

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 9

FILED BY CLERK  
DISTRICT COURT  
JUDICIAL DISTRICT

JAN 6 11 38 AM '95

STATE OF KANSAS, ex rel.  
ROBERT T. STEPHAN, Attorney General,  
  
Plaintiff,

LIMITED ACTIONS DIV.  
TOPEKA, KANSAS

vs.

Case No. 93CV952

OPPORTUNITIES UNLIMITED PUBLICATIONS, INC;  
and CONTEST AMERICA PUBLISHERS, INC.,  
  
Defendants.

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 6th day of January, 1994<sup>5</sup>, the plaintiff's petition for approval of consent judgment comes before the court for consideration under K.S.A. 50-632. The State of Kansas, ex rel. Robert T. Stephan, Attorney General, appears by and through Kathy Greenlee, Assistant Attorney General. The defendant appears by and through R. Pete Smith of McDowell, Rice & Smith.

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

1. Robert T. Stephan is the duly elected, qualified, and acting Attorney General of the State of Kansas and is duly responsible for the enforcement and administration of the Kansas Consumer Protection Act, K.S.A. 50-623, et seq.

2. Respondent Opportunities Unlimited Publications, Inc. is a Missouri corporation and has its principal place of business at 1401 Armour Road, North Kansas City, Missouri 64116.

3. Respondent Contest America Publishers, Inc. is a Missouri corporation and has its principal place of business at

1401 Armour Road, North Kansas City, Missouri 64116.

4. An original copy of this Consent Judgment will be filed in the District Court of Shawnee County, Kansas for judicial approval pursuant to K.S.A. 50-632 without objection by either party on grounds of venue or jurisdiction.

5. The Attorney General alleges that respondents and others acting on their behalf have engaged in certain merchandising practices in the State of Kansas, in violation of the provisions of K.S.A. 50-623 et seq. Respondents deny engaging in any such unlawful practices.

6. The Attorney General deems this Consent Judgment, executed pursuant to K.S.A. 50-632, and respondents' complete compliance with the terms contained herein, as adequate to protect the people of the State of Kansas against any continuation of the alleged unlawful practices.

7. The State of Kansas is concerned about certain practices that companies in skill contests may, from time to time, have utilized. Respondents vigorously assert that they have not engaged in such practices but agree with the State of Kansas that such practices should not be used in skill contests. All parties to this agreement acknowledge, however, that the fact that respondents agree with the State of Kansas that these practices are prohibited and that respondents will not engage in them should not suggest that respondents have previously engaged in any such conduct.

8. Each respondent, directly or indirectly, or through

agents, employees, salespersons, representatives, or contractors, shall neither engage in nor aid or encourage others in any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the advertisement, offer for sale, or sale of opportunities to win cash contest prizes, specifically including the following methods, acts, uses, or practices;

A. Employing formats in its contest or giveaway mailings which create deception or have the capacity to deceive reasonable consumers in the following manners:

- (1) That the consumers have already won or are tied for first place in a contest or giveaway when, in fact, every person to whom the mailing is sent is "in first place" or is "tied for first place" at the time they receive the initial mailing and no one "wins" the contest or giveaway until a series of tiebreakers are completed; provided, however, that this shall not prevent respondents from advising its contestants at any level of the contest that they are tied for a prize so long as respondents do not indicate that the contestants have either won or are in first place;
- (2) That the consumers' chances of winning the contest or giveaway are equal to or better than those of other persons, despite individual

skills, characteristics, or qualifications of such consumers;

- (3) That the consumers have been "specifically selected" without advising such consumers as to the method by which they have been selected or the number of persons to whom the initial mailing was sent;
- (4) Using envelopes containing language that creates the impression that the mailings are affiliated with governmental entities;
- (5) Using a format which deceives or has the capacity to deceive reasonable consumers into believing that they have an opportunity to win certain prizes or awards which are not ultimately available;

B. Omitting to disclose prior to payment for initial participation in the contest the following material facts and information in the contest rules:

- (1) Description of prizes and fees;
- (2) Description or an example of each and every tiebreaker that participants are expected to complete in order to win;
- (3) The date the contest is expected to be completed;
- (4) Description of all restrictions;
- (5) Description of any refund policy;
- (6) Description of the effects of multiple entries by

participants;

(7) Description of any handling fees for processing tiebreakers;

(8) The approximate number of contestants who are expected to participate and the percentage of contestants a particular consumer is expected to be "tied with" for first place at the end of each successive tiebreaker;

(9) The historical or anticipated percentage of entry fees that are paid out in prizes or awards;

- C. Providing over the telephone answers or assistance in answering questions in the preliminary steps of the purported "contest of skill" to entice consumers to send entry fees;
- D. Requiring additional entry fees for each tiebreaker in the contest or giveaway unless clearly disclosed in the initial mailing;
- E. Advising consumers who call that they have equal chances of winning regardless of their individual characteristics or skill levels;
- F. Advising consumers who call that all or most entry fees are paid out in prize money;
- G. Knowingly accepting more than \$400 from any consumer in any calendar year in contest entry fees unless respondent first informs the consumer in writing the total amount the consumer has paid in the various

contests and receives from the consumer a written acknowledgement that such consumer wishes to submit additional entries at additional cost.

9. Respondents agree as follows:

A. They will make a good faith effort to reduce the incidents of a single customer having multiple match codes in their computer systems by making a manual review of the Kansas list on a yearly basis.

B. With regard to Kansas consumers, respondents will not ask for information regarding age, telephone number, or credit card information. With regard to that type of information currently on hand in the respondents' files, that information will not be made available to anyone renting the list nor will respondents allow list renters to be able to select names based on that data.

C. List rental agreements between respondents and list renters will clearly reflect that telematching the names will be strictly prohibited.

D. In the event the Attorney General develops and proposes to respondents reasonable criteria calculated to identify telemarketers engaging in deceptive practices, respondents will not rent its lists to any telemarketers meeting such criteria.

10. Respondents agree and are obligated to pay \$40,600 in restitution to the Kansas customers listed in attached Exhibit A.

11. Respondents agree and are obligated to pay \$10,000 in investigation fees and expenses to the Attorney General of the State of Kansas, pursuant to K.S.A. 50-636(c).

12. Payment of those obligations incurred in paragraphs 10 and 11 above shall be due within 90 days of the filing of this agreement.

13. This Consent Judgment is entered into pursuant to the provisions of K.S.A. 50-632. No actions taken by the parties, either previously or in connection with the negotiation or preparation of this Consent Judgment, shall be deemed or construed to be an admission of any violation or of the truth or falsity of any matter pertaining to any claim or defense in this matter, or an acknowledgement by any of the parties of any liability to any other parties or to any person for any claim, demand, or action.

14. The parties represent that they and their respective attorneys have read this Consent Judgment and fully understand it. This Consent Judgment shall be binding upon, and inure to the benefit of, the successors and assigns of the parties.

15. This Consent Judgment embodies the entire agreement and understanding of the parties with respect to the subject matter contained herein. The parties declare and represent that no promise, inducement, or agreement not herein expressed has been made and that the parties acknowledge that the terms and conditions of this Consent Judgment are contractual and not a mere recital.

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, 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.

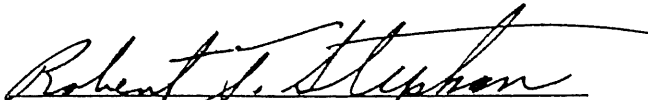
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED the respondents will pay all court costs and filing fees.


IT IS SO ORDERED.

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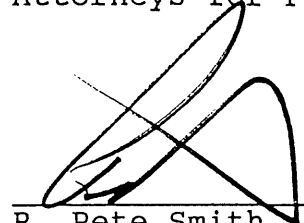
District Court Judge

Approved by:

  
Robert T. Stephan, #05340  
Attorney General

  
Kathy Greenlee, #13759  
Assistant Attorney General

Attorneys for Plaintiff

  
R. Pete Smith  
McDowell, Rice & Smith



C. Floyd Anderson

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Opportunities Unlimited  
Publications, Inc.

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Contest America Publishers, Inc.