

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. BOTTFNER, (individually and in his  
corporate capacity)

Defendants.

EQUITY NO. CE 73356

PETITION

FILED  
POLK COUNTY, IA  
13 JAN 15 AM 8:31  
CLERK DISTRICT COURT

The State of Iowa ex rel. Attorney General Thomas J. Miller, by Special Assistant Attorney General William L. Brauch, brings this action against Level 10 Marketing, Inc., ("Level 10 Marketing"), and David M. Bottner, President of Level 10 Marketing, Inc., pursuant to the provisions of Iowa Code § 714.16, commonly known as the Iowa Consumer Fraud Act, and in support of its claims states as follows:

**INTRODUCTION**

The Attorney General brings this civil action regarding the acts and practices of Defendants Level 10 Marketing and David M. Bottner. Defendants, with the help of certain Iowa auto dealers, have subjected Iowa consumers to a variety of deceptive and unfair advertisements and sales practices concerning used vehicles offered for sale.

In short, Defendants sell promotional advertising and sales packages to auto dealers designed to increase possible sales of the dealers' used vehicle inventories. These promotional

packages uniformly result in dealers sending false messages to consumers by presenting a false premise for a sale. The promotional packages are designed to trick consumers into believing that the vehicles in inventory come from a source other than the dealer's usual used vehicle inventory and are available at lower than usual retail prices. Some of Defendants' promotional packages falsely represent that the selling party isn't the dealer offering the vehicles but, rather, that the dealer is merely a conduit for some third party who has a strong interest in selling the vehicles at well below average retail prices.

In addition, the advertisements included in the promotional packages are deceptive in other ways, including that they represent the recipient of the mailer is a "winner" of a prize through a misleading scratch-off card which is a subterfuge designed to trick consumers into visiting the dealership, subjecting the consumers to undesired sales pitches. Also, Defendants contract with companies which send sales teams of individuals to the dealerships who unlawfully interact with potential customers and use high-pressure sales tactics to sell them vehicles under false pretenses.

The Attorney General brings this action to stop Defendants' unlawful practices, obtain restitution for injured Iowa consumers, and penalize Defendants for their past conduct.

#### PARTIES

1. Plaintiff is the State of Iowa ex rel. Thomas J. Miller, the duly elected Attorney General of the State of Iowa.

2. Defendant, Level 10 Marketing, Inc. ("Level 10") is a for-profit Louisiana corporation which does business in the State of Iowa. Defendant's principal place of business is located at 600 Oak Harbor Boulevard, Suite 201, Slidell, Louisiana, 70458.

3. 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.

4. For the purposes of this Petition, the term, "Defendants," unless otherwise specified, shall refer to all Defendants; and when used in conjunction with allegations of unlawful conduct, shall mean that each defendant committed such act or is legally accountable for such act.

#### JURISDICTION

5. The Attorney General of Iowa has the authority to initiate an action for consumer fraud in violation of Iowa Code § 714.16.

#### VENUE

6. Venue is proper in Polk County, pursuant to Iowa Code § 714.16(10), for the Consumer Fraud Act violations because the Defendants have conducted business in Polk County, and one or more of the victims reside in Polk County.

#### FACTUAL ALLEGATIONS

7. Defendants engaged in the business of providing advertising, marketing and sales assistance to motor vehicle dealers in the State of Iowa, including Polk County.

8. Defendants entered into agreements with motor vehicle dealers to provide promotional materials for "sales events."

9. Defendants provided consulting, training and staff composed of employees and/or independent contractors.

10. Under these agreements, motor vehicle dealers paid Defendants an advertisement and

promotion fee for advertising a sales promotion, in addition to amounts related to performance of the “sales event.”

11. Defendants created promotional materials that materially misrepresented the nature of the “sales events.”

12. Defendants created a false premise for advertised sales by representing or implying that the vehicles included in a sale were from some source other than dealer used vehicle inventory, by using such terms as, “Lenders Inventory Sale,” or “Reprocessed Vehicle Event,” or by representing that the vehicles are “coming to” the city where the advertising dealership is located, or by representing the sale is the state’s “Only F.A.I. Authorized Vehicle Liquidation Event” or that the vehicles included in the sale are being sold “directly to the public.”

13. Defendants compared an advertised price for a used motor vehicle to the Manufacturer’s Suggested Retail Price (“MSRP”), with statements such as, “90% Off Original Price.”

14. Defendants created a false sense of urgency by use of terms such as “Liquidation” and “Emergency Disposal” and by stating a sales event lasts for “5 Days Only,” when, in fact, the event reoccurs at certain dealer locations.

15. Defendants gave consumers who received the solicitations the false impression that they had been selected to receive certain prizes when, in fact, all recipients of the mailed solicitation received at least one of the prizes.

