

E-04-000050

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division _____

STATE OF KANSAS, ex rel.,)
PHILL KLINE, Attorney General,)
)
Plaintiff,)
)
v.)
)
Liberty Online Services, Inc.,)
)
National Online Services, Inc.,)
)
Defendant.)

Case No. 04 C 1095

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 10th day of Aug-, 2004, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to Kansas Statutes Annotated ("K.S.A.") §50-632(b). Plaintiff, the state of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through Joseph N. Molina, Assistant Attorney General. Defendant appears through Counsel William E. Raney.

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

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. Defendants Liberty Online Service, Inc. and National Online Services, Inc., are corporations organized under the laws of the state of Delaware. Epixtar Corp., was formerly

registered as Global Asset Holdings, Inc., ("Global"), until November 21, 2002. The principal office of the corporation is located at 11900 Biscayne Blvd., Suite 262, Miami, Florida, 33181.

4. The Court has personal and subject matter jurisdiction over the parties for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

5. Defendants stipulate and waive any objection to venue in Shawnee County for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

6. Defendants are a supplier within the definition of K.S.A. 50-624(j) (2003 Supp.) and have engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c)(2003 Supp.).

7. Defendants conduct telemarketing calls to small businesses in Kansas to solicit its ISP Service and Yellow pages website hosting services. These services cost \$29.95 per month and the charge appears on the line subscriber's phone bill.

8. The Plaintiff alleges Defendants have engaged in the following deceptive acts and practices in connection with consumer transactions as prohibited by K.S.A. 50-626:

- a. Charging consumers' local phone bills for Service website hosting services which were not authorized;
- b. Charging consumer's local phone bills for ISP Service and Yellow pages website hosting services when the consumer affirmatively advised the Defendants that they did not want the service without later authorizing the service
- c. Representing to consumers during the telemarketing call that Defendants were just verifying the consumer's business information and that no charges would be incurred and then charging the consumer's phone bill for unauthorized ISP Service; and/or;
- d. Defendants promised to provide a welcome package, which include was to the phone number to call and cancel service, to consumers who authorized the service. The Defendants then failed to provide the consumers with the promised information, leaving the consumer with no reasonable way to cancel future charges after the trial period ended;

9. Defendants deny that they committed unfair and deceptive practices in the conduct of trade and commerce. Defendants voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law in order to avoid the costs and uncertainties of litigation. Defendants expressly deny any wrongdoing and deny all of the allegations set forth in the Complaint other than the jurisdictional facts set forth in the Complaint and the findings of this Court set forth herein.

10. Defendants agree to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive in Paragraph Eight (8) of this Consent Judgment.

11. Defendants also agree to be permanently enjoined from the following prohibited misrepresentations in connection with the advertisement, promotion, offering, solicitation or sale of any ISP Service and Yellow pages website hosting services to Kansas residents by telephone, on or through the internet, the World Wide Web, any web site, by direct mail or through any other means; Defendants are hereby enjoined from:

- a. making, directly or through an agent, expressly or by implication, orally, or in writing, any misrepresentation of material fact, including but not limited to, falsely representing that a consumer will receive a free trial offer membership without risk or obligation;
- b. Failing to disclose or to disclose adequately, orally or in writing, to the consumer any free-to-pay conversion or negative-option feature, including but not limited to:
 - i. That a consumer who fails to contact the Defendants within a specific time period and cancel is automatically enrolled as one of the Defendants' customers.
 - ii. That the consumer's telephone bill would be charged a monthly fee unless the consumer cancels during the specific period of time; and

- iii. The prescribed manner in which the consumer must cancel, and other specific steps the consumer must take to avoid these charges; the exact duration of the trial period; and the time period in which the charges will be submitted for payment.

12. Defendants are also enjoined from billing or receiving money, or assisting others in the billing or receiving of monies, from Kansas consumers for ISP Services and Yellow pages website hosting services without first obtaining their express informed consent which shall include, but is not limited to:

- a. Obtaining from or confirming with the line subscriber or person representing they are authorized by the line subscriber the telephone number or account number to be charged;
- b. Obtaining from the line subscriber or person representing they are authorized by the line subscriber his or her expressed agreement to receive ISP Services and Yellow pages website hosting services, and to be charged a disclosed amount to the aforesaid telephone number or account number; and
- c. Making and maintaining an audio or digital recording of sales portion and verification portion of the telephone call with the line subscriber, whether or not the telemarketing transaction and its verification are conducted by the same telemarketer or seller.

Provided, however, that this provision shall not apply to any sales generated prior to the entry of this Order assuming a notice was mailed to the customer reminding the customer of their subscription to the service and informing the customer in clear and conspicuous manner of the amount of the charge, that it will be billed to their phone bill on a monthly basis, and that they have the right to cancel if so desired by calling a specific toll-free number and that cancellation and refund requests from such customers are honored in accordance with the provisions of 13.e and 13.f.

13. In addition, Defendants, in connection with the advertising, promotion, offering, solicitation or sale of ISP services and Yellow pages website hosting services to Kansas residents by

telephone, and to the extent applicable through the internet, world wide web, any website, direct mail or through any other means, **SHALL**:

- a. Use only telemarketers and telemarketing materials, including but not limited to, sales scripts, customer service scripts, and pamphlets, that clearly and conspicuously inform consumers: i) that they will be billed for service unless they call a specific toll-free number to cancel before the trial period ends and ii) the time period when such trial period begins and ends;
- b. Use non-commissioned personnel to randomly monitor telemarketing sales calls to assure compliance with the telemarketing sales material.
- c. Tape the sales portion and verification portion of each telemarketing call to ensure that the consumer was properly informed of the negative-option feature and of all material terms of the sale, and that the consumer expressly agreed to the charges;
- d. Engage non-commissioned personnel to review each verification tape recordings to confirm that the consumer consented to the ISP service and was informed of all cancellation options;
- e. Allow any consumer who wishes to cancel to do so;
- f. Provide a satisfactory refund to any customer who reasonably claims to have been billed: i) without authorizing the service, or ii) without having been informed that they would be billed unless they contacted the company to cancel, to the extent that such customer has not previously received the requested refund or credit from the LEC or billing aggregator.

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

15. Defendants agree to make available and/or disclose the provisions of the Consent Judgment to its employees, agents and representatives who are involved in the solicitation of ISP Services within five days of the signing of this Consent Judgment.

16. Defendants agree to pay to the "Office of the Attorney General" of the State of Kansas a total of \$10,000.00 for investigation fees, expenses and other consumer protection purposes allowed by law. Payment shall be made by cashier's check, payable to the Office of the Attorney General, and shall be delivered to the Attorney General of the State of Kansas at the time of Defendants signing this Consent Judgment

17. 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.

18. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, unconstitutional 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.

19. 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 his jurisdiction.

20. 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 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 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.

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 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

DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:



Phil Kline, #3249
Attorney General

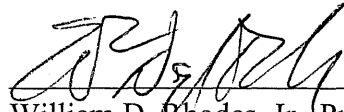
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Attorneys for Plaintiff


DEFENDANTS:

National Online Services, Inc.

Liberty Online Services, Inc.



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