill Contest. It does not include one or more similarly valued items, or items or cash amounts of nominal value that are distributed to all, or substantially all, Recipients of a Covered Communication.

#### **IV. JUDGMENT AND DECREE**

**IT IS HEREBY ADJUDGED, ORDERED AND DECREED** as follows:

4.1. Defendants shall immediately inform all successors, assigns, transferees, officers, agents, servants, employees, representatives, and all other persons or entities in active concert or participation with Defendants of the terms and conditions of this Judgment and Decree.

4.2. Defendants and all successors, assigns, transferees, officers, agents, servants, employees, representatives, and all other persons or entities in active concert or participation with Defendants are hereby enjoined and permanently restrained from directly or indirectly engaging in any of the following conduct:

*Misrepresentation of the Recipient as a Winner or Potential Winner*

1. Unconditional Winner Representations: Defendants shall not represent, in a Covered Communication, that the Recipient has won, is the winner of, or will be the winner of, a Skill Contest unless:

- A. The Recipient or such Recipient's entry has won or will be determined to be the winner,
- B. The Representation is not false, deceptive, or misleading,
- C. The Prize and its value are Clearly and Conspicuously disclosed in the Representation itself, and
- D. Any action that the Recipient must take to receive or obtain the Prize is set forth in Readily Understandable terms and the action does not affect their entitlement to receive or obtain the Prize.

2. Conditional Winner Representations: Defendants shall not represent, in a Covered Communication, that the Recipient may already be or may become a winner, characterize the Recipient as a possible winner, or represent that the Recipient will, upon the satisfaction of some condition or the occurrence of some event or other contingency, become the winner of a Skill Contest, unless Defendants Clearly and Conspicuously disclose: (a) that a winner of the contest has not yet been determined; and (b) all conditions necessary to win the contests, so as to render the representation fair, true, and not misleading.

3. Defendants shall not request, in a Covered Communication, information or action from the Recipient that would be of use or is represented as being of use in the event the Recipient has won

a Skill Contest Prize, unless the Recipient has won a Skill Contest Prize and such information or action is necessary to deliver the Prize.

4. Defendants shall not use, in a Covered Communication, a personalized simulated check or other payment device, such as a depiction of a deposit slip or electronic funds transfer receipt, to represent any Contest Prize.

*Misrepresentations of Likelihood of Winning a Skill Contest*

5. Defendants shall not misrepresent the likelihood or chance of winning a Skill Contest or Prize.

6. Defendants shall not represent, in a Covered Communication, that Skill Contest Prize awards are or may be distributed to anyone other than to a winner of a Skill Contest.

7. Defendants shall not misrepresent, in a Covered Communication, that its employees or others acting on its behalf, real or fictitious, have personal feelings concerning a personal relationship with, or will take or refrain from taking any action relating to the Recipient of the Communication.

8. Defendants shall not misrepresent that a Recipient has an advantage over other contestants.

9. Defendants shall not misrepresent, on the outside of the envelope, the method of delivery of any Covered Communication, including, but not limited to, misrepresenting that the delivery is being made by courier, overnight mail, special delivery, express mail, hand delivery, registered or certified mail, or by any other form of expedited delivery, or otherwise misrepresenting the urgency with which it is sent.

10. Defendants shall not use stamps, labels, symbols, bar codes, or other elements which resemble indicia or forms used by an entity such as the United States Postal Service, a government

agency, a private courier, delivery service, or a financial institution, unless the element is genuine and required by such other entity.

11. Defendants shall not make reference to any law or regulation, pertaining to the use of the mail or to the operation of a Skill Contest, that is visible on the unopened envelope in which a Covered Communication is contained, unless such statement and such placement is required by law.

***Representations of Special Selection for a Skill Contest Entry Opportunity***

12. Defendants shall not misrepresent the number of persons eligible for a Skill Contest or a Prize, any limitations on eligibility for a Skill Contest or a Prize, or the method by which the Recipient was selected to receive an offer to enter a Skill Contest or to compete for a Prize.

