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STATE OF ARIZONA, ex rel.)
TERRY GODDARD, Attorney General,)
)
Plaintiff,)
v.)
)
SMART ADVERTISING SOLUTIONS,)
LLC, an Arizona Limited Liability)
Company; BILL FAUTSCH and JANE)
DOE FAUTSCH, individually and)
as husband and wife; THOMAS KELLY)
and JANE DOE KELLY, individually)
and as husband and wife; and SMART)
ADVERTISING SOLUTIONS, INC.,)
successor in interest to Smart)
Advertising Solutions, LLC,)
)
Defendants.)
_____)

No. _____

CONSENT JUDGMENT

The State of Arizona, having filed a complaint alleging violations of the Arizona Consumer Fraud Act, Arizona Revised Statutes (“A.R.S.”) § 44-1521, *et seq.*, and Defendants Smart Advertising Solutions, LLC, Bill Fautsch, Thomas Kelly, and Smart Advertising Solutions, Inc. having been served with a copy of the complaint, having been fully advised of the right to a trial in this matter and, after receiving advice of counsel, having waived the same, admit that this Court has jurisdiction over the subject matter and the

parties for purposes of entry of this Consent Judgment and acknowledge that this Court retains jurisdiction for the purpose of enforcing this Consent Judgment.

The Defendants have agreed to a voluntary compromise of disputed claims and the State of Arizona and Defendants have agreed on a basis for the settlement of these matters in dispute.

This Consent Judgment does not constitute an admission by the Defendants for any purpose of a violation of any state law, rule, or regulation nor does it constitute evidence of any liability. This Consent Judgment is made without trial or adjudication of any issues of fact or law, or finding of liability of any kind.

ALLEGATIONS

1. The Plaintiff is the State of Arizona, ex rel. Terry Goddard, Attorney General, who is authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*

2. Defendant Smart Advertising Solutions, LLC (“SAS”) was an Arizona Limited Liability company located in Maricopa County, Arizona that marketed and sold home based businesses to consumers. When reference is made to SAS the reference applies both to SAS and to the actions of SAS’s former owners, officers, managers, employees, agents, and independent contractors.

3. Defendant Bill Fautsch was an owner and member of SAS and in such capacities supervised, directed, and controlled the business activities of SAS.

4. Defendant Thomas Kelly was an owner, member, and manager of SAS and in such capacities supervised, directed, and controlled the business activities of SAS.

5. Defendant Smart Advertising Solutions, Inc. is an Arizona corporation into which Defendant Smart Advertising Solutions, LLC merged on January 26, 2006. Smart Advertising Solutions, Inc. is the legal successor in interest to Smart Advertising Solutions, LLC and is responsible for the LLC's contractual and other obligations.

6. Beginning in February 2004, SAS advertised in direct mailings to consumers that they could purchase business opportunities through SAS that allowed them to work at home, selling various products and services over the internet by use of a website that would be set up and maintained by SAS. In response to these mailings, thousands of consumers contacted SAS and purchased the home based businesses, along with advertising services sold by SAS that were represented as being useful in directing the public to the consumers' websites.

7. The mailings that SAS used to advertise its products and services made numerous claims regarding the amount of money that a consumer could earn by purchasing a home based business from SAS. These claims included:

“[You could] earn up to \$10,000.00 per week or more!;”

that “you could be making thousands from home!;”

that “people just like you are earning 6 figure incomes from the comfort of their own home;”

that “you could be here [depicting a tropical beach] while making thousands from home;” and

that “SAS can now take you to the new wave of home based businesses, finally giving you a legitimate opportunity to earn thousands of dollars weekly in a \$400 BILLION industry.”

In addition to the written statements described above, SAS salespersons made earnings claims to consumers over the telephone, including:

“[You] are purchasing a business that will allow you to earn a regular weekly income;”

that “all the people in the group are making money;”

that “some dealers make \$20,000.00 per month;” and

that “you can make \$2,000.00 per month.”

The earnings claims made by SAS were deceptive and misleading, as no consumers earned the represented amounts by using the home based business they purchased from SAS.

8. Frequently, once consumers purchased a home based business from SAS they were contacted by SAS salespersons and urged to buy additional advertising from SAS while being told that such advertising would pay for itself in a matter of weeks or months. In some cases, SAS salespersons helped consumers obtain additional credit through third parties to pay for the advertising. SAS’s claims of the effectiveness of its advertising were deceptive and misleading, as in most cases the advertising did not result in additional earnings to the consumer.

9. SAS salespersons told consumers during their initial telephone conversations (before consumers received a written agreement with SAS) that SAS would refund their money within thirty (30) days if the consumer was unhappy with his or her purchase from SAS. The refund claim was deceptive and misleading, as SAS would only reimburse a portion of the money paid by consumers, retaining a fee of seventy-nine dollars (\$79.00) for a website set up fee and any advertising fees.

