

December 4, 2009

ATTORNEY GENERAL ISSUES CEASE AND DESIST ORDER AGAINST PUBLISHERS MARKETING SERVICE

BISMARCK – Attorney General Wayne Stenehjem today issued a Cease & Desist Order against Publishers Marketing Service, Inc. of Pinellas, Park Florida and its principals, Erran O'Donnell and Ashley O'Donnell, for violations of North Dakota do not call and home solicitation laws.

Publishers Marketing sells magazine “renewal” subscription services by telemarketing. The Attorney General received a do not call complaint and a complaint about this company’s magazine solicitation and sale. Publishers Marketing sold an elderly consumer a four-year subscription to a well-known magazine for \$200. The victim reportedly has dementia. The charges were excessive in comparison to the value of the same subscription with the actual publisher of the magazine. According to Stenehjem, this four-year year subscription purchased from the publisher costs \$30 or would be \$159.60 when purchased monthly at the newsstand for the same period.

Stenehjem’s Consumer Protection Division initiated an investigation, but this business has refused to cooperate. Stenehjem is concerned Publishers Marketing’s solicitations for “renewals” are designed to confuse and mislead consumers into believing they are merely renewing an existing subscription with the actual magazine publisher when, instead, it is this company charging an excessively inflated price. Publishers Marketing also failed to comply with the home solicitation sales law requiring a signed contract before charging consumers and to provide proper notification of consumers’ cancellation rights. “Publishers Marketing’s offensive sales tactics take advantage of elderly and other consumers who fail to understand they are not dealing with the actual magazine publisher or that they are being charged outrageous fees,” Stenehjem said.

According to Parrell Grossman, Director of the Consumer Protection Division, Publishers Marketing, when making its magazine sales pitch, also attempts to sell consumers a discount buying club. “These discount buying clubs typically have little or no value and then consumers are unwittingly charged for ongoing fees after the free trial period expires,” Grossman said.

Consumers with questions about magazine subscription solicitations should contact the Consumer Protection Division toll-free at 1-800-472-2600.

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STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Petitioner,

-vs-

PUBLISHERS MARKETING SERVICE,
INC.; ERRAN O'DONNELL, Individually;
and ASHLEY O'DONNELL, Individually,

Respondents.

**CEASE AND DESIST ORDER,
NOTICE OF CIVIL PENALTY
AND NOTICE OF RIGHT
TO REQUEST A HEARING**

CPAT 090108.002

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To each of the individuals and entities identified below (hereinafter collectively "Respondents"):

Publishers Marketing Service Inc
8800 49th St N Ste 412
Pinnellas Park FL 33782-5341
(866) 221-7444
(800) 930-4408
(727) 420-0241

P.O. Box 660
Pinellas Park, FL 33781-0660

c/o Larry D Goldstein
Registered Agent
7601 38th Ave N
St Petersburg FL 33710-1232

Erran O'Donnell
729 Barbara St
Palm Harbor FL 34684-4605

Ashley O'Donnell
729 Barbara St
Palm Harbor FL 34684-4605

(including all of those entities' officers, directors, owners, agents, servants, employees and representatives as well as all other persons in active concert or participation with them, extending to all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

BACKGROUND

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15, commonly referred to as the "Consumer Fraud Law;" N.D.C.C. ch. 51-18, commonly referred to as the "Home Solicitation Sales Statute;" and N.D.C.C. ch. 51-28, commonly referred to as the "Do Not Call Law." It is necessary and appropriate in the public interest and for the protection of consumers to restrain the Respondents' unlawful acts or practices.

2. Respondents have been the subject of North Dakota consumer complaints alleging do not call violations. N.D.C.C. ch. 51-28 prohibits telephone solicitations to the telephone line of any subscriber in North Dakota who, for at least 31 days before the date the call is made, has been on the North Dakota or Federal Trade Commission do-not-call list.

