

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

COMMONWEALTH OF VIRGINIA,)
EX REL. KENNETH T. CUCCINELLI, II,)
ATTORNEY GENERAL,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. ____
)
KLMN READERS SERVICES, INC.,)
a Florida corporation,)
)
SERVE: Shannon Dancy)
Registered Agent)
16 N. Kingsbridge Place Apt. B)
Chesapeake, VA 23322)
)
Defendant.)
)

COMPLAINT

The Plaintiff, Commonwealth of Virginia, by, through and at the relation of its Attorney General, Kenneth T. Cuccinelli, II (the "Plaintiff" or the "Commonwealth"), petitions this Court to declare that the activities in which the Defendant, KLMN Readers Services, Inc. ("KLMN" or the "Defendant"), has engaged constitute violations of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, and the Virginia Home Solicitation Sales Act ("VHSSA"), Virginia Code §§ 59.1-21.1 through 59.1-21.7:1. The Commonwealth prays that this Court grant the relief requested in this Complaint and states the following in support thereof:

JURISDICTION AND VENUE

1. The Commonwealth brings this action pursuant to the authority set forth in §

59.1-203 of the VCPA, which provides, *inter alia*, that the Attorney General may bring an action to enjoin any violation of the VCPA. Section 59.1-21.7:1 of the VHSSA subjects violations of the VHSSA to any and all of the enforcement provisions of the VCPA.

2. The Circuit Court for the City of Chesapeake has authority to entertain this action and to grant the relief requested herein pursuant to Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

3. Venue is permissible in this Court pursuant to Virginia Code § 8.01-262 (1), (2), and (4) because the Defendant maintains its principal and registered office in the City of Chesapeake, because the Defendant regularly conducts substantial business activity in the City of Chesapeake, and because portions of the causes of action arose in the City of Chesapeake. Venue is preferred in this Court pursuant to Virginia Code § 8.01-261(15)(c) because some or all of the acts to be enjoined are, or were, being done in the City of Chesapeake.

4. In accordance with Virginia Code § 59.1-203(B), prior to commencement of this action, the Plaintiff gave the Defendant written notice that these proceedings were contemplated and a reasonable opportunity to appear before the Office of the Attorney General to demonstrate that no violations of the VCPA had occurred, or in the alternative, to execute an appropriate Assurance of Voluntary Compliance that is acceptable to the Commonwealth.

PARTIES

5. The Plaintiff is the Commonwealth of Virginia, by, through and at the relation of Kenneth T. Cuccinelli, II, Attorney General of Virginia.

6. The Defendant, KLMN Readers Services, Inc. is a Florida corporation. It provides its consumer customers a mailing address of P.O. Box 15187, Chesapeake, Virginia 23328 and a telephone contact number of (757) 818-9497. The Defendant has obtained a

Certificate of Authority to Transact Business in Virginia. The address listed as the Defendant's principal office and registered office in Virginia is 16 N. Kingsbridge Place Apt. B, Chesapeake, Virginia 23322.

FACTS

7. KLMN is a Florida corporation that conducts door-to-door sales of magazine subscriptions. Based on the 199 complaints our office has received, directly or through the Better Business Bureau of Greater Hampton Roads, the Commonwealth of Pennsylvania Office of Attorney General, or the Washington State Office of Attorney General, the Plaintiff has reason to believe that KLMN has conducted door-to-door sales campaigns in no less than 24 states, including Virginia, but not Florida.

8. When consumers purchase a subscription, a KLMN sales agent fills out an order form. The sales form says they should expect to receive their magazines within 120 days. A copy of one of KLMN's sales forms with the name of the affected consumer redacted is attached as Exhibit A.

9. The order form completed by the KLMN sales agent contains a statement of the buyer's right to cancel the transaction. A buyer's right to cancel allows a consumer to cancel the order within three days to receive a full refund. The carbon copy of the order form that is left with the consumer provides a Virginia address of P.O. Box 15187, Chesapeake, Virginia 23228 and a telephone number of (757) 818-9497. Notice of cancellation forms must be sent to the referenced Chesapeake address.

10. During the period from 2009 to the present, many consumers who purchased magazines from KLMN agents did not receive the magazines they ordered within 120 days or thereafter. The Commonwealth has received complaints from 154 consumers that fall into this

category. Of the 154 complaints received, 128 have been left unresolved.