***Representations of Status During a Skill Contest***

13. Defendants shall not misrepresent that the Recipient: (a) has a better chance of winning a Skill Contest than other participants who are at the same stage of the contest; (b) has advanced beyond participants who are or will be at the same stage in the contest; or (c) has a status in the Skill Contest that is superior to other participants who are or will be at the same stage.

14. Defendants shall not represent that each participant has an equal aptitude for winning a Skill Contest.

15A. Defendants shall not misrepresent that: (1) a Recipient has advanced in a Skill Contest; (2) that the field of contestants in a Skill Contest has been winnowed; or (3) that a Recipient's status in a Skill Contest has otherwise improved in a substantive way.

15B. Defendants shall not represent that a Recipient has advanced in a Skill Contest, that the field of contestants in a Skill Contest has been winnowed, or that a Recipient's status in a Skill Contest has otherwise improved in a substantive way, such as by representing that a Recipient is "tied" for any



position or status in a Skill Contest, is now eligible for a round subsequent to the entry round of a Skill Contest, or is participating in or eligible for a tie-breaker round, unless the Representation also Clearly and Conspicuously discloses:

- (1) If Defendants represent that a Recipient is "tied" for any position or status in a Skill Contest, the fact that there are many others who hold the same status as recipient. This subparagraph "A" shall apply to Covered Communications written or revised after the date upon which this Judgment is signed in accordance with the following deadlines: Within ninety days of such date, at least one third (1/3) of all Covered Communications in use by Defendants shall be in compliance with this term, and within nine months of such date, all Covered Communications in use by Defendants shall be in compliance with this term;
- (2) The manner in which the Recipient's status has improved; and
- (3) All facts necessary to make the Representation truthful and not misleading.

*Representations of Chance in Connection with a Skill Contest*

16. Defendants shall not represent that a Recipient's likelihood of winning a Skill Contest is based, in whole or in part, on chance or luck.

17. Defendants shall not represent that a Recipient's likelihood of winning a Skill Contest is based on anything other than the individual effort and skills required to compete successfully in the Skill Contest.

18. Defendants shall not represent, in a Covered Communication, that the Recipient of the Communication has characteristics or skills which indicate an enhanced chance of winning a Skill Contest, such as characteristics or skills that are similar to the characteristics or skills of past winners in

a Skill Contest, unless the Recipients have objectively demonstrated characteristics or skills needed to win the contest.

***Representations Relating to Skill Contest Participation and Conduct of Contest***

19. Defendants shall not misrepresent the degree of skill, knowledge, or ability required to compete effectively for winning a Prize.

20. Defendants shall not use any writing that simulates or resembles a legal document such as an affidavit, certification, release or legal notice.

21. Defendants shall not represent that a Recipient is being notified a second or subsequent time of the opportunity to compete for a Prize, unless the Representation is true.

22. Defendants shall not represent that a Recipient is being notified a "final" time of an opportunity to compete for a Prize, unless a previous notification of that opportunity was sent to the Recipient and no further opportunity to compete in that contest will be offered.

23. Defendants shall not misrepresent a Prize nor represent separate or multiple contest or game prizes as a single prize.

24. Defendants shall not solicit any charge, fee, or bonus fee in connection with a Skill Contest, or any portion thereof, that is not Clearly and Conspicuously disclosed in the Official Rules.

***Effect of Multiple Entries on Winning or Amount of Prize to be Won***

25. In contests commenced after September 18, 2001; Defendants shall not represent that an entrant's chance of receiving a Prize or the amount of the Prize will increase by submitting identical entries in the same contest, except this will not preclude Defendants from returning those entry and bonus fees directly related to the person's submission of the winning entry

26. Defendants shall not represent that any deadline applies to the return of an entry in any level of a Skill Contest other than the date by which all entries must be received. Nothing herein shall prevent Defendants from making general requests for prompt responses that do not specify any deadlines.

***Prohibited Business Practices***

27. Defendants shall not offer in a Skill Contest any puzzle or other game that does not require *bona fide* skill to complete correctly. If Defendants offer Skill Contests consisting of multiple levels or rounds, Defendants shall ensure that the level of difficulty in each level or round increases in a systematic and consistent manner. If 15% or more of the contestants are eliminated at the initial or entry level, the requisite skill will be presumed, provided that the 15% elimination rate can be demonstrated by empirical data. In subsequent rounds, Defendants shall further be entitled to the presumption of *bona fide* skill if they can demonstrate that at least twice the percentage of contestants fail to advance from that round as failed to reach the round in question. The requirements set forth in this paragraph shall only apply to Skill Contests that begin after the effective date of the entry of this judgement.

