

E-03-000070

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

2003 NOV 14 P 12: 03

Kristy L. Hiebert, #14716
Assistant Attorney General
Office of the Attorney General
120 W. Tenth Street, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

STATE OF KANSAS, *ex rel.*
PHILL KLINE, Attorney General,

Plaintiff,

vs.

BUSINESS OPTIONS, INC., a/k/a US BELL,
KURTIS KINTZEL, individually, and
KEANAN KINTZEL, individually,

Defendants.

Case No. 03C1745

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 14th day of November, 2003, the Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b) (K.S.A. 2002 Supp.). The Plaintiff, State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through Kristy L. Hiebert, Assistant Attorney General. Defendants Business Options, Inc., a/k/a US Bell, Kurtis Kintzel and Keanan Kintzel appear by and through Diane L. Bellquist,
Fairchild and Buck, P.A.

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

PARTIES, JURISDICTION AND VENUE

1. Phill Kline is the 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. 50-623 *et seq.*
3. Defendant Business Options, Inc., a/k/a US Bell is a foreign corporation organized under the laws of the State of Illinois. The principal office of the corporation is located at 8380 Louisiana Street, Merrillville, Indiana 46410.
4. Defendant Kurtis Kintzel is President and owner of Business Options and at all times relevant hereto was responsible for formulating, directing and controlling the practices and policies of Business Options.
5. Defendant Keanan Kintzel is Secretary and Treasurer and owner of Business Options and at all times relevant hereto was responsible for formulating, directing and controlling the practices and policies of Business Options.
6. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.
7. Defendants stipulate and admit that venue is proper in this Court.
8. Defendants are a supplier within the definition of K.S.A. 50-624(j) (K.S.A. 2002 Supp.) and engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c) (K.S.A. 2002 Supp.).
9. Defendants engaged in business as a reseller of telecommunication services, including interstate/long distance and intrastate/local toll services to Kansas consumers.

ALLEGATIONS

10. Beginning at a time unknown to Plaintiff but at least since April 1996, Defendants, through their agents, employees and representatives, have been conducting telemarketing contacts with Kansas consumers in an effort to persuade consumers to use its interstate/long distance and intrastate/local toll services.

11. The Attorney General alleges that the Defendants, directly or through its third party distributors, engaged in the following acts and practices:

- a. Switching consumers' intrastate/local toll service without their express authorization;
- b. Misrepresenting Defendant's intrastate rate in telemarketing contacts.
- c. Misrepresenting the company on whose behalf Defendant's representatives were calling in telemarketing contacts.
- d. Recapturing consumers by switching them back to Business Options, Inc's. interstate/long distance and intrastate/local toll services without express authorization.

12. The Attorney General alleges that the acts and practices described in paragraph eleven (11) herein are deceptive and unconscionable acts and practices in violation of Kansas Statutes Annotated (K.S.A.) 50-626, 50-627, 50-6,103, 50-676 and 50-677 (K.S.A. 2002 Supp.), in that Defendants, its agents or representatives:

- a. Engaged in activity, conduct or representations while soliciting changes in consumers' telecommunications service to the Defendant's service that had the capacity to mislead, deceive or confuse consumers;
- b. Submitted orders to change consumers' intrastate service without having obtained the express authorization of the consumers authorized to make the change and

recapturing or switching consumers back to the Defendant's interstate/long distance and intrastate/local toll services without the consumers' express authorizations after they switch away from the Defendants;

- c. Made representations knowingly or with reason to know that the services had a sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they did not have.

13. Defendants, by entering into this Consent Judgment, make no admission of liability as to any practice set forth in paragraphs eleven (11) and twelve (12). The parties agree that this Consent Judgment constitutes a full and final resolution of all claims that the Attorney General could pursue under the Kansas Consumer Protection Act relating to the acts and practices alleged to be deceptive or unconscionable in paragraphs eleven (11) and twelve (12), and which occurred prior to the date of signing this Consent Judgment.

14. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law.

INJUNCTIVE RELIEF

15. Defendants agree to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraphs eleven (11) and twelve (12) herein and Defendants agree that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

16. Defendants agree to be permanently enjoined from submitting or causing to be submitted to a local exchange carrier an order to change a consumer's telecommunications carrier or local exchange carrier to another carrier without having obtained the express authorization of the consumer authorized to make the change as defined in K.S.A. 50-6,103 (K.S.A. 2002 Supp.) and the Defendants shall, at a minimum, comply with all Federal laws, statutes, rules and

regulations, including but not limited to 47 C.F.R. 64.1100, *et seq.*, as they now exist or as amended in the future and all Kansas laws, statutes, rules and regulations, as they now exist or as amended in the future.