10. SAS’s conduct described above constituted willful violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*

ORDER

11. This Order applies to SAS, Bill Fautsch, and Thomas Kelly, and to their current and future principals, officers and directors, assigns and successors, managerial or supervisory employees, and to any other employees or agents having responsibilities with respect to the subject matter of this Order.

12. Defendants shall comply with the Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*, as it is currently written, or as it may be amended.

13. SAS shall not make representations regarding the amount of money that a consumer can earn from his or her use of SAS' products and services unless SAS can document a representative number of consumers who have earned the advertised amounts from their use of SAS's products and services.

14. SAS shall not make representations regarding the efficacy of the advertising it sells to consumers unless SAS can document a representative number of instances where their advertising has resulted in the represented results.

15. SAS shall not represent that there is a money back guarantee available to consumers who purchase their products and services without also making clear that any such refund is partial, and that SAS will retain a portion of the money paid by the consumer for website set up and advertising fees.

16. Notwithstanding the foregoing, neither SAS, Bill Fautsch, Thomas Kelly, nor the principals, officers or directors of SAS, nor any managerial or supervisory employee of SAS, nor any of the assigns or successors of any of them, shall be in violation of this Order because of any isolated violation by another employee or agent of SAS, provided that SAS,

as a regular practice, trains, supervises and monitors its employees and agents to insure compliance with the terms of this Order and takes prompt and appropriate remedial and disciplinary action if any such isolated violation occurs.

17. SAS shall pay to the Attorney General a civil penalty in the amount of two hundred and twenty-five thousand dollars (\$225,000.00), pursuant to A.R.S. § 44-1531.

18. SAS shall pay to the Attorney General an amount of twenty-five thousand dollars (\$25,000.00) for attorneys' fees and costs of investigation, pursuant to A.R.S. § 44-1534.

19. The payments described in paragraphs 17 and 18 shall be made collectively and paid according to the following schedule:

a. \$31,250.00 on April 10, 2006, or within ten days after the court's signing of this judgment, whichever is later;

b. \$31,250.00 on or before July 1, 2006;

c. \$31,250.00 on or before October 1, 2006;

d. \$31,250.00 on or before January 1, 2007;

e. \$31,250.00 on or before April 1, 2007;

f. \$31,250.00 on or before July 1, 2007;

g. \$31,250.00 on or before October 1, 2007;

f. \$31,250.00 on or before January 1, 2008.

20. Each payment ordered herein shall be made by cashier's check, payable to the Office of the Attorney General, and is to be delivered or mailed and postmarked, postage prepaid, to the Attorney General on or before the above-designated dates.

21. Defendants shall not represent or imply that the Attorney General, the State of Arizona, or any agency thereof has approved any of their actions or has approved any of their past, present, or future business practices in Arizona and Defendants are enjoined from directly or indirectly representing anything to the contrary.

22. This Court retains jurisdiction of this matter for the purposes of entertaining an application by the parties for the enforcement of this judgment.

DATED this _____ day of _____, 2006

BY: _____
Judge of the Superior Court

CONSENT TO JUDGMENT

1. Defendants Smart Advertising Solutions, LLC and its successor in interest Smart Advertising Solutions, Inc., Bill Fautsch, and Thomas Kelly state that no promise of any kind or nature whatsoever was made to them to induce them to enter into this Consent Judgment and that they have entered into the Consent Judgment voluntarily.

2. Defendants have fully read and understood this Consent Judgment, understand the legal consequences involved in signing it, assert that this is the entire agreement of the parties, and that there are no other representations or agreements not stated in writing herein, and that no force, threats, or coercion of any kind have been used to obtain their signatures.

3. Defendants acknowledge that Plaintiff's acceptance of this Consent Judgment is solely for the purpose of settling this litigation and does not preclude the Plaintiff, or any other agency or officer of this State, or subdivision thereof, from instituting other civil or criminal proceedings as may be appropriate now or in the future based on events other than those alleged in this Consent Judgment.

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4. Smart Advertising Solutions, Inc. represents and warrants that the person signing below on its behalf is duly authorized to do so.

DATED this _____ day of _____, 2006.

Smart Advertising Solutions, Inc.

By: _____

Its: _____

Bill Fautsch

Thomas Kelly

APPROVED AS TO FORM AND CONTENT

TERRY GODDARD
Attorney General

By: _____
Cherie L. Howe
Assistant Attorney General
Counsel for Plaintiff

By: _____
Judith M. Bailey
Gust Rosenfeld PLC
Counsel for Defendants