

FILED
12-07-2022
CIRCUIT COURT
DANE COUNTY, WI
2022CX000026

DATE SIGNED: December 5, 2022

Electronically signed by Frank D Remington
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

US AUTOMOTIVE PROTECTION SERVICES, LLC,
1124 Rock Creek Elementary Drive
O'Fallon, MO 63366,

Defendant.

CONSENT JUDGMENT

Pursuant to the Stipulation of the parties, the Court enters the following *Consent Judgment*:

I. FINDINGS

1. The *Complaint* alleges that Defendant engaged in deceptive acts and practices in connection with the marketing of vehicle service plans to

Wisconsin residents, in violation of Wis. Stat. §§ 100.18 and 100.20, and Wis. Admin. Code § ATCP chapter 127, subchapter III, by delivering mail solicitations to Wisconsin recipients that: (1) failed to make required opening disclosures and (2) contained misrepresentations that misled consumers to believe that US Automotive Protection Services (“USAPS”) had a pre-existing business relationship with the recipients or were in possession of specific information about the recipients’ existing vehicle warranty, when it did not, and that contained misrepresentations that misled consumers to believe there was an urgent need to respond immediately to the mail solicitation, when there was not.

2. Defendant denies it has violated any provision of Wisconsin law. It has stipulated to the entry of this *Consent Judgment* to avoid the cost and expense of protracted litigation.

3. Defendants and Plaintiff waive all rights to appeal or otherwise challenge the validity of this *Consent Judgment*, but they do not waive their rights to seek enforcement of this *Consent Judgment* as provided herein.

II. DEFINITIONS

For the purpose of this Consent Judgment, the following definitions apply:

1. “Mail Solicitation” shall have the meaning set forth in Wis. Admin. Code § ATCP 127.30(2).

2. “Clearly and conspicuously” means that a disclosure required by this *Consent Judgment* is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in the following ways:

- a. By its size, contrast, location, and other characteristics, a printed disclosure must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
- b. A printed disclosure must not be contradicted or mitigated by, or be inconsistent with, anything else in the communication.

III. PERMANENT INJUNCTION

1. This injunction is entered pursuant to Wis. Stat. §§ 100.18(11)(d) and 100.20(6).

2. The terms of this injunction apply to Defendant USAPS, and to all of USAPS’s successor entities, whether by acquisition, merger or otherwise, to the extent that any of those entities operate a marketing business that mails written and graphic solicitations for automotive vehicle service plans in Wisconsin. The terms of injunction also apply to each of USAPS’s current and future members (owners), principals, officers, directors, managers, managerial or supervisory employees, and to any other employees

or agents having responsibilities with respect to the subject matter of this permanent injunction (collectively, "USAPS.")

3. In any Mail Solicitation offering or promoting the sale of a vehicle service plan, USAPS shall clearly and conspicuously disclose:

- a. The full name: "US Automotive Protection Services."
- b. The address of the principal place of business of USAPS as of the date of mailing.
- c. The statement: "US Automotive Protection Services is not affiliated with any auto dealer or manufacturer."

4. In any Mail Solicitation offering or promoting the sale of a vehicle service plan, USAPS is prohibited from creating a misleading impression that USAPS has a pre-existing relationship with the recipient of the Mail Solicitation or that USAPS is in possession of specific information about the recipient's automobile or current warranty coverage, by using any of the following or substantially similar phrases:

- a. "Our records indicate that you have not contacted us to get your service coverage up to date." (if this is a first mailing by USAPS)
- b. "Official Business."
- c. "Penalty for Private Use."
- d. "Notice."
- e. "Personal and Confidential."
- f. "Private and Confidential."
- g. "Customer Account #"
- h. "Customer Code"
- i. "Vehicle Protection Notice."
- j. "You can still activate protection." (although the phrase "You can activate protection" would not violate this section).