28. Defendants shall not knowingly sell, rent, exchange, transfer, or otherwise furnish to, or purchase from other persons, customer age or telephone contact information or financial data disclosed in connection with a Skill Contest. Also, Defendants shall not provide list renters the ability to select names based on customer age, telephone contact information, or financial data. For purposes of this provision, financial data includes credit card numbers, bank account numbers, other payment device numbers, and a customer's purchase history, except that Defendants may disclose dollars spent per customer within 90 days prior to the date such information is furnished or purchased.

29. Defendants shall not provide, over the telephone, answers or assistance in completing the puzzles offered in a Skill Contest, beyond explaining the Skill Contest rules.

30. Defendants shall not make customer lists available to others unless such list rental agreements between Defendants and list renters prohibit telematching the names or addresses on the customer lists and using such lists for telephonic solicitation of any kind.

31. Defendants shall not make telephone numbers of customers available to others, offer lists of customers' names or addresses in segments based on the customers' ages, or offer any names or addresses of customers who cannot be mailed to by Defendants under Paragraphs 32 through 34 below.

32. Defendants shall not mail or otherwise make a Covered Communication to a person who has made payments to one Defendant of \$1,500.00 or more in response to Covered Communications within a twelve-month period beginning with the first day of the first month of the calculation and ending with the date on which the payment is made. Defendants shall not mail or otherwise make a Covered Communication to any person who has made, in any time period, payments of \$3,500.00 or more to one Defendant.

33. At-Risk Analysis Suppression Program. In addition to those consumers who are suppressed from receiving further Covered Communications under 32, 34, and 35, Defendants shall suppress any consumers identified by the "At-Risk Analysis" described by this paragraph:

A. Each Contest Entity (Contest America, Opportunities Unlimited, and North American) shall conduct the At-Risk Analysis of a customer's record if any of the following criteria are met:

- (1) A customer enters the same contest more than five times; or
- (2) A customer submits four incorrect First Tiebreakers; or
- (3) A customer submits three incorrect Entry Parts; or

- (4) A customer's lifetime expenditures reach \$500, and at \$500 increments thereafter; or
- (5) The Customer Service Department believes that a customer may not understand what he or she is doing.

B. Upon review of the customer's record, a customer shall be designated "at-risk" if any one of the following is true:

- (1) A customer has incorrectly answered the "entry question or puzzle" to a contest at least four times; or
- (2) The customer has submitted at least five entry parts or initial puzzles in a contest and they are incorrect or fail to qualify the customer to advance in the contest 20% more often than the norm; or
- (3) The customer has submitted at least five first tiebreaker parts or puzzles in a contest and they are incorrect or fail to qualify the customer to advance 20% more often than the norm; or
- (4) The customer has submitted at least five second tiebreaker parts or puzzles in a contest and they are incorrect or fail to qualify the customer to advance 40% more often than the norm; or
- (5) The customer has been mailed at least seven first tiebreaker parts or puzzles more than 45 days prior to the analysis and has failed to return first tiebreaker parts 20% more often than the norm; or

- (6) The customer has been mailed at least seven second tiebreaker parts or puzzles more than 45 days prior to the analysis and has failed to return first tiebreaker parts 40% more often than the norm.
- C. A customer identified as “at-risk” by one Contest Entity shall automatically be determined to be “at-risk” by all Contest Entities.
- D. When a customer is identified as “at-risk”, he or she shall automatically be put on a mail suppress. Once put on a mail suppress, the following shall occur:
  - (1) The customer shall not receive any new contest Entry Parts; and
  - (2) The customer shall be allowed to complete his or her play in contests already entered, but the customer shall only be mailed “alternate parts” which do not request any fees or payment.
- E. The “norm” shall be established by each Contest Entity within sixty (60) days of the Effective Date and shall be re-established every six months by analyzing the play history of all customers for that Contest Entity for the previous six months.
- F. Defendants shall retain an independent certified public accountant to analyze and report regarding Defendants' compliance with the standards set forth herein. During this review, the independent certified public accountant shall:
  - (1) Analyze the Defendants' record-keeping systems in which they maintain the customer records subject to “at-risk” analysis.

