

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

Plaintiff,

v.

ITALIA TRADING, LLC, a Florida limited-
liability corporation,

and

ROBERT SCHERMERHORN, in his
corporate and personal capacities,

Defendants.

EQUITY NO. 05771 EQCE084973

CONSENT JUDGMENT

The Court, having been presented by Assistant Attorney General J. Andrew Cederdahl with a copy of this Consent Judgment (signed by counsel and signed and notarized by Mr. Schermerhorn), finds and orders as follows:

PARTIES

1. Robert Schermerhorn sells a consumer product called the “Miracle Scraper,” as well as buying club memberships in “VIP Auto Discount Club.”
2. Robert Schermerhorn is a principal of Italia Trading, LLC, a corporation with a business address of 5811 Memorial Highway Suite 203, Tampa, FL 33615.
3. The Court has jurisdiction of the parties and subject matter.

ALLEGATIONS

4. The Attorney General alleges that, while soliciting sales of merchandise, the Defendants violated the Iowa Consumer Fraud Act, Iowa Code § 714.16 ("CFA") and the Iowa Buying Club Memberships law, Iowa Code § 552A (“BCM”) by:

- a. deceptively and unfairly enrolling Iowa consumers into a membership club with nonconsensual monthly fees;
- b. continuing to charge certain Iowa consumers who discovered the nonconsensual monthly fees and cancelled the membership they never consented to join; and
- c. failing to comply with the Iowa Buying Club Membership law.

5. Defendants deny that they, or (as applicable) their agents, owners, officers, directors, or employees are legally responsible for any conduct in violation of the CFA and the BCM, and this Consent Judgment is not an admission of liability by the Defendants.

6. This Consent Judgment, which has been approved by all parties, is intended to resolve this litigation pursuant to the CFA and the BCM. For purposes of entry of this Consent Judgment, the above-captioned Defendants agree that any and all service or notice requirements relating to this Consent Judgment may be fully met upon the Plaintiff's emailing of a file-stamped copy of this document to their attorney, Alex Stavrou.

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

RESOLUTION

IT IS THEREFORE ORDERED, pursuant to Iowa R. Civ. P. 1.1501 *et seq.* and the CFA that Robert Schermerhorn, in his personal and corporate capacities and Italia Trading, LLC ("Defendants"), as well as the Defendants' employees, successors, principles, partners, affiliates, members, agents, representatives, subsidiaries, assigns, parent or controlling entities, and all other persons, corporations, agents, trusts or other entities acting in concert or participating with the Defendants who have actual or constructive knowledge of this Consent Judgment, shall refrain now and at all times in the future, from engaging in or participating, directly or indirectly,

in any form of advertising, solicitation or sale of “miracle scrapers” and buying club memberships of any sort (as defined under the BCM) (a) to Iowa consumers or (b) that are conducted in whole or in part from any location in the State of Iowa. The Defendants shall disable the ability of Iowa consumers to purchase the “miracle scraper” and membership into the “VIP Auto Discount Club” online and shall refuse any payment or attempted payment by Iowa consumers for “miracle scrapers” and all buying club membership(s) the Defendants sell. This Court’s permanent injunction is entered against the Defendants pursuant to the authority of Iowa Code § 714.16 (7).

IT IS FURTHER ORDERED, pursuant to the CFA, that the Defendants shall reimburse the total amount of money all Iowa consumers who purchased the “Miracle Scraper” and “VIP Auto Discount Club” on or before 35 days from the entry of this Order.

To effectuate reimbursement of Iowa consumers, the Defendant shall credit each Iowa consumer the total amount each consumer paid for “Miracle Scraper(s)” and the “VIP Auto Discount Club” directly to the credit or debit card each eligible consumer used to purchase the product(s). The amount to be credited to each consumer includes the cost of the “Miracle Scraper” and every monthly fee paid by the consumer, which has not already been credited to the consumer by the Defendants as of the time of this Order’s entry.