11. During the period from 2009 to the present, many other consumers attempted to cancel their subscription orders within three days of completing the order by returning their notice of cancellation to the Chesapeake address of KLMN. The Commonwealth has received 31 complaints that fall into this category, all of which involved sales greater than the \$25 purchase price required to bring the sales within the VHSSA under Virginia Code § 59.1-21.2(B)(2). Of the 31 consumers who sent in the notice of cancellation within the three-day deadline, 21 have not received a refund.

12. Other consumers attempted to cancel their subscription orders within three days of completing the order by returning their notice of cancellation to KLMN, and did eventually receive a refund, but did not receive the refund until after a period of 10 days following their cancellation. The Commonwealth has received 10 complaints that fall into this category.

13. Some consumers who cancelled within three days and received a refund did not receive a full refund and instead KLMN retained one or more \$10 “non-refundable process & handling service charge[s].” The Commonwealth has received 8 complaints that fall into this category.

14. In the complaints received by the Commonwealth, consumers’ purchase prices range from \$20.34 to \$459, with an average purchase price of \$74.24.

15. In several instances from 2009 onward, KLMN responded in writing to consumers that KLMN would provide a refund to a consumer, but no refund was ever issued. In 3 instances KLMN emailed or wrote a letter to the consumer promising a refund, and in 2 additional instances KLMN sent a “speed letter” which informed the consumer that the magazine ordered was no longer offered and gave the consumer the choice to order a new magazine or

request a refund. The consumers contacted in this manner requested a refund, or attempted to contact KLMN about a new subscription, but never received either magazines or a refund. A copy of a KLMN “speed letter” with the name of the affected consumer redacted is attached as Exhibit B.

16. On several occasions KLMN sales agents informed consumers that the magazines purchased could be sent to charitable organizations or to soldiers overseas. KLMN sales forms state however, “This company does not send magazines to charities.” When consumers later sought an explanation for the discrepancy, KLMN provided no explanation or assurances that the magazines reached their destination. The Commonwealth has received 5 complaints from consumers who were told their magazines would be sent to charitable organizations or to soldiers overseas, and 4 have not received a refund or an assurance that their magazines were delivered as promised.

17. In many instances KLMN failed to return consumers’ phone calls, email messages, or complaints made through KLMN’s website. The telephone number provided on the KLMN website, letterhead, and sales forms is a Virginia number, as is the KLMN fax number. When consumers called the telephone number it would often lead to a full answering machine in which consumers could not leave messages.

18. When consumers were able to get through to KLMN with the telephone number provided, they would most often reach Shannon Dancy, KLMN’s registered agent in Virginia and Treasurer. Despite assurances that either magazines or refund checks would be delivered, in many instances consumers would wait the specified time and receive nothing in the mail.

19. On information and belief, the Commonwealth understands that the complaints it has received may represent the proverbial “tip of the iceberg” for those who actually have been

harm. In this regard, the subscription clearing house used by KLMN, Publishers Consulting Corporation, has reported to the Commonwealth that KLMN has not provided it with payments for 13,061 subscriptions, which total approximately \$600,000.

CAUSES OF ACTION

COUNT 1—VIRGINIA CONSUMER PROTECTION ACT

20. The Plaintiff re-alleges and incorporates herein by reference all matters set forth in Paragraphs 1 through 19 above.

21. The Defendant is now, and was at all relevant times mentioned herein, a “supplier” of “goods” or “services” in connection with “consumer transaction[s]” as those terms are defined in § 59.1-198 of the VCPA.

22. By offering for sale magazine subscriptions to consumers, the Defendant has and does engage in “consumer transaction[s],” as defined in § 59.1-198 of the VCPA.

23. In offering magazine subscription sales to consumers, and thereafter failing to follow through with delivery of the ordered magazines, and, in some instances, with a promised refund, or in other instances making conflicting representations that magazines would be sent to charitable organizations or to soldiers overseas without adequate assurances of delivery, the Defendant has engaged, and continues to engage in the following acts and practices, which are prohibited practices under the VCPA:

- a. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits, in violation of § 59.1-200(A)(5);
- b. Advertising goods or services with intent not to sell them as advertised, or with the intent not to sell at the price or upon the terms advertised, in violation of § 59.1-200(A)(8);

- c. Using deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, in violation of § 59.1-200(A)(14); and
- d. Failing to adhere to the terms and conditions of a written agreement entered into with a consumer to resolve a dispute that arises in connection with a consumer transaction, in violation of § 59.1-200(A)(17).

