
STATE OF WISCONSIN,

Plaintiff,

vs.

Case No.: 12-CX-02

CREATIVE OPENINGS, INC., ET AL.

Complex Forfeiture: 30109

Defendants.

STIPULATION AND SETTLEMENT

Creative Openings, Inc. and Robert Beaster, by and through their attorneys, Hager, Dewick & Zuengler, S.C.; and the State of Wisconsin by Assistant Attorney General Gwendolyn J. Cooley, hereby stipulate and agree as follows:

1. Creative Openings, Inc. (“Creative Openings”) was the subject of an investigation by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (“DATCP”) which investigation was referred to the Wisconsin Department of Justice (“DOJ”). DOJ brought this action, alleging that Creative Openings violated various provisions of Wis. Stat. § 100.52 and the DATCP rules promulgated thereunder.

2. Robert Beaster is voluntarily dismissed from this lawsuit.

3. For the purposes of this Stipulation and Settlement, all of the definitions found in Wis. Stat. § 100.52(1) and in Wis. Admin. Code §§ ATCP 127.01 and ATCP 127.80 are incorporated herein by reference. “No-Call List” means the non-solicitation directory that is provided or made available to the telephone solicitor under Wis. Stat. § 100.52(2)(d).

INJUNCTIVE PROVISIONS

4. The terms of this injunction applicable to Creative Openings shall also apply to Creative Opening's employees, agents, owners, officers, successors, and assigns.

5. Pursuant to Wis. Stat. § 100.52(9), Creative Openings is hereby permanently enjoined and restrained from failing to comply with the applicable provisions of Wis. Stat. § 100.52 and of Subchapter V of Wis. Admin. Code Chapter ATCP 127, as it is currently written or as it is amended in the future, including from making any Telephone Solicitation to a Residential Customer whose telephone number appears on the current No-Call List in violation of Wis. Stat. § 100.52(4)(a)(2), unless one of the exceptions in Wis. Stat. § 100.52(6) applies.

6. Creative Openings warrants that it has discontinued Telephone Solicitation other than to numbers for which an exception in Wis. Stat. § 100.52(6) applies.

7. For each of the eight calendar quarters following the execution of this Stipulation and Agreement (altogether, the "Verification Period"), Creative Openings shall provide to DATCP its complete telephone records in a sortable, electronic format like Microsoft Excel, identifying all calls made from the telephone numbers used by it or anyone on its behalf for telemarketing to Wisconsin residents. The first set of telephone records (for the calendar quarter ending June 30, 2013 shall be provided on or before July 20, 2013 (and need only include call data beginning from the date of this judgment)), with the records for the subsequent 7 calendar quarters being provided on or before the 20th calendar day following the end of the preceding calendar quarter.

8. If, during the Verification Period, DATCP determines that the telephone records provided by Creative Openings demonstrate that more than 2 percent of the telephone calls made during any calendar month (beginning with the date of this Stipulation and Settlement) violated

the provisions of Wis. Stat. § 100.52(4)(a)2, and/or Wis. Admin. Code § ATCP 127.82(2) (hereinafter collectively referred to as a “Compliance Failure”), then DATCP shall notify Creative Openings in writing of its determination.

9. Creative Openings shall have 10 calendar days from the receipt of a DATCP notice of a Compliance Failure to submit evidence to DATCP for the purpose of demonstrating that there was not a Compliance Failure. If upon review of the evidence submitted by Creative Openings, DATCP determines that there was a Compliance Failure it shall notify Creative Openings to immediately cease all Telephone Solicitation to Wisconsin residents. Such Telephone Solicitation may not thereafter be recommenced unless the state consents or the Court grants a motion made by Creative Openings for permission to recommence telemarketing.

10. For purposes of determining whether there is a Compliance Failure, any telephone call to a number on the then-current Wisconsin no-call list will be prima facie evidence of a violation and counted toward the 2 percent standard. Creative Openings shall have the burden of demonstrating that any such call is not a Telephone Solicitation or otherwise not a violation of the applicable rules or statutes.