16. Defendants represented the odds of winning particular prizes without clearly and conspicuously disclosing that the odds do not relate only to the odds of winning at the dealership event in question, but reflect odds of winning over a series of events possibly held across the

country or a region of the country over an extended period of time.

17. Defendants advertised prices that failed to include all mandatory charges for non-governmental fees, including documentary fees.

18. Defendants used footnotes or asterisks which contradicted or materially modified material terms of an advertisement, such as stating "All Vehicles Must be Sold!" and "\$1 down" and "\$114 per month," with a corresponding footnote that states "vehicles subject to prior sale," or informing consumers that they are approved for financing at a stated amount with a corresponding footnote which stated that the offer is limited only to consumers with a certain minimum credit score or better."

19. Defendants advertised vehicles for sale at a range of prices without clearly and conspicuously disclosing both the highest and the lowest price or discount, such as "Save Up To 50% Off NADA Book Value" or "Vehicles as low as \$299."

20. Defendants advertised that a specific number of vehicles would be sold at a certain monthly payment, such as "150 Vehicles Will be Available, Some Vehicles Will be Available for \$1 Down, \$114 per month," when such was not in fact the case.

21. Defendants advertised monthly payment amounts without clearly and conspicuously disclosing that said payment amounts were contingent upon the negotiated price of the vehicle, each consumer's credit score, the amount of the purchase that is financed, the rate of financing (APR), the number of payments, the consumer's down payment and the value of any trade-in vehicle.

22. Defendants supplemented the dealership's sales staff by providing its own "Sales Management Team" composed of its personnel or independent contractors that include a sales

director and sales closer, a team leader, a finance and insurance manager.

23. Defendants and their independent contractors, directly or in concert with the dealerships, negotiated the sales terms for all vehicles sold during the “sales event.”

24. Defendants’ advertising misrepresented the cost of the vehicles and the ability of consumers to obtain financing.

25. Defendants failed to adequately disclose the terms and conditions of prizes offered during some of these “sales events.”

#### CAUSES OF ACTION

26. Paragraphs 1 through 25 are incorporated herein by reference.

#### COUNT I

#### CONSUMER FRAUD ACT VIOLATIONS

27. Defendants’ business transactions in Iowa are in connection with the lease, sale, or advertisement of merchandise.

28. Defendants violated Iowa Code § 714.16(2)(a) by engaging in deception, unfair practices, misrepresentation, false pretense or false promise and omissions of material fact with intent that others rely on the omissions in connection with retail advertisements for motor vehicles directed to Iowa consumers as set forth in paragraphs 7-25.

#### REQUEST FOR RELIEF

The State respectfully requests the Court grant relief against the Defendants as follows:

A. That the Court, pursuant to Iowa Code § 714.16(7), permanently enjoin each of the Defendants and (as applicable) each Defendant’s directors, officers, principals, partners, employees, agents, representatives, subsidiaries, affiliates, successors, assigns, merged or

acquired predecessors, parent or controlling entities, and all other persons, corporations, or other entities, acting in concert or participating with Defendants who have actual or constructive notice of the Court's injunction from engaging in the deceptive, misleading, unfair, and omissive acts and practices or otherwise violating the Iowa Consumer Fraud Act as alleged in this Petition.

B. That the Court expand the provisions of the permanent injunctions as necessary by including such "fencing in" provisions as are reasonably necessary to ensure that the Defendants and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law.

C. That the Court, pursuant to Iowa Code § 714.16(7), enter judgment against Defendants, jointly and severally, for amounts necessary to restore to consumers all money acquired by means of acts or practices that violate the Consumer Fraud Act.

D. That the Court, pursuant to Iowa Code § 714.16(7), enter judgment against Defendants, jointly and severally, for such additional funds as are necessary to ensure complete disgorgement of all ill-gotten gain traceable to the unlawful practices alleged herein.

E. That the Court, pursuant to Iowa Code § 714.16(7), enter judgment against Defendants, jointly and severally, for civil penalties up to \$40,000.00 for each separate violation of the Consumer Fraud Act, by each Defendant.

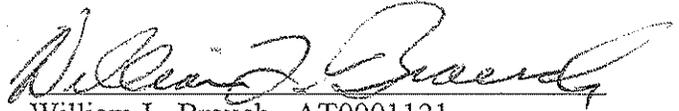
F. That the Court award the State interest as permitted by law.

G. That the Court, pursuant to Iowa Code § 714.16(11), enter judgment against Defendants, jointly and severally, for mandatory attorney fees, state's costs and court costs.

H. That the Court grant such additional relief as the Court deems just and equitable.

Respectfully submitted,

STATE OF IOWA ex rel.  
ATTORNEY GENERAL  
THOMAS J. MILLER



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