3. Respondents have been the subject of North Dakota consumer complaints alleging violations of North Dakota's Home Solicitation Statute. N.D.C.C. ch. 51-18 regulates home solicitation sales and requires, among other things, that sellers provide North Dakota consumers with both oral and written notice of cancellation rights. N.D.C.C. ch. 51-18 also prohibits Respondents from soliciting or accepting any payment

from a North Dakota consumer until Respondents have received an original copy of the sales contract signed by the consumer.

4. Publishers Marketing Service, Inc. is a Florida Profit Corporation with its principal place of business located at 8800 49th Street North # 412 in Pinellas Park, Florida 33782, and with a mailing address of P.O. Box 660, Pinellas Park, Florida 33781. Publishers Marketing Service, Inc.'s registered agent is Larry D. Goldstein of 7601 38th Avenue North, St. Petersburg, Florida 33710. Erran O' Donnell of 729 Barbara Street, Palm Harbor, Florida 34684, is the President of Publishers Marketing Service, Inc. Ashley O'Donnell of 729 Barbara Street, Palm Harbor, Florida 34684, is the Vice President, Secretary and Treasurer of Publishers Marketing Service, Inc.

5. Respondents are doing business in North Dakota under the name Publishers Marketing Service, Inc. Respondents are in the business of advertising, soliciting and selling merchandise, including magazine subscriptions in the State of North Dakota and nationwide. Respondents primarily solicit customers through telemarketing.

6. It appears that Respondents are engaged in telephone solicitations to telephone lines of subscriber in North Dakota who, for at least 31 days before the date the call is made, has been on the North Dakota or Federal Trade Commission do-not-call list, in violation of N.D.C.C. ch. 51-28, the Do Not Call law.

7. It appears that Respondents are marketing, soliciting and selling merchandise to North Dakota consumers, without providing consumers with the necessary notices of right to cancel, as required by the North Dakota Home Solicitation statute, N.D.C.C. ch. 51-18, and are soliciting or accepting payments from North Dakota

consumers prior to receiving an original copy of the sales contract signed by the consumer, in violation of N.D.C.C. § 51-18-04.2.

8. Violations of N.D.C.C. ch.51-28 and/or ch. 51-18 are violations of N.D.C.C. ch. 51-15.

9. The Attorney General issued a Civil Investigative Demand to Respondent Publishers Marketing Service, Inc. on August 21, 2009, pursuant to the Attorney General's authority under N.D.C.C. § 51-15-04. Respondents have refused to provide responses and produce documents as requested in the Civil Investigative Demand.

10. Petitioner offered an Assurance of Voluntary Compliance to Respondents pursuant to § 51-15-06.1 of the North Dakota Century Code, first in July of 2009 and again through their attorney on October 1, 2009. The Assurance of Voluntary Compliance provided Respondents the opportunity to voluntarily agree to be enjoined from the unlawful acts or practices without formal legal action by Petitioner. Respondents did not accept the proposed Assurance of Voluntary Compliance. Respondents were advised that the failure to respond could result in an enforcement action by the Attorney General against them. Petitioner's repeated attempts to secure information from Respondents have been unsuccessful.

11. Each of the Respondents is engaged in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or who have agreed to act together to commit a lawful act using unlawful means to inflict a wrong or injury upon another, namely violation of North Dakota's Home Solicitation Statute and Do Not Call Law. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

12. Respondents are liable for their own misconduct and/or for directing others to engage in misconduct. See e.g. *Zimprich v. North Dakota Harvestore Sys., Inc.*, 419 N.W.2d 912, 914 (N.D. 1988); *Rickbeil v. Grafton Deaconess Hosp.*, 23 N.W.2d 247, 257 (N.D. 1946)("The general rule with reference to this feature is considered and set out in the great series of volumes of jurisprudence familiar to the courts. In 52 Am. Jur. 440, this rule is stated, 'It is a conceded general rule that all persons or entities are liable for torts committed by them, or by their agents while acting within the scope of their duties.'").