11. The Parties acknowledge that DATCP has declined to renew Creative Openings’ Telephone Solicitation Registration. Creative Openings shall have a right to file an annual registration form with DATCP during and after the Verification Period. If Creative Openings files an annual registration form with DATCP during the Verification Period, DATCP shall not have any obligation to review an annual registration form unless it is accompanied by a written action plan for compliance with this Judgment (“Compliance Plan”). Creative Opening’s Compliance Plan shall initially include at least the following three measures, or substantially similar measures:

- a. Acquiring or utilizing, for marketing purposes, only potential customer lists that have been pre-scrubbed against the Wisconsin no-call list;
- b. Properly utilizing scrubbing software;
- c. Using industry-recognized software to prevent completion of calls to telephone numbers on the Wisconsin no-call list.

12. Creative Openings may at any time submit an updated Compliance Plan for approval by DATCP that eliminates one or more of the measures identified in Paragraphs 8 (a)-(c), so long as the remaining measure or measures can be reasonably expected to ensure Creative Opening's compliance with Wis. Admin. Code §§ ATCP 127.82(2) and ATCP 127.83(2)(a).

13. Creative Openings shall pay all fees associated with its Telephone Solicitor Registration when due, and shall not engage in any telephone solicitations, as defined in Wis. Stat. § 100.52(1)(i), without being registered.

14. Creative Openings shall, within 30 days of entry of this Judgment, provide a copy of this Judgment to every person who engages in marketing activity on behalf of or in association with Creative Openings, and any person who is responsible for the operation, configuration, or maintenance of Creative Openings dialer system.

15. Creative Openings is permanently enjoined from violating, or knowingly assisting in violating telephone solicitation provisions of Subchapter II of Wis. Admin. Code Ch. ATCP 127, and is specifically enjoined from failing to make the disclosures required by Wis. Admin. Code § ATCP 127.04(1) in telephone solicitations before asking any questions or making any statements other than an initial greeting. Specifically, the Creative Opening employee, agent, or representative shall clearly and explicitly state that the call is being made by Creative Openings for the purpose of offering a specific product or service, which shall be specifically identified, and shall identify the name of the caller, subject to Wis. Admin. Code §ATCP 127.04(2);

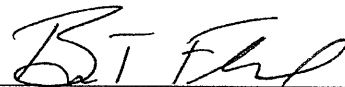
§93.20(2). Payment shall be submitted by two separate checks or money orders to the Wisconsin Department of Justice and Wisconsin Department of Agriculture Trade and Consumer Protection, respectively, in care of Assistant Attorney General Gwendolyn J. Cooley, Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857 within ten (10) business days of the execution of this Stipulation and Settlement.

24. Should Creative Openings commit a compliance failure or fail to follow any of the monetary provisions of this Judgment; Creative Openings will be deemed to be in violation of the Stipulation and Settlement and shall be required to pay the remaining balance of the full judgment amount of \$130,000 within 30 days of the date of notice of the compliance failure or a failure to follow the monetary provisions of this Stipulation and Settlement.

HAGER, DEWICK & ZUENGLER, S.C.

Dated this 30 of April, 2013

BY:



Attorney Brian T. Flood
State Bar No. 1061313
200 South Washington Street, Suite 401
Green Bay, WI 54301

Attorneys for Creative Openings, Inc. and Robert Beaster.

Dated this 29 day of April, 2013.

D.M.K., Inc.

BY:



Robert Beaster, President

21. Upon execution of this Stipulation and Settlement, Creative Openings shall direct its attorneys to issue a payment by check or money order for \$10,000 to the Outagamie Clerk of Circuit Court, Outagamie County Judicial Center, 320 South Walnut Street, Appleton, Wisconsin 54911, along with a cover letter to the Court identifying the case by name and number. A copy of the check and the cover letter to the clerk shall be simultaneously mailed as proof of payment to Assistant Attorney General Gwendolyn J. Cooley at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. The remaining payment schedule is as follows:

- a. \$5,000 on June 1, 2013;
- b. \$5, 000 on December 1, 2013;
- c. \$5,000 on June 1, 2014;
- d. \$5, 000 on December 1, 2014;
- e. \$5,000 on June 1, 2015;
- f. \$5, 000 on December 1, 2015; and
- g. \$5,000 on June 1, 2016.