5. In any Mail Solicitation offering or promoting the sale of a vehicle service plan, USAPS is prohibited from creating a misleading impression that there exists a false sense of urgency for the recipient of the Mail Solicitation to respond quickly, by using any of the following or substantially similar phrases:

- a. "Final Notice"
- b. "Final Attempt to Notify" (but the phrase "Final Attempt" may be used if the solicitation is truly the last one).
- c. "Extremely Urgent"
- d. "Time Sensitive."
- e. "Expiration Date."
- f. "You may still have time."
- g. "Call immediately" (but the phrase "Please call immediately" may be used).

6. When a Wisconsin recipient of any USAPS Mail Solicitation contacts USAPS in response to the Mail Solicitation, USAPS shall orally state to the recipient that USAPS is an independent seller of vehicle services or that it is not acting on behalf of the provider of the caller's existing vehicle warranty coverage, if any.

IV. MONETARY JUDGMENT FOR CIVIL FORFEITURE AND MANDATED SURCHARGES AND ASSESSMENTS

1. Pursuant to Wis. Stat. §§ 100.26(4) and 100.26(6), judgment is entered in the amount of \$225,000 against the Defendant. However, upon payment by the Defendant of \$75,000 to the Clerk of the Dane County Circuit Court ("Clerk"), the remainder of the judgment (\$150,000) shall be STAYED for a period of three (3) years or until a motion for default has been ruled on

by this Court as provided for in Section V herein. The \$75,000 may be paid in three equal installments of \$25,000, due respectively 30, 60 and 90 days after the date of entry of this *Consent Judgment*.

2. If after three (3) years from the date of entry of this *Consent Judgment*, or after a motion for default filed within three (3) years has been denied by this Court, the Defendant has not been found by the Court to be in Default of this *Consent Judgment* under Section V herein, then the State shall file a Satisfaction of the stayed portion of the judgment, which shall have the effect of fully discharging the Defendant from all additional liability under Section IV.

3. If the Court finds Defendant in Default as provided in Section V herein, then the stay shall immediately lift on the unpaid portion of the Judgment and shall be paid to the Clerk within 30 days of the Court's finding.

4. The Clerk shall apportion the Defendant's total \$75,000 payment under Section IV.1 above, as follows:

a) a civil forfeiture of \$49,208.22 pursuant to Wis. Stat.

§ 100.26(6);

b) a penalty surcharge of \$12,800.64 pursuant to Wis. Stat.

§ 757.05 (26 percent of forfeiture);

c) a consumer protection surcharge of \$12,308.31 pursuant to Wis. Stat. sec. 100.261 (25 percent of forfeiture);

d) a jail surcharge of \$492.33 pursuant to Wis. Stat. § 302.46 (1 percent of forfeiture);

e) a crime laboratories and drug enforcement surcharge of \$39.00 pursuant to Wis. Stat. § 165.755 (\$13 per count in the *Complaint*);

f) a court fee of \$75 pursuant to Wis. Stat. § 814.63 (\$25 per count in the *Complaint*);

g) a court support services surcharge of \$68 pursuant to Wis. Stat. § 814.85; and

h) a justice information system surcharge of \$21.50 pursuant to Wis. Stat. § 814.86.

V. DEFAULT PROCEDURE

1. The procedure set forth in this Section shall apply only to the determination of whether a default of the Defendant's obligations under Section III occurs during the three (3) years following entry of this *Consent Judgment*.

2. If during the three (3) year period following the date of entry of this *Consent Judgment*, the State believes that the Defendant has violated any provision of Section III, it may file a motion with the Court to find the Defendant in default.

