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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

STATE OF OREGON, ex rel HARDY MYERS, Attorney General for the State of Oregon,

Plaintiff,

v.

PUBLISHERS CLEARING HOUSE,

Defendant.

Case No. 00C10706

(Assigned to the Honorable James Rhoades)

AMENDED COMPLAINT ALLEGING VIOLATIONS Of the Unlawful Trade Practices Act (ORS 646.605 *et seq.*)

Plaintiff, State of Oregon, claims for relief for violations of Oregon’s Unlawful Trade Practices Act (UTPA), ORS 646.605 to 646.656. Plaintiff alleges that all times material herein and during the period January 1, 1997, to the present:

1.

HARDY MYERS is the Attorney General for the State of Oregon and sues in his official capacity pursuant to ORS 646.632.

2.

Defendant, PUBLISHERS CLEARING HOUSE (PCH) is a New York limited partnership doing business in the State of Oregon as a direct mail solicitor.

3.

The Circuit Court for the State of Oregon has personal jurisdiction over defendant PCH pursuant to ORCP 4A (4). Defendant has engaged in substantial activities within the State of Oregon by operating a business providing consumer goods primarily for personal, family, and household use. All transactions took place in the course of defendant’s business.

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4.

PCH is a national marketing company and one of the largest sellers of magazine subscriptions in the country. In addition to acting as an agent of magazine publishers, PCH sells many other items of merchandise including collectible figurines, sports memorabilia, coins, household items, personal care items, books and tapes.

5.

To sell these products, PCH conducts promotional sweepstakes through direct mail solicitations/bulletins, which are sent to millions of households throughout the United States and Oregon. In addition to the direct mailings, PCH also advertises heavily in a variety of other media.

6.

PCH selects consumers to receive PCH sweepstake bulletins. As consumers respond, PCH sends additional bulletins, most of which offer sweepstake entry opportunities. A significant number of individuals receive scores of mailings in a single year.

7.

PCH sweepstake bulletins use personalized form letters that falsely imply that each recipient has won or is about to win a major sweepstakes prize. These form letters include notes that appear hand-written and contain language that intimates friendship and caring. The letters contain false information about events, such as meetings held concerning the individual consumer and in which the individual consumer purportedly was named and discussed with caring concern by PCH. The letters misrepresent the nature of the relationship between PCH, a mass-market retailer, and its customers. See Exhibit 1 attached.

8.

Some Oregonians suffer from social isolation as a result of illness, impaired mobility, and the breakdown of social networks due to death and relocation. These Oregonians are particularly vulnerable to bulletins that falsely intimate friendship and individualized concern. Oregonians

1 suffering from cognitive and perceptual impairments are also particularly vulnerable to these
2 deceptive advertising practices.

3 9

4 The personalized bulletins described in paragraph 7 are particularly effective with the
5 vulnerable consumers described in paragraph 8. PCH targets this vulnerable group when
6 designing its personalized bulletins. Senior citizens are disproportionately represented among
7 vulnerable consumers. Although senior citizens make up approximately 13% of the US
8 population, they comprise 30% of PCH customers. PCH is aware of the demographic profile of
9 its customers and designs its bulletins to maximize sales.

10 10.

11 The external packaging and envelopes of PCH sweepstake bulletins use deceptive text
12 and graphics to create the false impression that the document is urgent and legally important
13 when in fact it is simply a mass-market mailing. See Exhibit 2 attached.

14 11.

15 PCH sweepstake bulletins misrepresent the likelihood of winning by sophisticated use of
16 graphics that manipulate font, type size, color, layout and text to hide conditional language and
17 emphasize the likelihood of a future event. See Exhibit 3 attached. PCH is aware that this
18 bulletin format is particularly effective with the vulnerable consumers described in paragraph 8.
19 The actual chance of winning a major prize in a PCH sweepstake is approximately one in fifty
20 million.

21 12.

22 PCH sweepstake bulletins are intended to mislead consumers to believe they have already
23 won a major prize through procedural devices such as preauthorization of the manner of the prize
24 payoff and associated publicity releases. See Exhibit 4 attached.

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13.

Through disparate entry procedures for purchase and non-purchase sweepstake entries, and through the acts alleged in paragraphs 5 through 12, PCH intends consumers to reasonably believe that an entry made with a purchase is more likely to win a sweepstakes prize than an entry made without a purchase. See Exhibits 6 and 9 attached. PCH creates the false impression that loyal customers are exclusively eligible for prizes not available to others. See Exhibit 8 attached. PCH creates the false impression that consumers must order merchandise and magazines to preserve their right to receive future sweepstakes entry opportunities. See Exhibit 11 attached.