22. If the DOJ believes that Creative Openings is in default of its payment obligations contained in Paragraph 22, the DOJ shall provide written notice to Creative Openings of same (hereafter a "Notice of Default"). Upon receipt, Creative Openings shall have ten (10) business days to cure the default.

23. In addition to the \$45,000 outlined above, Creative Openings shall also pay \$1589.66 to the State of Wisconsin Department of Justice for its costs and attorney fees pursuant to Wis. Stat. §§ 814.04(1) and (6). Creative Openings shall also pay \$1302.19 to the Department of Agriculture Trade and Consumer Protection for its investigation fees pursuant to Wis. Stat.

entitled to receive all relief afforded by law, including forfeitures, for violations of Subchapter II that occurred prior to the date of entry of this Judgment.

MONETARY TERMS

19. Judgment is entered against Creative Openings in the amount of \$130,000 for civil forfeitures, surcharges, and attorney fees pursuant to the statutes cited in the following paragraphs.

20. If Creative Openings complies with all of the terms of this Stipulation and Settlement, including making all payments when due as set forth in this paragraph, then the state shall provide a satisfaction of the monetary portion of the judgment upon timely receipt of fees and costs as described in paragraph 23, in addition to \$45,000.00 which is comprised of the following:

- a. Forfeitures in the amount of \$29,564.38, pursuant to Wis. Stat. § 100.52(10)(b);
- b. A consumer protection surcharge of \$7374.10, pursuant to Wis. Stat. § 100.261(1);
- c. A penalty surcharge of \$7669.06, pursuant to Wis. Stat. § 757.05(1);
- d. A jail surcharge of \$294.96, pursuant to Wis. Stat. § 302.46(1);
- e. A crime laboratories and drug law enforcement surcharge of \$26.00, pursuant to Wis. Stat. § 165.755(1)(a);
- f. A justice information system surcharge of \$21.50, pursuant to Wis. Stat. § 814.86(1);
- g. A court support services surcharge of \$68.00, pursuant to Wis. Stat. § 814.85(1);
and
- h. A court fee of \$50.00, pursuant to Wis. Stat. § 814.63(1)(b);

16. To effectuate Creative Opening's compliance with the requirements of Paragraph 15, Creative Openings shall include in the Compliance Plan submitted to DATCP pursuant to Paragraph 11, provisions that require, at a minimum:

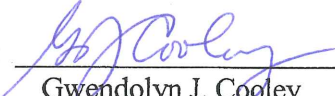
- a. The use of solicitation scripts for the purpose of ensuring consistency and compliance with this Judgment and all applicable law by all persons engaged in solicitation activities on behalf of Creative Openings;
- b. The development of a training manual and a training program designed to instruct all relevant employees or agents on the requirements of the laws and this Judgment;
- c. Maintenance of a system to log, record, and store all consumer complaints (whether written or oral) about Creative Opening's business practices or activities, and Creative Opening's response to such complaints;
- d. A program to randomly monitor solicitation calls made by representatives of Creative Openings;
- e. Establishment and implementation of a policy of a corrective action and discipline to ensure proper conduct by Creative Openings employees or representatives; and
- f. Retention of all scripts, training manuals, complaints, for a period of at least five years.

17. Creative Openings shall provide copies of all documents or records to the state within 10 calendar days of a request for such documents or records during the verification period.

18. In the event the state brings an action for violations of Subchapter II of Wis. Admin. Code Ch. 127, alleging that Creative Openings committed further violations of Subchapter II during the 24 month period following entry of this Judgment, it may add claims for violations of Subchapter II which occurred prior to entry of the Judgment. The state shall be

J.B. VAN HOLLEN
ATTORNEY GENERAL

Dated this 28 of ^{May} April, 2013

BY: 
Gwendolyn J. Cooley
Assistant Attorney General
State Bar No. 1053856
Wisconsin Department of Justice
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857

Attorneys for State of Wisconsin

ORDER

BASED UPON THE FOREGOING STIPULATION, the same is hereby adopted as the
Order of the Court this ___ day of _____, 201__.

BY THE COURT:

Honorable Nancy J. Krueger
Circuit Court Judge