3. Prior to filing a motion under this section, the State shall give written notice to Defendant identifying in detail the conduct, advertisement or statement constituting the alleged default. Defendant shall have 10 business days to explain why a default has not occurred or why the alleged default was caused by a third party which was not authorized to send the advertisement to Wisconsin on behalf of USAPS. If after such notice and response the State files a motion with the Court seeking a finding of default, the State shall have the burden of establishing non-compliance with the terms of Section III by clear and convincing evidence. The issue shall be determined by the Court without a jury. The Defendant shall have the burden of establishing by clear and convincing evidence any claim that the default was caused by a third party which was not authorized to send the advertisement to Wisconsin on behalf of USAPS. If there was a default but the Court finds that it was caused by a third party not authorized by USAPS to send the defaulting advertisement, the Court shall not enter a default of Defendant's obligations under Section III against USAPS.

4. If the Court finds Defendant in default, the Court may award the State its reasonable costs, including attorney's fees, incurred in bringing the motion.

VI. COSTS OF INVESTIGATION

Pursuant to Wis. Stat. § 100.263, the Defendant shall pay the sum of \$4,000 within 30 days of the date of entry of this *Consent Judgment* to the Wisconsin Department of Justice to reimburse the State of Wisconsin for its costs of investigation and prosecution of this action. Of that amount, the Department of Justice shall remit \$1,162.51 to the Wisconsin Department of Agriculture, Trade and Consumer Protection to reimburse it for its costs of investigation. The Defendant's obligation under this Section is separate and apart from the obligations under Section IV.

VII. RELEASE

Pursuant to the parties' agreement, upon the Defendant's completion of the monetary obligations of this *Consent Judgment*, the State of Wisconsin releases and forever discharges Defendant and all of its past and present owners, directors, divisions, principals, employees, officers, parents, predecessors, shareholders, subsidiaries, successors, assigns and transferees from the following: all claims, causes of action, damages, restitution, fines, costs, attorneys' fees, remedies, and/or penalties that were or could have been asserted against the defendant by the State of Wisconsin resulting from the conduct described in the *Complaint* filed in this action, from the beginning of time up to and including the date of entry of this Consent Judgment.

VIII. NO EFFECT ON OTHER LEGAL RIGHTS AND OBLIGATIONS

1. Nothing in this *Consent Judgment* shall be construed to apply to, or affect, the Defendant's obligations to comply with all state and federal laws, regulations, or rules, or as granting the defendant permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

2. The *Consent Judgment* in this action shall not affect the private rights or remedies of any of Defendant's customers.

IX. MISCELLANEOUS

1. For three (3) years after entry of this *Consent Judgment*, Defendant must deliver a copy of this *Consent Judgment* to: (1) all members, officers, directors and supervisory employees or agents of USAPS; and (2) the manager of any business entity providing services to USAPS in connection with the marketing of vehicle service plans to Wisconsin residents.

2. If any portion, provision, or part of this *Consent Judgment* is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions.

3. The parties understand this *Consent Judgment* shall not be construed as an approval of or sanction by the Attorney General or the State of Wisconsin of the business practices of Defendant, nor shall Defendant represent the decree as such an approval. The parties further understand

that any failure by the State of Wisconsin or by the Attorney General to take any action in response to any information which they now have in their possession and may believe forms the basis for a violation of this *Consent Judgment* shall not be construed as an approval of or sanction of any representations, acts, or practices indicated by such information, nor shall it preclude action thereon at a later date.

**X. CONTINUING JURISDICTION
TO ENFORCE THIS CONSENT JUDGMENT**

Jurisdiction is retained by the Court for the purpose of enabling any party to request enforcement of the terms of this *Consent Judgment* as permitted by law. If the State of Wisconsin determines that the defendant has failed to comply with any terms of this *Consent Judgment*, the State has agreed not to initiate any action or proceeding against Defendant for alleged non-compliance with the injunctive terms of this *Consent Judgment* without first notifying Defendant in writing and permitting Defendant the opportunity to respond or cure the alleged non-compliance. Defendant will have ten (10) business days from receipt of such written notice to provide a written response to the Department of Justice for alleged failures to comply with the injunctive provisions of this *Consent Judgment*.

IT IS SO ORDERED.