24. Individual consumers have suffered losses as a result of the Defendant's violations of § 59.1-200 (A)(5), (A)(8), (A)(14), and (A)(17) of the VCPA.

25. The Defendant has willfully engaged in the acts and practices described in this Complaint in violation of the VCPA.

COUNT 2- VIRGINIA HOME SOLICITATION SALES ACT

26. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1 through 25 above.

27. The Defendant is now, and was at all relevant times mentioned herein, a "seller" of "goods" in connection with "home solicitation sale[s]" as those terms are defined in § 59.1-21.2 of the VHSSA.

28. By operating door-to-door and offering for sale magazine subscriptions to consumers who receive personal solicitations from agents of the Defendant, the Defendant has and does engage in "home solicitation sale[s]," as defined in § 59.1-21.2 of the VHSSA.

29. In offering door-to-door magazine subscription sales to consumers, and failing to provide any refund to consumers who submitted a timely notice of cancellation in some instances, or a complete refund to other consumers in other instances, the Defendant has engaged, and continues to engage in the following acts and practices, which are prohibited by the VHSSA:

a. In violation of § 59.1-21.5(1), the Defendant failed, within ten days after a home solicitation sale has been canceled or an offer to purchase revoked, to tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

30. Individual consumers have suffered losses as a result of the Defendant's violations of § 59.1-21.5(1) of the VHSSA.

31. The Defendant has willfully engaged in the acts and practices described in this Complaint in violation of the VHSSA.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court:

A. Preliminarily and permanently enjoin KLMN from violating Virginia Code §§ 59.1-200 (A)(5), (A)(8), (A)(14), and (A)(17) of the VCPA and § 59.1-21.5(1) of the VHSSA pursuant to Virginia Code § 59.1-203;

B. Grant judgment against KLMN and award to the Commonwealth all sums necessary to restore to any consumers the money or property acquired from them by KLMN in connection with its violations of §§ 59.1-200 (A)(5), (A)(8), (A)(14), and (A)(17) of the VCPA and § 59.1-21.5(1) of the VHSSA, pursuant to Virginia Code § 59.1-205;

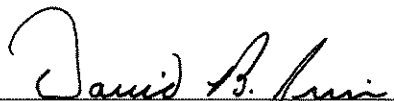
C. Grant judgment against KLMN and award to the Commonwealth civil penalties of up to \$2,500 per willful violation of §§ 59.1-200 (A)(5), (A)(8), (A)(14), and (A)(17) of the VCPA and § 59.1-21.5(1) of the VHSSA, pursuant to Virginia Code § 59.1-206(A), with the exact number of violations to be proven at trial;

D. Grant judgment against KLMN and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000.00 per

violation of §§ 59.1-200 (A)(5), (A)(8), (A)(14), and (A)(17) of the VCPA and § 59.1-21.5(1) of the VHSSA, and its attorney's fees, pursuant to Virginia Code § 59.1-206(C); and

E. Order such other and further relief as may be deemed proper and just.

COMMONWEALTH OF VIRGINIA,
EX REL. KENNETH T. CUCCINELLI, II,
ATTORNEY GENERAL

By: 
David B. Irvin

Kenneth T. Cuccinelli, II
Attorney General

Patricia L. West
Chief Deputy Attorney General

Wesley G. Russell, Jr.
Deputy Attorney General

David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General

Consumer Protection Section
900 East Main Street
Richmond, Virginia 23219
Phone: (804) 786-4047
Fax: (804) 786-0122

DATE 1/1/20

KLMN Readers Services, Inc.

P.O. BOX 15187, CHESAPEAKE, VA 23328
PHONE (757) 818-9497 • www.klmnreaders.com

IF THIS SALE IS \$25.00 OR MORE, YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE NOTICE OF THE CANCELLATION FORM ON BACK FOR AN EXPLANATION OF THIS RIGHT. SUBJECT TO STATE LAW.

I UNDERSTAND THAT IF ORDER IS CANCELLED FOR ANY REASON, THE SOLICITOR WILL NOT RECEIVE ANY CONTEST OR TRIP POINTS. THIS COMPANY DOES NOT SEND MAGAZINES TO CHARITIES.