If the Defendants are unable to credit certain credit or debit cards belonging to eligible Iowa consumers because the card to be credited is no longer active, the Defendant shall take other necessary steps to refund each eligible consumer – including by sending a check to the consumer’s last-known address. If by February 28, 2020, any amount leftover cannot be credited to eligible consumers because they cannot be found or otherwise reimbursed, the Defendants shall transfer the balance to the Iowa Attorney General and it shall be deposited into the

Consumer Education and Litigation Fund referred to in Iowa Code § 714.16C.

Iowa consumers are not required to return the “miracle scraper(s)” to receive refunds, and the Defendants shall not make any contrary representation.

IT IS FURTHER ORDERED that any and all alleged debts of Iowa consumers Defendants allege are or were incurred from sale of “Miracle Scraper(s)” and the VIP Auto Discount Club are void. The Defendants shall not make any contrary representation to Iowa consumers that they continue to owe the alleged debt(s), and the Defendants shall not turn over said alleged debts to a debt collection agency or otherwise attempt to collect them. The Defendants shall not misrepresent the terms of this Order to Iowa consumers.

IT IS FURTHER ORDERED that, pursuant to the CFA, that the Defendants shall pay \$20,000.00 to the Consumer Education and Litigation Fund referred to in Iowa Code § 714.16C. The Defendant shall pay said amount on or before 35 days after the entry of this Order.

IT IS FURTHER ORDERED that, if the Attorney General receives evidenced notice by any Iowa consumer who paid money to the Defendant on or after January 1, 2016 for “Miracle Scraper(s)” and/or the “VIP Auto Discount Club” and who was not refunded as required by this Order, the Defendants must immediately pay an additional \$30,000 to the Consumer Education and Litigation Fund referred to in Iowa Code § 714.16C. The Attorney General is permitted to inquire whether Iowa consumers received the refunds to which they are entitled and to ensure the Defendants carried out the obligations of this Order.

IT IS FURTHER ORDERED that the Defendants shall not participate, directly or indirectly, in any activity to form or proceed as a separate entity, trust or corporation for the purpose of engaging in, or benefitting from, acts from within any Iowa location or directed at Iowa consumers that are prohibited by this Order, or for any other purpose which circumvents

any part of this Order. This permanent injunction is entered against the Defendants pursuant to the authority of Iowa Code § 714.16 (7).

IT IS FURTHER ORDERED that the Defendants shall refrain from selling, renting, sharing, transferring, making available for use by others, or making any other use whatsoever of the names and/or other identifying or personal information of persons with Iowa addresses who previously responded to solicitations from the Defendants.

IT IS FURTHER ORDERED that the Defendants shall comply with requests from the Attorney General for information relating to compliance with this Consent Judgment.

IT IS FURTHER ORDERED that nothing contained in this Consent Judgment shall be construed to waive any individual right of action by a consumer or a local, state, federal or other governmental entity.

IT IS FURTHER ORDERED that nothing herein diminishes the requirements, duties, obligations, or powers set forth in the CFA.

IT IS FURTHER ORDERED that Defendants shall distribute a copy of this Order to every one of the employees, contractors and agents of all “Miracle Scraper” and “VIP Auto Discount Club” companies with which he is affiliated within one week of this Order’s entry.

IT IS FURTHER ORDERED that the Attorney General’s execution of this Consent Judgment and its subsequent entry by the Court constitutes a settlement, and a release of the Defendants from any and all liability for conduct outlined in Allegation Paragraph 4 that (i) occurred prior to entry of this Consent Judgment; and (ii) would violate the CFA and/or BCM; provided, the Attorney General may seek to enforce violations of this Consent Judgment.

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 Consumer Fraud Act, Iowa Code § 714.16 (CFA), and each such violation by any of the Defendants of this Consent Judgment, if established by a preponderance of the evidence in an enforcement action by the Attorney General, gives rise to all of the remedies provided in the CFA.

IT IS FURTHER ORDERED that the Court retain jurisdiction to enforce this Consent Judgment.

IT IS FURTHER ORDERED that the Defendants pay court costs, if any.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
EQCE084973 STATE OF IOWA VS ROBERT SCHERMERHORN ET AL

So Ordered

A handwritten signature in blue ink that reads 'David Nelmark'. The signature is written in a cursive style with a large initial 'D'.

David Nelmark, District Judge
Fifth Judicial District of Iowa