



OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION
GATEWAY PROFESSIONAL CENTER
1050 E INTERSTATE AVENUE, STE 200
BISMARCK, NORTH DAKOTA 58503-5574



701-328-5570 (Telephone)
701-328-5568 (Facsimile)

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

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

-vs-

SMASHDOG STUDIOS INC. doing
business as **SMASHDOGSTUDIOS.COM**;
and **JILL GAINER**, formerly known as
JILL SCHWARTZ, JILL PAURUS,
Individually;

Respondents.

CPAT 100231.002

.....
To the individual and entity identified below (hereinafter "Respondents"):

Smashdog Studios, Inc.
dba **smashdogstudios.com**
620 4th Ave
Sanborn, ND 58480
and
PO Box 65
Sanborn, ND 58480-0065
701-730-6454

Jill Gainer
fka Jill Schwartz
fka Jill Paurus
620 4th Ave
Sanborn, ND 58480
and

PO Box 65
Sanborn, ND 58480-0065
701-730-6454

(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." It is necessary and appropriate in the public interest and for the protection of consumers to restrain the Respondents' unlawful acts or practices.

2. Smashdog Studios, Inc. is a North Dakota corporation. It was involuntarily dissolved on August 4, 2010. Its principal place of business was located at 356 Central Ave N., Valley City, North Dakota 58072. Respondents have used the mailing addresses of PO Box 65, Sanborn, North Dakota 58480 and 620 4th Ave, Sanborn, North Dakota 58480. Jill Gainer, formerly known as Jill Schwartz and Jill Paurus, is the owner of Smashdog Studios, Inc. Respondents are doing business as and operate a website named www.smashdogstudios.com. Respondents are in the business of advertising, soliciting and selling merchandise, including photographs and photography services, in the State of North Dakota. Respondents solicit and receive advance deposits from consumers for photographs and photography services.

3. Respondents have been the subject of North Dakota consumer complaints alleging failure or refusal to provide photography services and photographs, together with other deceptive advertisement and sales practices. The Attorney General has

received information from consumers alleging that Respondents have violated N.D.C.C. ch. 51-15 by: 1) Soliciting and accepting \$1,499 from a consumer for wedding photographs and failing to provide all of the photographs and perform all of the photography services; 2) Soliciting and accepting \$2,400 from a consumer for wedding photographs and failing to provide the photographs and a written release to reprint the photographs; 3) Soliciting and accepting \$2,200 from a consumer for wedding photographs and failing to provide all of the photographs ordered; 4) Soliciting and accepting \$2,352 from a consumer for wedding photographs and failing to provide all of the photographs ordered; 5) Soliciting and accepting \$3,600 from a consumer for wedding photographs and failing to provide the photographs; 6) Soliciting and accepting \$3,088 from a consumer for wedding photographs and failing to provide the photographs. In addition to filing complaints with the Attorney General, numerous consumers have posted similar complaints against Respondents on the Facebook page located at www.facebook.com/group.php?gid=470496425113.

4. Respondents have made untrue, deceptive and misleading representations, and/or have made or engaged in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that others rely thereon, in violation of N.D.C.C. ch. 51-15, the Consumer Fraud Law, including, but not limited to, the following: 1) misrepresenting to consumers that they would provide photography services; 2) misrepresenting to consumers that they would deliver their photographs; and 3) falsely promising consumers that Respondents would provide a written release of the photographs to enable the consumer to reprint the photographs at a commercial printer. The acts and practices alleged in paragraphs three and four

constitute violations of N.D.C.C. § 51-15-02, and pursuant to N.D.C.C. § 51-15-07 the Attorney General may issue a cease and desist order.

5. After receiving consumer complaints and other information regarding Respondents' business activities, the Attorney General commenced an investigation into Respondents' business practices. After numerous unsuccessful attempts to contact Respondents to discuss the complaints, the Attorney General issued a Civil Investigative Demand on December 1, 2010 pursuant to the Attorney General's authority under N.D.C.C. § 51-15-04. Respondents were requested to provide their responses to the Civil Investigative Demand by December 30, 2010. A representative from the Attorney General's Office attempted to contact Respondents numerous times regarding Respondents' failure to respond to the Civil Investigative Demand and the complaints filed against Respondents. However, Respondents never responded to the Civil Investigative Demand or the consumer complaints. Pursuant to N.D.C.C. § 51-15-07 the Attorney General may issue a cease and desist order for the Respondents' failure or refusal to file a response to the Civil Investigative Demand.

