

C  
MF 10/6/99

Gail E. Bright, #14572  
Assistant Attorney General  
Office of the Attorney General  
Kansas Judicial Center  
Topeka, Kansas 66612-1597  
(785) 296-3751

FILED BY CLERK  
KS. DISTRICT COURT  
3rd JUDICIAL DISTRICT  
OCT 5 1 37 PM '99  
TOPEKA, KANSAS

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS**  
**Division 9**

STATE OF KANSAS, *ex rel.* )  
CARLA J. STOVALL, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MAIL GROUP ASSOCIATES, INC., d/b/a )  
UNCLAIMED ASSETS, and )  
SMART MARKETING, INC., d/b/a )  
UNCLAIMED ASSETS, )  
 )  
Defendants. )

Case No. 98 CV 295

(Pursuant to K.S.A. Chapter 60)

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 4 day of <sup>October</sup>~~August~~, 1999, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Gail E. Bright, Assistant Attorney General. Defendant Smart Marketing, Inc., appears by and through counsel, William E. Rancy and Andrew Lustigman. There are no other appearances.

**WHEREUPON**, the parties advise the Court they have stipulated and agree to the following matters:

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*
3. Defendant Smart Marketing, Inc., d/b/a Unclaimed Assets, is a corporation organized under the laws of the State of New York. The principal office of the business is located at 1401 Lakeland Avenue, Bohemia, New York, 11716.
4. Defendant Smart Marketing, Inc., is a supplier within the definition of K.S.A. 50-624(i) and has engaged in consumer transactions in Kansas within the definitions of K.S.A. 50-624(c).
5. Defendant Smart Marketing, Inc., admits the Court has personal and subject matter jurisdiction.
6. Defendant stipulates and waives any objection to venue in Shawnee County.
7. The Attorney General alleges Defendant Smart Marketing, Inc., engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:
  - (a) knowingly, or with reason to know, made representations their services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities they do not have, in violation of K.S.A. 50-626(b)(1)(A);
  - (b) knowingly, or with reason to know, made representations their property or services have uses, benefits or characteristics they do not have, in violation of K.S.A. 50-626(b)(1)(F);
  - (c) willfully used exaggeration, falsehood, innuendo or ambiguity as to a material fact, in violation of K.S.A. 50-626(b)(2);
  - (d) willfully failed to state a material fact, or willfully concealed, suppressed or omitted a material fact, in violation of K.S.A. 50-626(b)(3);

(e) no material benefit was received by consumers from the subject of the transaction, in violation of K.S.A. 50-627(b)(3); and

(f) misleading statements of opinion were made to consumers upon which consumers were likely to rely to their detriment, in violation of K.S.A. 50-627(b)(6).

8. Defendant Smart Marketing, Inc., agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and denies each and every one of the Attorney General's allegations set forth herein.

9. Defendant Smart Marketing, Inc., agrees to refrain from and to be permanently enjoined from engaging in acts and practices described in paragraph seven (7) in violation of the Kansas Consumer Protection Act. Defendant Smart Marketing, Inc., agrees that engaging in acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order.

10. The provisions of this Consent Judgment will be applicable to Defendant Smart Marketing, Inc., and every employee, agent or representative of Defendant Smart Marketing, Inc.

11. Defendant Smart Marketing, Inc., agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

12. Defendant Smart Marketing, Inc., agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant Smart Marketing, Inc., within thirty (30) days of the date such complaint is forwarded to Defendant Smart Marketing, Inc., for resolution.

13. Defendant Smart Marketing, Inc., agrees to pay \$1,250.00 in investigation fees and expenses and \$1,250.00 in civil penalties to the "Office of the Attorney General." Payment shall be

made by cashier's check and shall be delivered to the Attorney General at the time of signing of this Consent Judgment.

14. Defendant Smart Marketing, Inc., agrees to maintain all business records for a period of five (5) years and to provide the Attorney General information related to compliance with this Consent Judgment upon demand.

15. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof. The parties agree that this Consent Judgment resolves all issues known to the parties under the Kansas Consumer Protection Act relating to the acts and practices described in paragraph seven (7), including subparagraphs, of this Consent Judgment up through the date of the execution of this Consent Judgment. Pursuant to the terms of this Consent Judgment, the Attorney General agrees that she and her office will not pursue any claims, demands or civil causes of action under the Kansas Consumer Protection Act against Defendant Smart Marketing, Inc., for the acts and practices described in paragraph seven (7) of this Consent Judgment up through the date of the execution of this Consent Judgment, excepting only action which may be required to enforce the provisions of this Consent Judgment.

16. 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, portions or parts.

17. Compliance with this Consent Judgment does not relieve Defendant Smart Marketing, Inc., of any obligation imposed by applicable federal, state or local law, nor shall the Attorney

General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction.

18. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant Smart Marketing, Inc., nor shall Defendant Smart Marketing, Inc., represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the 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.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendant Smart Marketing, Inc., immediately become a judgment upon filing.


**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant Smart Marketing, Inc., and in favor of Plaintiff in the amount of \$2,500.00.

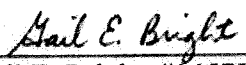
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

**IT IS SO ORDERED.**

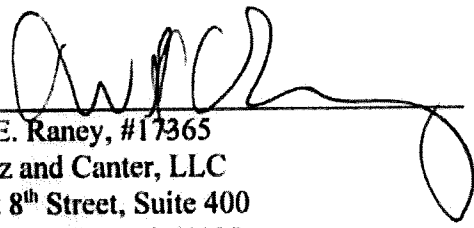
  
Judge of the District Court

**PREPARED AND APPROVED BY:**

  
\_\_\_\_\_  
CARLA J. STOVALL, #11433  
Attorney General

  
\_\_\_\_\_  
Gail E. Bright, #14572  
Assistant Attorney General  
Kansas Judicial Center  
Topeka, Kansas 66612-1597  
(785) 296-3751  
Attorney for Plaintiff

**APPROVED BY:**

  
\_\_\_\_\_  
William E. Raney, #17365  
Copilevitz and Canter, LLC  
423 West 8<sup>th</sup> Street, Suite 400  
Kansas City, Missouri 64105  
(816) 472-9000

Of Counsel:

Andrew Lustigman  
The Lustigman Firm, P.C.  
Empire State Building, 60<sup>th</sup> Floor  
New York, New York 10118-6098  
(212) 268-0797

Attorneys for Defendant Smart Marketing, Inc.,