

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Case No. CE 51687

STATE OF IOWA ex rel. THOMAS J. MILLER, ATTORNEY GENERAL OF IOWA, 99AG25112,

CONSENT JUDGMENT

Plaintiff,

v.

VISION IMPROVEMENT TECHNOLOGIES, L.L.C., an Iowa corporation; CLIFF ROSE, in his individual and corporate capacities; DAVID E. SYKES, in his individual and corporate capacities; DAVID W. MURIS, in his individual and corporate capacities; GARY KORF, in his individual and corporate capacities,

Defendants.

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IOWA DISTRICT COURT

On this 1st day of November, 2006, the Court, having been presented by Assistant Attorney General Steve St. Clair with this Consent Judgment, determines that final judgment should be entered herein, and finds as follows:

1. Plaintiff State of Iowa ex rel. Thomas J. Miller, Iowa Attorney General, has filed a Petition in Equity against the Defendants named in the above caption pursuant to Iowa Code § 714.16 (2005), the Iowa Consumer Fraud Act, alleging *inter alia* unfair and deceptive practices in connection with Defendants' marketing of the See Clearly Method.
2. The Court has jurisdiction of the parties and subject matter.

3. 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 shall not be used as evidence of wrongdoing or liability on the part of Defendants and shall not be admissible in any legal proceeding for any purpose other than a proceeding for the enforcement of this Consent Judgment.

4. The Court finds that this Consent Judgment has been approved by all parties and by the Defendants' counsel and should be entered.

5. To the extent such an agreement is legally binding, the parties have agreed that this Consent Judgment (and all debts or obligations arising hereunder) shall be deemed non-dischargeable in bankruptcy in accordance with 11 U.S.C. sec. 523.

6. The parties have agreed that their approvals to this Consent Judgment may be affixed in counterparts, as necessary, and that faxed signatures shall be treated as if original.

7. All parties signing this Consent Judgment waive any right to notice of the execution of the Consent Judgment by the Court and the entry by filing of this Consent Judgment, and are conclusively presumed to know when it takes effect.

8. For purposes of this Consent Judgment:

(i) "VIT" refers to the corporate defendant, Vision Improvement Technologies, L.L.C.

(ii) "SCM" refers to the See Clearly Method.

(iii) "Defendants" refers to all defendants named in the above caption, unless the context otherwise requires.

1. **IT IS HEREBY ORDERED** pursuant to Iowa Code § 714.16 (7) (2005) that Defendants, whether acting directly or indirectly through, or in concert with, their principals,

employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, parent or controlling entities, or through other persons, corporations and other entities acting in concert or participating with Defendants who have actual or constructive notice of the Court's injunction are enjoined from violating the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2005), and, without limiting the foregoing, are enjoined from engaging in the acts and practices set forth in the lettered subparagraphs below, to the extent the conduct in question occurs in Iowa (wholly or in part) or is directed to an Iowa resident:

A. Advertising, promoting, distributing, offering for sale or selling ("marketing") the product that has been sold by VIT under the name See Clearly Method or any substantially similar merchandise, or taking an action that would promote or facilitate such marketing by another person or entity.

B. Making, or assisting others in making, directly or by implication, any material false or misleading oral or written statement or representation in connection with the advertising, promotion, distribution, offer for sale, or sale of any merchandise relating to the improvement of eyesight, or to the health or functioning of the eyes.

C. Making, or assisting others in making, directly or by implication, any performance or benefit claim for any merchandise relating to the improvement of eyesight, or to the health or functioning of the eyes, unless a reasonable basis for the claim exists at the time the claim is made. "Reasonable basis" shall include competent and reliable scientific evidence, which shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

D. Making, or assisting others in making, directly or by implication, any performance or benefit claim for any merchandise unless a reasonable basis for the claim exists at the time the claim is made. To the extent that any such claim includes, or is accompanied by, an express or implied representation that the claim is supported by science, "reasonable basis" shall include competent and reliable scientific evidence, which shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

E. Using, in connection with the advertising, promotion, distribution, offer for sale, or sale of any merchandise, any testimonial or endorsement that does not comply with the Federal Trade Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 CFR § 255.0, et seq., as they exist as of the date of this Consent Judgment. For purposes of this injunctive requirement, precatory language in the Guides (e.g., "should") shall be interpreted as though mandatory ("shall"), and the "Examples" contained in the Guides may be used to aid in interpreting the standards contained in the Guides.