- (2) Conduct a random sampling of individual customer records to test whether the records are being appropriately identified as meeting the criteria of Paragraph 33(A) and whether the customers are being appropriately determined to be "at-risk" or not "at-risk" in accordance with the criteria described in Paragraph 33(B).
- (3) Confirm that persons identified as "at-risk" under this paragraph are suppressed by both Defendants with reasonable promptness.
- (4) Upon request any reports or analyses under this paragraph shall be provided to the state.

34. "Do Not Contact" Disclosure and Requirements. Defendants shall maintain an accurate and up-to-date list of all persons who request to be removed from Defendants' mailing list (the "do not contact" list). Defendants shall provide, in Covered Communications, a Clear and Conspicuous notice of the procedure by which a Recipient's name may be removed from Defendants' active mailing list. In maintaining the "do not contact" list, Defendants shall comply with the following procedures:

- A. Defendants shall accept "do not contact" requests made by mail to an address identified in the notice. Defendants shall accept "do not contact" requests made directly by the Recipient or made on behalf of the Recipient by a guardian, conservator, primary caregiver, family member, legal representative, or by the State's Attorney General. Defendants may require that the requestor verify the request in writing. Defendants shall not include

in any other communications inducements to request removal from the "do not contact" list.

- B. Defendants shall add to the "do not contact" list the name and address provided in any such request together with all variations of the name and address that the Defendant has, with reasonable diligence, identified or identifies in the future as being the same customer. Defendants shall maintain a record of all "do not contact" requests in such form or forms as shall permit the permanent suppression of such names and addresses from future Covered Communications.
- C. Defendants shall not accept any entries from any persons having the same name and address that appears on its "do not contact" list. Defendants shall exclude all names and addresses on the "do not contact" list from all lists of names and addresses used to select Recipients for Covered Communications (other than billing and collections communications for open orders and customer service communications which contain no promotional material) and from all lists of names and addresses made available for use by others for marketing purposes. Defendant shall also exercise reasonable diligence to ensure that the names and addresses on its "do not contact" list are suppressed from each and every new list obtained, rented, or used.
- D. Any such "do not contact" request shall be given effect by Defendants not more than forty-five (45) days after receipt and shall remain in effect until a Defendant receives notice to the contrary from the Recipient; provided that,



in any case in which the original request was made by a legal representative of the person or the state's Attorney General, the request shall be changed only upon notice from the same or another legal representative or the Attorney General, respectively.

35. **Matchcode Review.** Defendants shall in good faith and with reasonable diligence review all matchcodes and merge duplicate matchcodes to eliminate duplicate mailings to the same person and ensure that all expenditures of a customer to each Defendant company are attributed to a single matchcode, and that "mail suppress" on any matchcode shall be applied to all duplicate matchcodes. Each Defendant shall conduct matchcode reviews within the following timelines:

- A. All matchcodes showing lifetime expenditures in excess of \$500.00 shall be reviewed every two weeks for duplication.
- B. All matchcodes showing lifetime expenditures in excess of \$100.00 shall be reviewed every month for duplication.
- C. All matchcodes shall be reviewed annually for duplication.

Defendants shall use good faith and reasonable diligence to develop a system that will search any acquired mailing lists for potential matchcodes of existing customers who are subject to "at-risk" or payment-threshold suppression and eliminate them from any active mailing list used by the Defendants.

36. In the case of a tie, in contests commenced after September 18, 2001, Defendants may split Prizes among the finalists, provided that no winning entrant shall be awarded a greater share of the Prize than any other winning entrant, regardless of whether an entrant submitted more than one winning entry. Defendants may engage in additional rounds in order to establish one final

winner provided that they do not charge fees beyond those disclosed in the initial offer and such additional rounds have been Clearly and Conspicuously disclosed in the rules of the initial and all subsequent Skill Contest offers.