SUBSCRIBER'S SIGNATURE

PHONE#

K 175305

THE SALESPERSON IS AN INDEPENDENT CONTRACTOR NOT AN AGENT OR EMPLOYEE OF THIS COMPANY. IN OTHER WORDS THIS PERSON IS SELF EMPLOYED.

IF GIFT COMPLETE THIS AREA

PURCHASER-BUYER

ADDRESS

CITY

ST

ZIP

SALES PERSON'S SIGNATURE

ID NUMBER

CUSTOMER PLEASE READ

- No verbal agreements recognized.
- Your first issue should be received within 120 days.
- All correspondence must contain order number.

This Company gives no Free Gifts such as T. Shirts, Jackets, C.D.'s or Magazines.

YOU MUST PRINT!

PERSON TO RECEIVE MAGAZINE

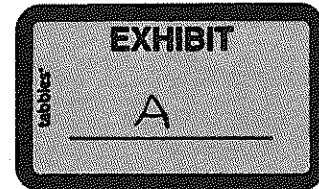
[Redacted Name]									
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ADDRESS

[Redacted Address]									
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CITY			STATE			ZIP CODE			
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CUSTOMER COPY		SAFETY SYSTEM RECEIPT	
MAGAZINES SUBSCRIBED FOR	CHECK IF RENEWAL	ISSUES	TOTAL COST
[Redacted]	<input checked="" type="checkbox"/>		
NON-REFUNDABLE PROCESS & HANDLING SERVICE CHARGE			\$10.00
TOTAL COST OF ORDER		THIS ORDER IS PAID IN FULL → \$	



DATE OF SALE

NOTICE OF CANCELLATION

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE. SATURDAY INCLUDED AS BUSINESS DAY.

IF YOU CANCEL ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE REFUNDED WITHIN 30 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE TO KLMN Readers Services, Inc., P.O. BOX 15187, CHESAPEAKE, VA 23328. NOT LATER THAN MIDNIGHT OF _____

I HEREBY CANCEL THIS TRANSACTION, THIS _____ OF _____, 20____
(DAY) (MONTH)

BUYER'S SIGNATURE

AUG - 5 2010

EXHIBIT

3

SPEED LETTER

THIS SPEED LETTER IS DESIGNED TO HELP YOU, PLEASE READ

Date: July 6, 2010

To: ~~Subscriber~~
~~Subscriber~~
Madison, OH 44057

KLMN Readers Services, Inc.
P.O. Box 15187
Chesapeake, VA 23328
(757) 818-9497 Fax (757) 482-2427

Dear Subscriber: K29428

Salesperson/Date: J McGee/09-10-09

This is in regards to an order placed on our original receipt. For us to handle this subscription as quickly as possible, please return this Speed Letter with all the correspondence attached and the information checked below.

We must have proof of payment in order to make an adjustment. Please forward the following checked item(s).

Original Receipt (No Photocopies) Copy of both sides of cancelled check.

We have no information on file regarding the above number. Please forward further explanation.

In regards to your above order, please complete the enclosed card and return to us within 5 days after receiving.

We regret that your order for the above receipt, lists a publication which is no longer on our current letter of introduction. Workbench As a subscription agency, we are only able to accept orders authorized to us by various publishers. Since it would be difficult for us to enter this magazine, we kindly ask that you look over the enclosed list of authorized publications in an attempt to make a new selection for your payment. Your choice will be immediately process.

In accordance with the Federal Law and our receipt, your order must be \$25.00 or more to cancel. We will forward your order to the publisher for the amount you have paid, canceling any balance that may be due. However, if your receipt states differently, please send us a copy and we will comply. Return this file with your requested adjustment.

Your order has been canceled within three days. However, we were unable to prevent your check(s) from being processed. For a refund, please send your receipt(s) and both sides of canceled check(s) when received from your bank.

If you do not wish to select another Magazine, CD-ROM or Book, please forward your original receipt for a refund.

Please forward your receipt so we can process your cancellation.

NOTE: OUR FILES ARE KEPT IN NUMERICAL ORDER. WHEN REPLYING, PLEASE RETURN THIS COMPLETE FILE. DO NOT DETACH ANY CORRESPONDENCE FROM THIS SPEED LETTER.