14.

PCH bulletins are intended to mislead consumers to believe they are winners of a valuable prize when in fact, every consumer who responds to certain bulletins receives a small gift of minimal value. See Exhibits 5, 6 and 7 attached.

15.

PCH recently sent a bulletin into Oregon, which incorporates a skill contest requiring a purchase within the same advertising packet soliciting for a sweepstakes where a purchase requirement is prohibited by Oregon’s gambling statutes. See Exhibit 10 attached. The requirement to make a purchase for the skill contest is prominently displayed unlike the “no purchase is necessary” message for the sweepstake. This format has the effect of negating any ostensible no purchase necessary message and misrepresenting that a purchase is necessary to participate in the sweepstake.

16.

In its aggregate, the conduct described in paragraphs 5 through 15 is intended to mislead consumers to believe it is necessary to purchase merchandise or magazines in order to maintain the consumer’s status as a winner or to increase the consumer’s chances of winning. This conduct is a pattern or process of repeating portions of successful deceptive mailings in

1 subsequent bulletins, of sending repetitive bulletins to consumers with the ultimate message
2 “buying will help you win” apparent in various formats, and stating the consumer’s name several
3 times in each bulletin.

4 17.

5 All PCH conduct alleged in this complaint was and is willful within the meaning of ORS
6 646.605(10).

7 18.

8 Prior to the filing of this complaint, Oregon gave PCH the notice required by ORS
9 646.632(2) that PCH had violated the Oregon Unlawful Trade Practices Act and the relief
10 sought. PCH has not signed a satisfactory Assurance of Voluntary Compliance in response to
11 the notice.

12 CLAIM FOR RELIEF

13 19.

14 Plaintiff, STATE OF OREGON, realleges and incorporates paragraphs 1 through 18.

15 20.

16 By engaging in the conduct described, defendant willfully violated ORS 646.608(1) (p)
17 by making misleading statements about a prize, contest, or promotion used to publicize a
18 product, business or service.

19 21.

20 By engaging in the conduct described, defendant willfully employed unconscionable
21 tactics in violation of ORS 646.607 (1) by taking advantage of consumers’ reasonable inability to
22 fully understand the nature of defendant’s bulletins and related correspondence.

23 22.

24 By engaging in the conduct described, defendant willfully made false or misleading
25 representations concerning the nature of the transaction or obligation incurred in violation of
26 ORS 646.608(1)(k).

///

1 23.

2 By engaging in the conduct described, defendant willfully violated ORS 646.608(1)(u)
3 and its implementing rule OAR 137-020-0440 (2) by misleading consumers to believe they have
4 been selected for a prize when this is not the case.

5 24.

6 By engaging in the conduct described, defendant willfully violated ORS 646.608 (1)(u)
7 and its implementing rule OAR 137-020-0440 (3) by representing consumers are in a limited
8 group of persons with an enhanced likelihood of winning or receiving a prize when in fact they
9 are not.

10 25.

11 By engaging in the conduct described, defendant willfully violated ORS 646.608(1)(u)
12 and its implementing rule OAR 137-020-0440(4) by representing by implication that multiple
13 purchases enhance the likelihood of winning a prize when in fact this is not the case.

14 26.

15 By engaging in the conduct described, defendant willfully violated ORS 646.608(1)(u)
16 and its implementing rule OAR 137-020-0440(5) by misleading consumers to believe they are
17 being notified a second or final time of the opportunity to receive or compete for a prize when
18 this is not the case.

19 27.

20 By engaging in the conduct described above, defendant willfully violated ORS
21 646.608(1)(u) and its implementing rule OAR 137-020-0440(13) by failing to clearly and
22 conspicuously make disclosures necessary to assure the promotion was not misleading, unfair or
23 deceptive.

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28.

WHEREFORE, PLAINTIFF prays for relief as follows:

- (a) For a judgment against PCH for civil penalties of up to \$25,000, for each violation of the Unfair Trade Practices Act. Each individual bulletin sent to a consumer in violation of Oregon law and/or rules, constitutes a separate violation and there are many thousands of violations;
- (b) For a judgment against PCH for reasonable attorney fees pursuant to ORS 646.632 (8);
- (c) For a judgment against PCH for full restitution to any consumer harmed by any of PCH's activities; and,
- (d) For a judgment granting such other relief including injunctive relief as the court may deem appropriate or that the parties may mutually agree upon. Injunctive relief should extend to putting defendant out of business in Oregon unless defendant completely reforms its sweepstakes bulletin practices.

DATED this _____ day of April, 2000.

Respectfully submitted,

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