37. Defendants shall not represent, in a Covered Communication or by any other means, that its Representations, solicitations, practices, goods, or services have the sponsorship or approval of any Court or the Attorney General of any State or any other judicial or governmental authority unless expressly authorized or required by such authority.

38. Defendants shall not make any Representation in a Covered Communication that contradicts or is inconsistent with any statement or disclosure required to be made under this Judgment.

***Mandatory Disclosures in Covered Communications Requesting Payment or Offering Entry***

39. Defendants shall include in each Covered Communication that requires, appears to require, solicits, or appears to solicit, the payment of any money related to a Skill Contest or game or contains an opportunity to enter a Skill Contest, game, or round, including, but not limited to, bonus opportunities, a separate insert, devoid of any marketing copy, titled "Official Contest Rules, Contest Facts, and Refund Policy". The stand-alone insert shall contain the following three sections:

A. **CONTEST RULES:** The Contest Rules, appearing in at least 10-point type and containing the following material facts set forth in a Clear and Conspicuous manner and in separately enumerated paragraphs which are divided by the equivalent of a line of clear space, shall include:

- (1) The name of the Skill Contest and game, if applicable. Nothing in this provision prohibits a single set of contest rules from covering

multiple games as long as it Clearly and Conspicuously discloses that fact;

- (2) The maximum number of rounds or levels, if the Skill Contest has more than one round or level and a statement to the effect that one or more additional rounds may be necessary to produce the final winner or winners, if such is the case;
- (3) The date the final winner or winners will be determined;
- (4) A complete and accurate description of all fees charged for participation in the Skill Contest, and a complete and accurate description of all fees requested for optional bonus Prize amounts. Such description shall include both the amount and the purpose of each fee required or requested during the Skill Contest. The paragraph containing this disclosure shall begin with the Title "Required and Optional Fees" which shall appear in a font that is more readily noticeable than the body of the paragraph;
- (5) If the Skill Contest involves multiple rounds of increasing difficulty, a representative example illustrative of the skills required to compete in the contest offered, including an actual depiction of a final tie-breaking round and a *bona fide* winning entry from a similar or identical Skill Contest with a description of the instructions for accurately completing that puzzle. The word "SAMPLE" may be superimposed over the examples but not in a manner which would

disguise or mislead as to the degree of difficulty posed by the final tiebreaker round or skill necessary to complete a winning entry. The example shall appear substantially as depicted in Exhibit "A";

- (6) Estimated Number of Contestants: The estimated number and percentage of contestants expected to successfully complete each round of the Skill Contest relative to the original number of contestants anticipated and the estimated number of contestants expected to advance to the next round followed by the percentage the number of successful entrants represents of the total entrants into each round of the Skill Contest. This disclosure shall provide the required information in a uniform and consistent manner. The paragraph containing this disclosure shall begin with the title "Estimated Number of Contestants" (which shall appear in a font that is more readily noticeable than the body of the paragraph);
- (7) The identity of and a description of the qualifications of the judges and their relationship to Defendants;
- (8) The method used in judging;
- (9) The name and address of the Defendant(s) offering the contest, or the Defendant's agent, if applicable;
- (10) A complete and accurate description of Prizes;
- (11) A description of all material restrictions;
- (12) A description of Defendant's refund policy;

- (13) A complete, accurate, and non-misleading description of the effects of multiple entries, (at the initial and any other tie-breaker rounds), by participants;
- (14) The historical or anticipated percentage of entry fees that are paid out in Prizes or awards;
- (15) The manner in which any Prize will be paid and a disclosure that on contests commenced after September 18, 2001, multiple winning entries by a single contestant will not increase the amount an individual contestant may win; and
- (16) The telephone number and address where Defendant's Customer Service Department can be contacted, and the office hours for the Customer Service Department.

The disclosures required under Subparagraphs 4 and 6 of Paragraph 39A shall, in addition to meeting the requirements of Paragraph 39A, be placed within a box so as to make them more readily noticeable than the adjacent provisions of the Official Rules.

**B. CONTEST FACTS:**

- (1) The Contest Facts Disclosure shall include the following statements with the first sentence of each statement appearing in bold type:
  - (a) **This is a Contest of Skill.** This Contest includes Several Rounds of Puzzles That Require Mathematical, Verbal, or Other Skills. Each Round will be Substantially More Challenging and Difficult to Solve.

