

STATE OF INDIANA)
)
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CAUSE NO. 49D04-0810-MI-046073

STATE OF INDIANA,)
)
Plaintiff)
)
vs.)
)
DAMIAN KUTZNER,)
)
Defendant.)

(49) FILED
JAN 02 2009
Charoeth A. White
CLERK OF THE MARION CIRCUIT COURT

CONSENT JUDGMENT

Plaintiff, State of Indiana, by Attorney General Stephen Carter and Deputy Attorney General Holly C. Newell, and Defendant, Damian Kutzner, hereby agree to the entry of a Consent Judgment without trial or adjudication of any issue of fact or law herein.

The parties believe it is in their best interests to resolve the issues raised by the State of Indiana to avoid further litigation. This Consent Judgment does not constitute an admission by Defendant of any wrongdoing, nor shall it be construed as an abandonment by the Attorney General of his position that Defendant violated Indiana's Telephone Privacy Act or Indiana's Regulation of Automatic Dialing Machines Act. The parties consent to entry of a final judgment in this proceeding by the Court and accept this Consent Judgment as final on the issues resolved herein.

PERMANENT INJUNCTION

Plaintiff, State of Indiana, by Attorney General Stephen Carter and Deputy Attorney General Holly C. Newell, and Defendant, Damian Kutzner hereby agree to the entry of a Permanent Injunction.

This Permanent Injunction does not constitute an admission by Defendant of any wrongdoing, nor shall it be construed as an abandonment by the Attorney General of his position that Defendant violated Indiana's Telephone Privacy Act and Indiana's Regulation of Automatic Dialing Machines Act. The parties consent to entry of a permanent injunction in this proceeding by the Court.

JURISDICTION AND SCOPE OF JUDGMENT

1. This Court has jurisdiction and venue over the subject matter of this action and the parties hereto.
2. The allegations in Plaintiff's Complaint for Injunction, Civil Penalties, Reasonable Attorneys Fees and Costs, if true, state a cause of action pursuant to the Indiana Telephone Privacy Act, Indiana Code § 24-4.7-5-1, *et seq.*; and Indiana's Regulation of Automatic Dialing Machines Act, Indiana Code § 24-5-14-1, *et seq.*
3. Defendant, Damian Kutzner, is an individual residing in Orange County, California.
4. Defendant offered various services and/or products to Indiana consumers.
5. On May 15, 2008, Defendant filed Chapter 7 bankruptcy in the Federal Bankruptcy Court for the Central District of California. At this time, there do not appear to be sufficient assets to satisfy Defendant's creditors.

6. This Consent Judgment shall apply to Defendant Damian Kutzner and any entity owned (legally or beneficially), operated or controlled by Damian Kutzner.

RELIEF ORDERED

7. Defendant is permanently enjoined from the following:

a) Making or causing to be made telephone sales calls to telephone numbers registered on Indiana's Telephone Privacy List in violation of Ind. Code § 24-4.7-4-1, *et seq.*

b) Using or connecting an automatic dialing-announcing device to telephone lines in Indiana without the subscriber knowingly or voluntarily requesting, consenting to, permitting, or authorizing receipt of the message; or without immediately preceding the message by a live operator who obtains the subscriber's consent before the message is delivered, in violation of Ind. Code § 24-5-14-5(b).

8. The Defendant shall cooperate with the Office of the Attorney General in the resolution of any future written complaints the Telephone Privacy Department receives. This shall include, but is not limited to, the Defendants promptly resolving any valid complaints brought to the Defendants' attention by the Office of the Attorney General, either prior to, or after the filing of, this Consent Judgment with the Court.

9. If Defendant violates of Ind. Code § 24-5-14-5(b) subsequent to this permanent injunction, such violation will result in the forfeiture of a civil penalty of fifteen thousand and 00/100 dollars (\$15,000.00) per violation in payment to the State of Indiana pursuant to Ind. Code § 24-5-0.5-4(f).

10. If Defendant violates Ind. Code § 24-4.7-4-1 subsequent to this permanent injunction, such violation will result in a civil penalty of twenty-five thousand and 00/100 dollars (\$25,000.00) per violation in payment to the State of Indiana pursuant to Ind. Code § 24-4.7-5-2.

11. A violation of the terms of the permanent injunction will also result in the court awarding reasonable costs to the state pursuant to Ind. Code §§ 24-5-0.5-4(f) and 24-4.7-5-2.

