

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.)
THOMAS J. MILLER,)
ATTORNEY GENERAL OF IOWA,)
99AG25112,)
)
Plaintiff,)
)
v.)
)
LEVEL 10 MARKETING, INC.)
)
and)
)
DAVID M. BOTTNER, (individually and in his)
corporate capacity))
)
Defendants.)

EQUITY NO. CE73356

CONSENT JUDGMENT

FILED
POLK COUNTY, IA
13 JAN 15 AM 8:34
CLERK DISTRICT COURT

PREAMBLE

This Court, recognizing that the plaintiff, by William L. Brauch, Special Assistant Attorney General, and the Defendants, by their counsel, Sean Petersen, have consented to the entry of this judgment, finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this litigation.
2. Venue is proper in Polk County.
3. Plaintiff commenced this action by filing suit on January 15, 2013, in this Court alleging violations of Iowa Code §§ 322.3 and 714.16.

PARTIES

4. Plaintiff is the State of Iowa, by Thomas J. Miller, the duly elected Attorney General of Iowa.

5. Defendant Level 10 Marketing, Inc., ("Level 10 Marketing") is a for-profit corporation organized under the laws of the state of Louisiana.

6. Defendant David M. Bottner, has been at all times relevant to this action, President of Level 10 Marketing, and has individually controlled, directed, participated in, and formulated the policies relating to the acts, practices, and activities of said corporation that are the subject of this action.

7. "Defendants" shall mean David M. Bottner, individually, and Level 10 Marketing under its own name or any other business name, its principals, officers, directors, agents, servants, representatives, salespersons, employees, successors and assigns, and all persons acting on behalf, and at the direction of Level 10 Marketing, directly or indirectly, through any corporate or other device, contract, partnership or association, jointly or severally, including all persons and entities that receive actual notice of this Consent Judgment.

FINDINGS OF FACT

8. The State alleges that Defendants engaged in deceptive and unfair practices in the advertisement and sale of motor vehicles to consumers located in the State of Iowa through advertising designed by Defendants and sold by Defendants to motor vehicle dealerships which broadcast or disseminated the advertising within the State of Iowa to promote the retail sale of motor vehicles, as set forth in the State's Petition.

9. The State also alleges that Defendants violated Iowa Code § 322.3 by contracting with companies or individuals to interact with consumers in attempting to sell motor vehicles at retail on behalf of certain Iowa motor vehicle dealers and the State further alleges that these companies or individuals did, in fact, interact with Iowa consumers in an attempt to sell motor vehicles at retail in violation of section 322.3.

10. Defendants deny the State's allegations, but are willing to agree to the entry of this Consent Judgment.

IT IS ORDERED, ADJUDGED AND DECREED that:

A. Pursuant to Iowa Code § 714.16(7), Defendants, and their successors, assigns, transferees, officers, agents, servants, employees, representatives and all other persons or entities in active concert or participation with Defendants are hereby permanently enjoined and restrained from engaging in any conduct in connection with the sale, lease or advertisement of merchandise within the meaning of Iowa Code § 714.16 that creates and provides promotional advertising services, consultations or materials for automobile dealers of new or used motor vehicles in the State of Iowa.

B. Pursuant to Iowa Code § 714.16(7) (2011), the Court may impose a civil penalty of not more than \$5,000 for each day of intentional violation of this Order in addition to any other remedy allowed by law.

C. The State is hereby awarded a Civil Penalty against Defendant Level 10 Marketing in the amount of Twenty Thousand Dollars and 00/100 Cents (\$20,000.00). Said Civil Penalty is to or for a governmental unit and is not for pecuniary loss. Said Civil Penalty shall be suspended contingent on Defendant Level 10 Marketing's full compliance with the terms of the Consent Judgment. If this Court later determines that Defendant Level 10 Marketing violated this Consent Judgment for conduct that occurred after the entry thereof, Defendant shall pay the Civil Penalty in full via a cashier's check within three (3) business days of entry of the Court's order. In the event of such a determination, Defendant Level 10 Marketing's obligation to pay the suspended amount shall be in addition to any other monetary or other sanctions which may be imposed for such violation.

D. The State is hereby awarded a Civil Penalty against Defendant David M. Bottner in the amount of Twenty Thousand Dollars and 00/100 Cents (\$20,000.00). The Civil Penalty shall be suspended contingent on Defendant Bottner's full compliance with the terms of the Consent Judgment. If this Court later determines that Defendant Bottner violated this Consent Judgment for conduct that occurred after the entry thereof, Defendant Bottner shall pay the Civil Penalty in full via a cashier's check within three (3) business days of entry of the Court's order. In the event of such a determination, Defendant Bottner's obligation to pay the suspended penalty shall be in addition to any other monetary or other sanctions which may be imposed for such violation.

E. Defendants shall be jointly and severally liable for all amounts that are due and owed under this Consent Judgment.

F. This Consent Judgment shall not be construed as, or be evidence of, admissions by Defendants, nor shall it be construed as a finding by this Court of any violation of Iowa Code § 714.16, Iowa Code § 322.3, or any other law.

G. Defendants shall pay any and all court costs incurred in this action.

H. The Court reserves jurisdiction over this action in order to take any further action deemed necessary to enforce this judgment and to award the State judgment for any costs, including attorneys fees, it incurs in the event of noncompliance by Defendants.

I. The mailing of a copy of this signed and filed Consent Judgment to Defendants, or to their attorneys, shall constitute notice and acceptance by Defendants of all the terms of this Consent Judgment; Defendants have waived the necessity of having a copy of this Consent Judgment served upon them.

J. Defendants hereby accept and expressly waive any defect in connection with service of process issued to Defendants by the Plaintiff.

K. This Judgment is entered into voluntarily by Defendants with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon it by this Judgment consents to its entry without further notice.

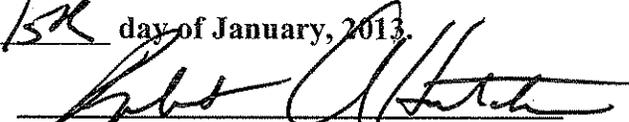
L. This Judgment shall bind Defendants and shall be binding on any and all future purchasers, merged parties, inheritors, or other successors in interest.

M. The acceptance of this Judgment by the State shall not be deemed approval by the State of any of Defendants' advertising or business practices. Further, neither Defendants nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the State of Iowa, the Attorney General, or any other governmental unit of the State of Iowa has approved, sanctioned or authorized any practice, act, advertisement or conduct of the Defendants.

N. Defendants will not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part in the State of Iowa which are prohibited in this Judgment or for any other purpose which would otherwise circumvent any part of this Judgment or the spirit or purposes of this Judgment.

O. Nothing in this Judgment shall be construed to affect any private right of action that a consumer, person, entity, or by any local, state, federal or other governmental entity, may hold against the Defendants.

IT IS SO ORDERED this 15th day of January, 2013.


JUDGE, Fifth Judicial District of Iowa

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE STATE OF IOWA:

DATE SIGNED: 1-14-13



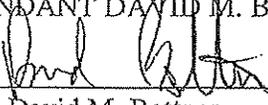
William L. Brauch
Special Assistant Attorney General
Consumer Protection Division
Iowa Attorney General's Office
1305 E. Walnut Street
Des Moines, IA 50319

DEFENDANT LEVEL 10 MARKETING, INC.

BY: 
David M. Bottner
President, Level 10 Marketing Automotive
Group, L.L.C.

DATE SIGNED: 11/25/12

DEFENDANT DAVID M. BOTTNER


David M. Bottner

DATE SIGNED: 11/25/12