13. Respondents who are natural persons will additionally be subject to personal liability for corporate misconduct. *Hilzendager v. Skwarok*, 335 N.W.2d 768 (N.D. 1983)(quoting *Schriock v. Schriock*, 128 N.W.2d 852, 866 (N.D. 1964)("... but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.' Fletcher, Private Corporations Sec. 41 (1963 rev. vol.)"). The crime/fraud exception to the protections of corporate form has long been recognized in North Dakota, "neither law nor equity will ever recognize the right of a corporate entity to become the receptacle or cover for fraud or wrong based on deception for the purpose of defeating the right of innocent parties." *McFadden v. Jenkins*, 169 N.W. 151, 163 (N.D. 1918). See also *Danks v. Holland*, 246 N.W.2d 86 (N.D. 1976); *Family Center Drug v. North Dakota St. Bd. of Pharm.*, 181 N.W.2d 738, 745 (N.D. 1970).

ORDER

NOW, THEREFORE, IT IS ORDERED pursuant to N.D.C.C. § 51-15-07 that Respondents, individually, and where applicable their officers, directors, owners, agents, servants, employees, contractors, representatives (extending to all "doing business as" names, formal corporate names, aliases, fictitious names of any kind or any variations of the same) as well as all other persons in active concert or participation with them, whether directly or indirectly, immediately **CEASE AND DESIST** from:

- 1) advertising, soliciting or selling merchandise to North Dakota consumers, including magazine subscriptions;
- 2) advertising, soliciting, or selling to North Dakota consumers merchandise without providing the consumer the written and verbal notice of rights to cancel as required by N.D.C.C. ch. 51-18;
- 3) soliciting or accepting any payment from a North Dakota consumer before Respondents has received an original copy of the sales contract signed by the consumer, in violation of N.D.C.C. § 51-18-04.2; and
- 4) engaging in telephone solicitations to the telephone line of any subscriber in North Dakota who, for at least 31 days before the date the call is made, has been on the North Dakota or Federal Trade Commission do-not-call list.

Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for the sale of merchandise and **CEASE AND DESIST** from taking, collecting or accepting any payments from North Dakota consumers including, but not limited to, direct debits or withdrawals from North Dakota consumers' bank accounts, cash, checks, or credit card payments for the sale of merchandise or other services related to the sale of merchandise.

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 12.1-09-03 a person is guilty of a criminal offense if he or she intentionally "alters, destroys, mutilates, conceals, or removes

a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution

NOTICE OF CIVIL PENALTIES

YOU ARE FURTHER NOTIFIED that pursuant to N.D.C.C. § 51-15-07 any violation of this Cease and Desist Order is subject to civil penalties not to exceed \$1,000 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-15 may result in additional civil penalties of not more than \$5,000 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-18 may result in additional civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-28 may result in additional civil penalties of not more than \$2,000 per violation and additional civil penalties of not more than \$5,000 per violation as a separate violation of N.D.C.C. ch. 51-15. Such penalties are separate and in addition to any civil penalties, costs, expenses, investigation fees, and attorney fees pursuant to N.D.C.C. ch. 51-15 or any other applicable statute. Nothing in this Order is intended to limit or waive any rights and remedies available to the State of North Dakota or consumers.

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be represented by legal counsel at the hearing.

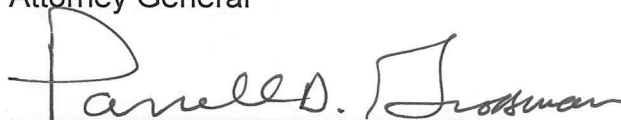
Dated this 4th day of December, 2009.

STATE OF NORTH DAKOTA

Wayne Stenehjem

Attorney General

BY:



Parrell D. Grossman, ID No. 04684

Assistant Attorney General

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