

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.)	
THOMAS J. MILLER,)	Case No. EQCE 69268
ATTORNEY GENERAL OF IOWA,)	
99AG25112)	
)	
Plaintiff,)	
)	
v.)	
)	CONSENT JUDGMENT
STONEBRIDGE BENEFIT SERVICES, INC.,)	
a Delaware corporation, fka Health Benefit Services,)	
Inc.; and)	
)	
J. C. PENNEY DIRECT MARKETING)	
SERVICES LLC, a Delaware corporation,)	
)	
Defendants.)	

The Court, having been presented by Assistant Attorney General Steve St. Clair with this Consent Judgment and having reviewed the file in this matter, determines that final judgment should be entered herein, and finds as follows:

1. On March 27, 2013, Plaintiff State of Iowa *ex rel.* Thomas J. Miller, Iowa Attorney General, filed an Amended and Substituted Petition in Equity against the above-captioned defendants (“Defendants”) alleging violations of Iowa Code Ch. 552A, the Buying Club Memberships Law (“BCL”), Iowa Code § 714.16, the Consumer Fraud Act (“CFA”), and Iowa Code § 714.16B, the Older Iowans Law, and seeking restitution for Iowa consumers over the time buying club memberships were marketed, offered, and sold to Iowa residents since 1993, and other relief as described in the Amended and Substituted Petition in Equity. This Consent

Judgment, which has been approved by Plaintiff and each Defendant, is intended to resolve this litigation.

2. The Court has jurisdiction of the parties and subject matter.

3. As a condition to the resolution of this litigation and without admitting any violation of the BCL and/or CFA, Stonebridge Benefit Services, Inc. has agreed to cancel the buying club memberships and discontinue the billing of membership fees for any current Iowa resident.

4. Defendants deny wrongdoing or liability of any kind, but have agreed to entry of this Consent Judgment in order to resolve their dispute with Plaintiff. This Consent Judgment represents the signatories' settlement of a disputed claim, and is not itself evidence of wrongdoing or violation of law on the part of Defendants.

5. The Court finds that this Consent Judgment should be entered.

IT IS THEREFORE ORDERED pursuant to the Iowa Buying Club Memberships Law, Iowa Code Ch. 552A, and the Iowa Consumer Fraud Act, Iowa Code § 714.16, that each Defendant, and each Defendant's partners, employees, agents, servants, representatives, successors, assigns, and all other persons, corporations and other entities acting in concert with, or participating in the marketing or sale of buying club memberships to Iowa residents with, each Defendant, who have actual or constructive notice of the Court's injunction (hereinafter "Defendants *et al.*"), are permanently restrained and enjoined from the following in connection with all transactions subject to the BCL: (A) violating the BCL; (B) without limiting the foregoing, failing to comply with all notice, disclosure, and other requirements of Iowa Code §§ 555A.1 through 555A.5 (incorporated by section 552A.3 of the BCL) and with all requirements relating to contracts set forth in Iowa Code §§ 552A.3 and 552A.4; and (C) without limiting the foregoing, from engaging in the following acts and practices:

1. Selling to Iowa residents buying club memberships, as defined in Iowa Code Ch. 552A, whether the sale is solicited through telemarketing, direct mail, online, or otherwise, without providing each buyer with a fully completed receipt or copy of any contract at the time of its execution, setting forth the date of the transaction and containing the name and address of the seller and the following statement:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

Such statement shall be in ten-point (or larger) boldface type, and must appear on the front page of the receipt or immediately above the buyer's signature line on the contract.

2. From failing to furnish each buyer, at the time the buyer signs the contract or otherwise agrees to buy a membership, a completed form in duplicate which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten-point boldface type the following caption, information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

.....
(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send

a telegram, to, (Name of seller) at (Address of seller's place of business) not later than midnight of (Date).

I hereby cancel this transaction.

.....
(Date)

.....
(Buyer's signature)

3. To the extent that a Defendant presents a contract for the consumer's signature by mail, courier, or any other means that does not involve instantaneous communication between seller and buyer, Defendant shall arrange for such further communication to occur as is necessary to ensure: (i) that the contract, as well as the Notice of Cancellation, accurately sets forth the date of the transaction; (ii) that the Notice of Cancellation sets forth a specific date not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation; and (iii) that the Defendant orally informs the buyer at the time the buyer signs the contract of the buyer's right to cancel.

IT IS FURTHER ORDERED pursuant to the Iowa Buying Club Memberships Law, Iowa Code Ch. 552A, and the Iowa Consumer Fraud Act, Iowa Code § 714.16, that Defendants *et al.* are permanently restrained and enjoined from charging, collecting, or receiving membership fees or costs from Iowa residents who were enrolled through a transaction that violated the BCL.