- (b) **The Winner Will Not be Determined Until the End of the Contest.** To Win this Contest You Must Receive the Highest Score in the Final Round of Puzzles. (In the event of a tie, all winners will share the Prize equally).
- (c) **This Contest Will End on \_\_\_\_\_.** See Contest Rules for the Entry Deadline.
- (d) **This is Not a Sweepstakes.** There is no "Chance" or "Luck" involved in this Contest.
- (2) The foregoing statements shall be placed within a box ("Contest Facts Box" or "Box") entitled "Contest Facts" and such title shall be in bold face type and appear in at least 12-point type. The statements shall be presented in a manner substantially similar to that depicted on Exhibit "B".
- (3) The Contest Facts Box shall also include, below the aforementioned statements, a disclosure of the individual and distinct name of the Skill Contest offered, the identity of the Prize(s) offered in each game, the number of rounds involved in the contest, the total amount of all required fees to participate and win the contest, and the ending date of the contest by which time the winner will be determined. Such information shall be presented in a grid format, in at least 10-point type, in a manner substantially similar to that depicted on Exhibit "B".

- (4) The Contest Facts Box shall contain no matter other than matter required by this paragraph and shall not be overlaid with any graphic design, text, or color from outside the Box. The background of the Box shall be in a color or shade that contrasts with the text in the box in such a manner that the text is clearly distinct from the background and easily read.

C. **REFUND POLICY:** The refund policy, appearing in at least 10-point type shall be prominently presented as a separate disclosure from the Contest Rules and the Contest Facts. Each Defendant's refund policy shall be as follows:

- (1) Regardless of the reason for the request, Defendants shall provide any customer a full refund for any open contest prior to that customer being notified that a losing entry has been submitted.
- (2) If a refund request is accompanied by any information indicating that a consumer has not fully understood, has acted irresponsibly or inappropriately, is confused, or otherwise lacks the ability to knowingly and voluntarily enter a Skill Contest, Defendants shall deliver a full refund for all contests, even if the contests are closed and even if the consumer is notified of an incorrect entry.

A refund request to one Defendant shall be considered to be a refund request to all Defendants. When a customer is given a refund pursuant to Paragraph 39C(2) above, he or she shall automatically be put on a mail suppress and

shall not be generated any new Covered Communications, and the name and address of such customer shall not be rented or sold to others.

40. A Covered Communication that requires, appears to require, solicits, or appears to solicit the payment of any money related to a Skill Contest shall include a Clear and Conspicuous disclosure of the identification of the Defendant(s), or the Defendant's agent in the manner described below:

- A. The name and address of the Defendant(s) offering the contest, or the Defendant's agent, consistently stated wherever it is used in the communication, except that the Defendant(s) may use a logo with Defendant's initials if within the communication the Defendant's name is Clearly and Conspicuously disclosed;
- B. The name and address of the Defendant(s) offering the contest, or the Defendant's agent, as the return address and sender on the envelope used to mail the communication; and
- C. The name and address of the Defendant(s) offering the contest, or the Defendant's agent, in a Clear and Conspicuous manner on the entry form.

#### **V. RESTITUTION**

#### **IT IS FURTHER ADJUDGED, ORDERED AND DECREED THAT:**

5.1. Within thirty (30) days of the Effective Date, Defendants shall cause to be sent to all customers who paid to them, jointly or severally, the amount of \$2,000.00 or more between January 1, 1999, and the date of entry of this consent Order, a letter substantially similar in all respects to that attached hereto and incorporated herein as Exhibit "C", which letter shall be sent via First Class



Mail. The letter shall be in 14-point type and shall not contain or be accompanied by any promotional material and shall be mailed in an envelope substantially similar to that attached hereto as Exhibit "D." At the time of mailing the letter, Defendants shall provide the State with specimen copies of both the letter and envelope and a certification that the mailing has been completed in accordance with this paragraph. At six and twelve months after the date of entry of this Consent Order, Defendants shall provide reports to the state, stating the number of customers who received refunds and the amounts thereof pursuant to this paragraph.