6. Each of the Respondents are 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 Consumer Fraud Law. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

7. 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.'").

8. 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

Respondents having: 1) engaged in deceptive acts and practices in violation of N.D.C.C. § 51-15-02; and 2) failed or refused to respond to a Civil Investigative Demand required by N.D.C.C. § 51-15-04. **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents, individually, and their 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, as defined by N.D.C.C. § 51-15-01(3), to consumers; 2) advertising, soliciting or selling photography services or photographs to consumers; 3) soliciting or accepting from consumers advance payments or consumer deposits in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3); 4) soliciting using untrue, deceptive or misleading representations to consumers or engaging in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that consumers rely thereon, in violation of N.D.C.C. § 51-15-02; and 5) engaging in any business activities in violation of N.D.C.C. ch. 51-15. Respondents also shall immediately **CEASE AND DESIST** from taking, collecting, charging, billing or accepting any payment from any consumers, including, but not limited to, cash, check, direct credit, debits or withdrawals from consumers' credit cards, debit cards or bank accounts for any past or future sale of merchandise or other services related to the sale of merchandise.

This Cease and Desist Order does not prohibit or prevent Respondents from delivering photographs or merchandise to consumers who have already paid Respondents for services, photographs, or other 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. 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.

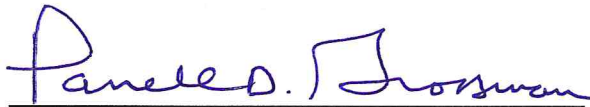
Dated this 18th day of February, 2011.

STATE OF NORTH DAKOTA

Wayne Stenehjem

Attorney General

BY:



Parrell D. Grossman, ID No. 04684

Assistant Attorney General

Director

Consumer Protection and

Antitrust Division

Office of Attorney General

Gateway Professional Center

1050 East Interstate Ave. Suite 200

Bismarck, ND 58503-5574

(701) 328-3404

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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

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SCHWARTZ, JILL PAURUS**, individually;

Respondents.

**AFFIDAVIT OF SERVICE
BY MAIL AND CERTIFIED MAIL**

CPAT 100231.002

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

Corinne Small states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct and made upon personal knowledge.

2. I am of legal age and on the 18th day of February, 2011 I served (1) CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING and (2) AFFIDAVIT OF SERVICE BY MAIL AND CERTIFIED MAIL upon the following by placing a true and correct copies thereof in an envelope addressed as follows:

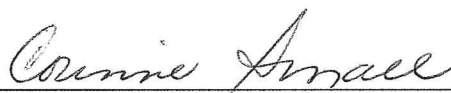
Certified Receipt No. 7010 0290 0003 6685 5532
SMASHDOG STUDIOS INC
JILL GAINER
620 4TH AVE
SANBORN ND 58480

First Class Mail
SMASHDOG STUDIOS INC
JILL GAINER
620 4TH AVE
SANBORN ND 58480

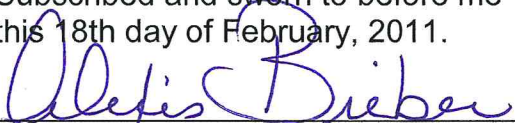
Certified Receipt No. 7005 1820 0007 5680 9602
SMASHDOG STUDIOS INC
JILL GAINER
PO BOX 65
SANBORN ND 58480-0065

First Class Mail
SMASHDOG STUDIOS INC
JILL GAINER
PO BOX 65
SANBORN ND 58480-0065

and depositing the same, with postage prepaid, in the United States mail at Bismarck,
North Dakota.


CORINNE SMALL

Subscribed and sworn to before me
this 18th day of February, 2011.


NOTARY PUBLIC