IT IS FURTHER ORDERED pursuant to the Iowa Consumer Fraud Act, Iowa Code § 714.16, that Defendants *et al.* are immediately and permanently restrained and enjoined from violating the CFA, and, without limiting the foregoing, from engaging in any practices determined to have constituted unfair or deceptive practices by the Iowa Supreme Court in *State of Iowa ex rel. Miller v. Vertrue, Inc.*, 2013 WL 3377866 (Iowa), or substantially equivalent practices. Without limiting the foregoing, Defendants *et al.* are ordered to refrain from the following acts and practices in connection with the marketing of memberships:

1. The solicitation of memberships through the use of telemarketing solicitation practices that involve:

a) Delivering telemarketing solicitations at a speed or in a manner that would

make it unreasonably difficult for the average consumer in the target population to understand the entire presentation.

b) Structuring or conducting solicitations in a manner that obscures the fact that an enrollment is being solicited, the terms of membership, the business with which the consumer is transacting a membership, the steps that must be taken to avoid credit card or other charges, or the consequences of the consumer's assent.

2. The practice of conveying to consumers that they are receiving a membership or other merchandise as a thank you or as a comparable show of gratitude, unless the membership or other merchandise is in fact provided as such a show of gratitude and is provided without any current or future cost or obligation.

3. Offering, as an inducement to try or obtain a membership, a money-back opportunity, a gift card, or other premium, unless such offer is accompanied, at the time the offer is made, by clear and conspicuous disclosure of all material facts associated with obtaining the premium, including without limitation a clear and conspicuous description of each step involved in the process of obtaining the premium, and any conditions, limitations, or restrictions pertaining to such process.

4. The use of the phrase "you have nothing to lose" (or its substantial equivalent), if the enjoined entity knows or should know that a significant volume of consumers do in fact incur loss associated with unwitting enrollments and/or unwanted charges; if the transaction involves any affirmative actions to deceive consumers; or if unnecessary obstacles or delays are included in the process of obtaining a premium.

5. The use of any form of solicitation that misleads consumers regarding what entity they are dealing with, and/or what entity is sponsoring a solicitation, promotion, or offer.

IT IS FURTHER ORDERED pursuant to the Iowa Consumer Fraud Act, Iowa Code § 714.16, that Defendants *et al.* are immediately and permanently restrained and enjoined from charging, collecting, or receiving membership fees or costs from Iowa residents who are likely to have been enrolled through a transaction that violated the CFA through one or more of the acts and practices prohibited in any part of the preceding paragraph.

IT IS FURTHER ORDERED that, contemporaneously with entry of this Consent Judgment, Defendants pay to Plaintiff the sum of \$2,738,448.00, to be applied by the Attorney General to restoring to Iowa consumers amounts they spent for Defendants' memberships from

1993 through the date of this Consent Judgment, to the extent reimbursement has not previously been made, pursuant to the BCL and the CFA (Iowa Code § 714.16(7)). Such restoration may include, in the Attorney General's discretion, such expenditures as are reasonably necessary to retain the services of a third party to administer consumer reimbursement. Defendants are directed to accommodate reasonable requests from Plaintiff for customer data or other information required by Plaintiff to facilitate restoration. To the extent that consumers entitled to reimbursement cannot be located through reasonable efforts, the money that is not returned to consumers shall be awarded to Plaintiff to be used by the Attorney General for the administration and implementation of the CFA, pursuant to Iowa Code § 714.16(7), and shall be deposited into the fund created by Iowa Code § 714.16C.

IT IS FURTHER ORDERED that, contemporaneously with entry of this Consent Judgment, Defendants pay to Plaintiff, for costs of the court action and any investigation which was conducted, including reasonable attorneys' fees, the sum of \$164,375.00, pursuant to the BCL and the CFA (Iowa Code § 714.16(11)).

IT IS FURTHER ORDERED that paragraph 18 of the prevailing Protective Order in this cause be modified (i) to substitute sixty days where thirty days appears, and (ii) to permit the Attorney General to retain the databases identifying Iowa residents who were members of the buying clubs to the extent reasonably necessary to effectuate the restitution to Iowa consumers provided in the Consent Judgment. When such databases are no longer needed by the Attorney General in connection with the effort to effectuate restitution, the Attorney General must either (i) return to Stonebridge within sixty (60) days all copies of all confidential information obtained through discovery in this action and utilized to effectuate restitution or (ii) certify under penalty of perjury within sixty (60) days to that person or party that all such materials have been

destroyed; provided, however, that nothing herein prevents the Attorney General or the State of Iowa from maintaining such records of restitution payments to consumers as it would typically maintain in the ordinary course.

IT IS FURTHER ORDERED that the Court retain jurisdiction for purposes of enforcing this Final Judgment.

IT IS FURTHER ORDERED that Defendants pay court costs.

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Approved:

FOR DEFENDANTS:

Date: 9/16/13

Erin Zajkowski
Erin Zajkowski
Stonebridge Benefit Services, Inc.

Date: 9/16/13

[Signature]
WINDY CHAN
J.C. Penney Direct Marketing Services, LLC

Date: SEPTEMBER 13, 2013

RECEIVED

[Signature]
Michael W. Thrall
Attorney for Defendants

FOR PLAINTIFF:

Date: 9-16-2013

[Signature]
Steve St. Clair
Assistant Iowa Attorney General