F. In connection with the advertising, promotion, distribution, offer for sale, or sale of any merchandise, misrepresenting expressly or by implication the terms of any guarantee or trial period, or the extent to which a consumer can readily obtain a refund or otherwise rescind the transaction.

2. **IT IS FURTHER ORDERED** that no later than November 1, 2006, VIT shall: (a) cease accepting or processing orders for the SCM; (b) cease all attempts to collect delinquent payments; and (c) take all steps reasonably necessary to effect a halt, at the earliest practicable time, to the dissemination of advertisements for the SCM. As such a halt relates to any website used to promote the SCM, any feature of the website that advertises, promotes, offers for sale or sells the SCM must be eliminated on or before November 1, 2006; however, other features of such website shall be maintained thereafter to the extent that such features are or may be helpful to consumers in communicating with VIT and/or in effecting a return, provided that in no event shall any feature of such website continue in existence beyond December 22, 2006.

3. **IT IS FURTHER ORDERED** that Defendants, other than Defendant Sykes, immediately take all steps reasonably necessary to remove any and all adverse credit reporting that may have occurred in connection with the credit of any and all consumers who ever ordered or purchased the SCM and to ensure that no such adverse credit reporting occurs hereafter. Defendants shall complete such steps as soon as practicable, but in any event no later than ninety (90) days after entry of this Consent Judgment.

4. **IT IS FURTHER ORDERED** that VIT shall continue to apply its policies relating to

returns and refunds ("returns") as necessary to ensure that all consumers who order the SCM prior to November 1, 2006 have at least the same opportunity to effect a return as consumers who had ordered the SCM in August 2006. Immediately upon entry of this Consent Judgment, VIT shall ensure that: consumers who wish to contact VIT to request a return are readily able to communicate the request effectively to VIT; no RMA (Return Merchandise Authorization) procedure is applied or enforced by VIT; any and all requirements or procedures that impede a consumer's ability to readily effect a return are eliminated; and any and all efforts to "save" a sale by offering discounts or otherwise cease. VIT shall provide Plaintiff with a list of all refunds (name, address, phone, date, amount) made pursuant to this paragraph on December 22, 2006 or as soon thereafter as practicable so that Plaintiff can ensure that any consumer who receives a refund directly from VIT does not also receive a distribution from the restitution fund established pursuant to other provisions of this Consent Judgment.

5. **IT IS FURTHER ORDERED** that VIT shall continue to conduct such operations as are necessary to ensure compliance with the Consent Judgment through December 22, 2006 or until full compliance with this Consent Judgment is achieved, whichever is longer.

6. **IT IS FURTHER ORDERED** that VIT shall take all steps reasonably necessary to ensure that no distributions, payments, or other transfers of anything of value shall be made to any holders of any equity or ownership interest in VIT until all financial obligations set forth in this Consent Judgment are fulfilled; provided, however, that this requirement shall not prevent such payments of regular business expenses as are reasonably necessary to perform the requirements of this Consent Judgment.

7. **IT IS FURTHER ORDERED** that VIT shall not market, sell, transfer, assign or

otherwise disseminate VIT's customer information to any third parties. In addition, VIT shall immediately take such steps as are necessary to cause any list marketing companies or sales agents which have previously received VIT's customer information for the purpose of marketing or selling the customer information to immediately return all such customer information to VIT and to immediately cease marketing, selling or otherwise utilizing such customer information.

8. **IT IS FURTHER ORDERED** that VIT maintain such records as are necessary to demonstrate compliance with this Consent Judgment, retain such records for no less than five (5) years, and respond promptly to reasonable requests from Plaintiff for information demonstrating compliance with this Consent Judgment. In addition, to the extent a Defendant other than VIT has or comes into possession of records relating to compliance with this Consent Judgment and that Defendant has reason to believe that such records would not be maintained and/or retained by VIT under the requirement of the immediately preceding sentence, that Defendant shall retain such records for no less than five (5) years, and respond promptly to reasonable requests from Plaintiff for information demonstrating compliance with this Consent Judgment. Defendants shall, on or before entry of this Consent Judgment, designate a custodian to perform the duties required by this paragraph after the corporate Defendant is no longer able to do so and provide Plaintiff a letter from the custodian accepting the designation.