REPRESENTATIONS AND WARRANTIES

12. The Defendant, and the person who signs this Consent Judgment, understands and agrees that the terms of this Consent Judgment apply to the Defendant, the Defendant's employees, agents, representatives, successors, assigns, principals, officers and directors, jointly and severally, while acting personally, or through any corporation or any other business entities, whose acts, practices, or policies are directed, formulated, controlled, or influenced by the Defendant.

13. The Defendant shall not represent that the Attorney General approves or endorse the Defendant's past or future business practices, or that execution of this Consent Judgment constitutes such approval or endorsement.

14. All parties to this Consent Judgment acknowledge that no other promises, representations, or agreements of any nature have been made or entered into by the parties, relating to the basis of this Consent Judgment. All parties further acknowledge that this Consent Judgment constitutes a single and entire agreement that is not severable or divisible. If, however, any provision or provisions of this Consent Judgment is or are declared invalid by a court of competent jurisdiction, the remainder of this Consent

Judgment shall remain in full force and effect and shall not be affected by such declaration.

15. This Consent Judgment embodies the entire agreement and understanding of the parties hereto solely with respect to violations of the Telephone Privacy Act and Indiana's Regulation of Automatic Dialing Machines Act occurring prior to the approval of this Consent Judgment. Acceptance of this Consent Judgment by the Defendants and the Attorney General, and its approval by the Court, shall not be construed as a release or waiver of any claims or causes of action that may accrue to third parties having any private right of action, or of any claims or causes of action that may arise out of violation or alleged violation of any statutes or rules other than the Telephone Privacy Act and Indiana's Regulation of Automatic Dialing Machines Act, or violations of the Telephone Privacy Act and Indiana's Regulation of Automatic Dialing Machines Act occurring after the date this Consent Judgment is approved by the Court.

16. All parties agree that this Consent Judgment constitutes a fair agreement, and agree to proceed in accordance therewith. The Defendant has had the opportunity to consult with legal counsel regarding this Consent Judgment, and agrees to be bound by all provisions contained herein, waiving the right to trial or appeal.

17. The Defendant expressly waives any right to contest the validity or applicability of the Telephone Privacy Act and Indiana's Regulation of Automatic Dialing Machines Act, and/or this Consent Judgment.

18. The mailing of this signed and filed Consent Judgment to Defendant's counsel by the Court shall constitute notice and acceptance by the Defendant of all the terms of this Consent Judgment.

CONTINUING JURISDICTION

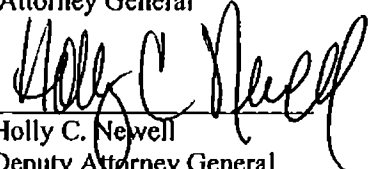
19. For the purpose of enforcing the provisions of this Consent Judgment, any subsequent Court obtaining jurisdiction over the Defendant based upon a complaint alleging a violation of any law that is the subject of this Consent Judgment may take judicial notice of this Judgment and is deemed to be a proper venue for interpretation and enforcement of this agreement. The Defendant waives any objection regarding the Court's jurisdiction to punish for contempt and agrees to appear on proper and reasonable notice of a failure to comply with any of the provisions of this Judgment.

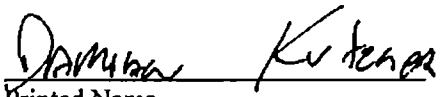
20. For the purpose of enforcing the provisions of this Permanent Injunction, Defendant waives any objection regarding the Court's jurisdiction to punish for contempt and agrees to appear on proper and reasonable notice of a failure to comply with any of the provisions of this Judgment.

IN WITNESS WHEREOF, the parties have executed this Consent Decree and
Permanent Injunction this 31st day of December, 2008.

STATE OF INDIANA
STEPHEN CARTER
Indiana Attorney General

DAMIAN KUTZNER


by: 
Holly C. Newell
Deputy Attorney General
Attorney No. 25029-29


Printed Name


Title

Approved: 

ALL OF WHICH IS APPROVED, ORDERED, ADJUDGED AND DECREED
this 2nd day of January, 2008.


Judge, Marion Superior Court

Distribution:

Holly C. Newell
Office of the Attorney General
Indiana Government Center South, 5th Floor.
302 W. Washington St.
Indianapolis, IN 46204

Michael Mallow
Loeb and Loeb, LLP
10100 Santa Monica Boulevard
Suite 2200
Los Angeles, CA 90067