#### **VI. COSTS, FEES AND OTHER AMOUNTS**

##### **IT IS FURTHER ADJUDGED, ORDERED AND DECREED THAT:**

6.1. Contemporaneous with filing this Journal Entry of Consent Judgment, Defendants shall pay Plaintiff, State of Kansas \$43,822.00 to be used for consumer education, litigation, public protection or local consumer aid funds, investigative fees and costs, or for any other purpose authorized by state law at the discretion of the Attorney General of Kansas.

6.2. **Court Costs.** Defendants shall be assessed and shall pay the Court costs incurred in this action, specifically all filing and service fees.

#### **VII. GENERAL PROVISIONS**

##### **IT IS FURTHER ADJUDGED, ORDERED AND DECREED THAT:**

7.1. Defendants agree 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.

7.2. Defendants agree to refrain from and to be 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 Defendants. Defendants agree that making of any such representation, after the date of this Consent Judgment shall constitute a violation of this Order.

7.3. 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.

7.4. 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.

7.5. 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.

7.6 The provisions of this Consent Judgment supersede those contained within the Journal Entry of Consent Judgment filed in Shawnee County District Court Case No. 93CV952, filed on January 6, 1995.

7.7 The State of Kansas, Office of the Attorney General, Consumer Protection Division, acknowledges by its execution hereof, that this Journal Entry of Consent Judgment constitutes a complete settlement and release of all civil claims on behalf of Plaintiff against Defendants with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or

could have been asserted on behalf of the State prior to the Effective Date pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, relating to or based upon the acts and practices which are the subject of this Consent Judgment. Plaintiff agrees that it shall not proceed with or institute any civil action or proceeding based upon the above-cited consumer protection statutes against Defendants, including but not limited to, an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees, or costs, for any communication disseminated prior to the Effective Date which relates to the subject matter of the Consent Judgment or any conduct or practice prior to the Effective Date which relates to the subject matter of this Consent Judgment. Notwithstanding the foregoing, Plaintiff may institute an action or proceeding to enforce the terms and provisions of this Consent Judgment or to take action based on future conduct by Defendants.

**IT IS THEREFORE ADJUDGED, ORDERED AND DECREED** that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of the Court.

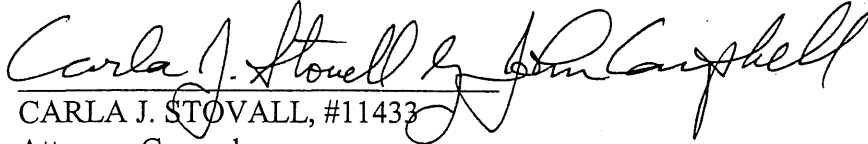
**IT IS FURTHER ADJUDGED, ORDERED AND DECREED** that pursuant to the Kansas Consumer Protection Act, the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

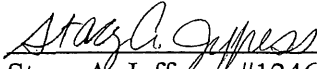
**IT IS FURTHER ADJUDGED, ORDERED AND DECREED** that judgment is entered against the Defendants in the amount of \$43,822.00.

**IT IS SO ORDERED.**

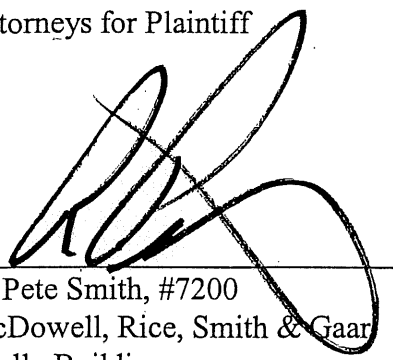
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The Honorable Terry L. Bullack  
Judge of the District Court

**PREPARED AND APPROVED BY:**

  
CARLA J. STOVALL, #11433  
Attorney General

  
Stacy A. Jeffress, #12460  
Assistant Attorney General  
120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612-1597  
(785) 296-3751

Attorneys for Plaintiff

  
R. Pete Smith, #7200  
McDowell, Rice, Smith & Gaar  
Skelly Building  
604 West 47<sup>th</sup> Street, Suite 350  
Kansas City, MO 64112-1905  
(816) 753-5400

Attorney for Defendants