9. **IT IS FURTHER ORDERED** that, in addition to whatever other legal remedies may be available, a violation of this Consent Judgment constitutes a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2005), and each violation by a Defendant of this Consent Judgment will, in an action by the Attorney General that establishes such violation by a preponderance of the evidence, give rise to a rebuttable presumption that a civil penalty should be imposed in the highest

amount provided for by Iowa Code § 714.16 (7), namely \$40,000.00.

10. **IT IS FURTHER ORDERED** that if current or historical (but not forecast) financial information provided by any Defendant is relied upon by Plaintiff in connection with the negotiation of the terms of this Consent Judgment, and it is proven by clear and convincing evidence that such Defendant knew such financial information to have been materially false, misleading, or incomplete at the time it was provided, such Defendant shall be liable to Plaintiff for \$250,000.00, to be used by the Attorney General for any purpose authorized by law.

11. **IT IS FURTHER ORDERED** that, pursuant to Iowa Code § 714.16 (7), Defendants pay to Plaintiff on or before the filing of this Consent Judgment \$200,000 to be used to pay restitution to consumers who paid money to VIT. The criteria and procedures to be employed in effecting such restitution shall be determined by Plaintiff, in Plaintiff's sole discretion. If any of these funds have not been distributed as restitution as of six (6) months from the entry of this Consent Judgment, Plaintiff may in its sole discretion terminate efforts to use the remaining funds for restitution and may deposit the remaining funds into the consumer fraud enforcement fund referred to in the next paragraph.

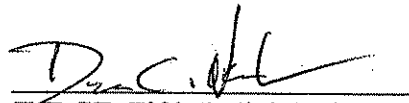
12. **IT IS FURTHER ORDERED** that, pursuant to Iowa Code § 714.16, Defendants pay to Plaintiff \$20,000.00 to the consumer fraud enforcement fund referred to in Iowa Code § 714.16A (2005) on or before the entry of this Consent Judgment.

13. **IT IS FURTHER ORDERED** that any documents, materials, or information provided to Plaintiff by a Defendant in response to Plaintiff's pre-lawsuit investigation or during litigation shall be deemed an open record and shall not be subject to any confidentiality restrictions, excepting for documents, materials, or information referred to in the Amendment To Protective

Order filed herein on August 18, 2006, which shall be subject to all restrictions set forth in such Order.

IT IS FURTHER ORDERED that the Court retains jurisdiction for purposes of enforcing this Consent Judgment.

IT IS FURTHER ORDERED that Defendants pay the court costs herein.



JUDGE, Fifth Judicial District

Approved:

VISION IMPROVEMENT TECHNOLOGIES, LLC

By *Gary M. Korf*
GARY M. KORF Its PRESIDENT

Gary M. Korf
Gary Korf

Date 30 October 2006

Cliff Rose
Cliff Rose 10/30/06

Date

David Muris
David Muris

Date

David Sykes
David Sykes

Date

Mark E. Weinhardt
Mark E. Weinhardt, Attorney for Defendants 10/31/06 Date

Edward M. Mansfield
Edward M. Mansfield, Attorney for Defendants 10/31/06 Date

Matthew C. McDermott
Matthew C. McDermott, Attorney for Defendants 10/31/06

Steve St. Clair 11-1-06
Steve St. Clair, Assistant Iowa Attorney General

Approved:

VISION IMPROVEMENT TECHNOLOGIES, LLC

By _____
_____ Its _____

_____ Gary Korf Date

_____ Cliff Rose Date

_____ *David W. Muris* Date 10-30-06
_____ David Muris

_____ David Sykes Date

_____ Mark E. Weinhardt, Attorney for Defendants Date

_____, Edward M. Mansfield, Attorney for Defendants Date

_____ Matthew C. McDermott, Attorney for Defendants

_____ Steve St. Clair, Assistant Iowa Attorney General

Approved:

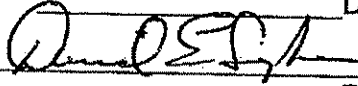
VISION IMPROVEMENT TECHNOLOGIES, LLC

By _____
_____ Its _____

_____ Gary Korf _____ Date

_____ Cliff Rose _____ Date

_____ David Muris _____ Date

 _____ 10/30/06
_____ David Sykes _____ Date

_____ Mark E. Weinhardt, Attorney for Defendants _____ Dat

_____, Edward M. Mansfield, Attorney for Defendants _____ Dat

_____ Matthew C. McDermott, Attorney for Defendants

_____ Steve St. Clair, Assistant Iowa Attorney General