17. Defendants agree that if the Attorney General brings an action alleging violations of this Consent Judgment or alleging violations of a type and kind similar in nature to those alleged herein that, upon a finding by the Court that such violations have occurred, Defendants agree to stipulate to civil penalties in the amount of \$20,000 per violation and an order permanently enjoining them from doing business in the State of Kansas

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

19. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director and employee of management level that is involved in Kansas operations of the Defendants within ten (10) days of signing the Consent Judgment.

20. Defendants agree to maintain all records of authorization to switch telecommunications services of Kansas consumers for a period of three (3) years and to allow the Attorney General to inspect such records in the future.

CONSUMER RESTITUTION

21. Defendants agree to provide a full refund or credit for each consumer for each type of service listed in Exhibit 1, attached hereto and incorporated herein as though fully set forth herein, to the extent such full refund or credit has not already been received by each consumer from the Defendants. Any refunds shall be provided to the Office of the Attorney General in checks made payable to such consumers within ten (10) days of signing this Consent Judgment. If the complainant has not paid the Defendants and has outstanding bills, the Defendants will credit

the account so that it has a zero balance. The Defendants will also reimburse such complainants for any switching charges incurred. The Defendants also agree that no negative credit information has been or will be reported to any credit reporting agency for nonpayment of a bill from the Defendants for such complainants. The Defendants agree to take all action necessary to remove and correct any negative information already reported related to a switch by the Defendants and subsequent billing for such complainants, and agree to forego any collection of present outstanding amounts owed to the Defendants by such complainants.

22. Defendants agree to provide, within ten (10) days of signing this Consent Judgment, an affidavit signed by an officer of Business Options, Inc. which acknowledges that all action required in paragraph twenty-one (21) herein has been taken by the Defendants and which provides a listing of the refund/credit amounts provided to each consumer listed in Exhibit 1.

23. For any complaints filed with or supplied to the Office of the Attorney General within ninety (90) days of the entry of this Consent Judgment, which complaints are meritorious as determined by the Office of the Attorney General, regarding a switch of telecommunications services occurring prior to the date of this Consent Judgment, the Defendants agree to resolve such complaints by providing relief consistent with the type of relief provided to consumers in paragraph twenty-one (21) above or as provided under federal or state law, whichever provides the greatest relief for the consumer.

INVESTIGATIVE FEES AND CIVIL PENALTIES

24. Defendants agree to pay to the "Office of the Attorney General" of the State of Kansas \$25,000 for investigation fees and expenses and civil penalties pursuant to K.S.A. 50-632 and 50-636 (K.S.A. 2002 Supp.). Payment shall be made by a cashier's check and shall be delivered to the Attorney General of the State of Kansas at the time of signing the Consent Judgment.

OTHER PROVISIONS

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

26. 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 thereof.

27. 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.

28. Compliance with this Consent Judgment does not relieve the 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 his jurisdiction.

29. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of the Defendants nor shall the 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 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 information, nor shall it preclude action thereon at a later date.

30. Each of the Defendants' representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendants for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment

on behalf of Defendants. Defendants further represent that they have each had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

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 Defendants immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants and in favor of Plaintiff in the amount of \$25,000.00.

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) (K.S.A. 2002 Supp.), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

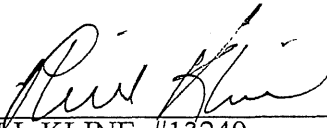
IT IS SO ORDERED.

/s/

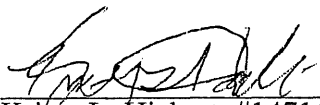
DISTRICT COURT JUDGE

Approved by:

PLAINTIFF



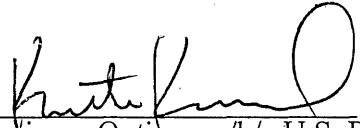
PHILL KLINE, #13249
Attorney General



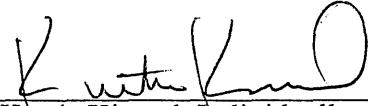
Kristy L. Hiebert, #14716
Assistant Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

Attorneys for Plaintiff

DEFENDANTS



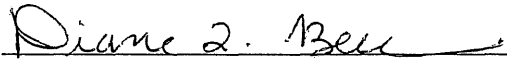
Business Options, a/k/a U.S. Bell
by Kurtis Kintzel, President



Kurtis Kintzel, Individually



Keanan Kintzel, Individually



Diane L. Bellquist #20969
Fairchild & Buck, P.A.
5851 SW 29th St.
Topeka, KS 66614
(785) 235-2200

Attorney for Defendants