

IN THE COURT OF COMMON PLEAS  
MONTGOMERY COUNTY, OHIO

STATE OF OHIO, ex rel.  
ATTORNEY GENERAL  
MICHAEL DEWINE

Plaintiff,

vs.

POSUCCESS, LLC, et al.

Defendants.

) Case No. 2013 CV 07027

) Judge Dennis J. Adkins

) FINAL JUDGMENT  
) ENTRY AND ORDER

RECEIVED  
ATTORNEY GENERAL OF OHIO

JUL 10 2014

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

The Plaintiff commenced this action on November 15, 2013 by filing its Complaint and Request for a Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalties against Defendants POSuccess, LLC ("POSuccess") and Princesa Brown ("Brown"). The Complaint alleged violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and its Substantive Rules, OAC 109:4-3-01 et seq. and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 et seq. Both Defendants were properly served. On January 21, 2014, Plaintiff filed a Motion for Default Judgment and this Court issued a Default Judgment Entry and Order against the Defendants on January 22, 2014. The Default Judgment included an order for the Defendants to pay civil penalties and restitution to all consumers injured by the Defendants' conduct, in amounts to be determined at a later date via affidavits.

On March 13, 2014, Plaintiff filed a Memorandum in Support of Damages and Other Requested Relief ("Damages Memo"), in which Plaintiff submitted evidence supporting the amount of civil penalties and consumer damages that Plaintiff was requesting. In support of its request for consumer damages, Plaintiff attached to its Damages Memo the affidavits of thirteen

(13) consumers, which attested to the damages they suffered. The evidence established that each of the thirteen consumers sustained monetary damages in connection with Defendants soliciting and selling magazine subscriptions.

The Court finds that each consumer sustained individual damages in the amounts set forth in the Consumer Damages Summary, attached as Exhibit 1 to Plaintiff's Damages Memo.

In its Damages Memo, the Plaintiff also explained the basis for the amount of civil penalties requested. Plaintiff's request was made pursuant to R.C. 1345.07(D). Plaintiff provided evidence of the Defendants' violations of the CSPA which, pursuant to R.C. 1345.07(D), permit the imposition of a civil penalty. The Court finds Plaintiff's request for a civil penalty in the amount of Five Thousand Dollars (\$5,000) well-taken.

**Based on the above, the Court completely reinstates below the Findings of Facts, Conclusions of Law, and Orders that were originally included in the Court's Default Judgment, and also issues new orders based on the evidence presented via the Plaintiff's Damages Memo and at the Damages Hearing:**

#### **FINDINGS OF FACT**

1. The actions of Defendants, hereinafter described, have occurred in Montgomery County, Ohio and other counties in Ohio.
2. Defendant Brown, at all relevant times herein, was the owner of Defendant POSuccess.
3. Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions either directly or indirectly, by soliciting and selling magazine subscriptions to individuals in several counties throughout Ohio, including Montgomery County, for purposes that were primarily personal, family or household use.

4. Defendants were, at all times relevant herein, engaged in personal solicitations at consumers' residences.
5. Defendant Brown directed, supervised, approved, formulated, authorized, ratified, benefited from and/or otherwise participated in the day to day activities of Defendant POSuccess.
6. Defendants' representatives and/or salespersons traveled door to door to consumers' residences encouraging consumers to sign up and order different magazine subscriptions.
7. When consumers agreed to order magazine subscriptions, they were given a copy of an order form, which included language that stated, "This Subscription processed through P.O.S. LLC."
8. The order form also included the following language, "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 attached notice of cancellation form for an explanation of this right." However, a notice of cancellation form was not attached to the order form provided to consumers.
9. In most, if not all, instances, consumers made payments for the magazine subscriptions by check.
10. Consumers wrote their checks out to POSuccess and the funds were deposited into POSuccess' banking account.
11. In many instances, consumers never received any of the ordered and paid for magazines.
12. In many instances, consumers tried to contact Defendants to find out when they should expect to receive their magazines or to request refunds, but Defendants failed to respond to consumers' messages.

### **CONCLUSIONS OF LAW**

13. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
14. This Court has venue to hear this case pursuant to Ohio Civ. R. 3 (B)(2) in that Montgomery County is the location in which the Defendant POSuccess had its principal place of business and Ohio Civ. R. 3 (B)(3) in that Montgomery County is a location where the Defendants conducted activity that gave rise to the claim for relief
15. The Attorney General is the proper party to commence these proceedings under the authority provided to him under R.C. 1345.01 et seq. and by virtue of his statutory and common law authority to protect the interest of the citizens of Ohio.
16. Defendant POSuccess is a “supplier” as that term is defined in R.C. 1345.01(C), since Defendant POSuccess engaged in the business of effecting “consumer transactions,” either directly or indirectly, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A), (C), and (D) of the CSPA.
17. Defendant Brown is a “supplier” as that term is defined in R.C. 1345.01(C) since Defendant Brown engaged in the business of effecting “consumer transactions,” either directly or indirectly, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A), (C), and (D) of the CSPA.
18. Defendants committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and the Failure to Deliver Rule, Ohio Administrative Code Sections 109:4-3-09(A)(2)(a) and 109:4-3-09(A)(2)(b), by accepting substantial payments from consumers for magazine subscriptions, then permitting eight weeks to elapse without delivering the magazines or making a full refund.

19. Defendants violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give proper notice to consumers of their right to cancel their contract by a specific date.

**THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

- A. Plaintiff's request for Declaratory Judgment is GRANTED, and it is therefore DECLARED that the acts and practices set forth above violate the CSPA, R.C. 1345.01 et seq. in the manner set forth herein.
- B. Defendants, under their own name or any other name, their agents, representatives, salespeople, employees, successors and assigns, and all persons acting on behalf of Defendants directly or indirectly, through any corporate or private device; partnership or association, are PERMANENTLY ENJOINED from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.
- C. Defendants are PERMANENTLY ENJOINED from engaging in business in the State of Ohio as a supplier until all judgment ordered remuneration is paid, including any outstanding unsatisfied judgment arising out of a prior consumer transaction.
- D. Defendants are ORDERED to maintain in their possession and control for a period of five (5) years all business records relating to Defendants' solicitation or effectuation of business in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable, twenty-four (24) hour notice, to inspect and/or copy any and all of said records, however stored, and further are ORDERED that copies of such records be provided at Defendants' expense to the Ohio Attorney General upon request of the Ohio Attorney General or his representatives.
- E. Defendants are ORDERED to pay consumer damages to the Ohio Attorney General in the total amount of One Thousand Six Hundred Forty Nine Dollars (\$1,649.00) to be

distributed by the Attorney General to consumers identified in Exhibit 1, in the amounts specified.

F. Pursuant to the above finding that Defendants committed unfair and deceptive acts and practices in violation of the CSPA, Defendants are ORDERED to pay a civil penalty to the Ohio Attorney General in the amount of Five Thousand Dollars (\$5,000.00).

G. Defendants are ORDERED to pay court costs.

**IT IS SO ORDERED.**

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**JUDGE DENNIS J. ADKINS**

PREPARED BY:

MICHAEL DEWINE  
Attorney General

/s/ Brittany M. Steele  
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General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Type:** Final Judgment Entry  
**Case Number:** 2013 CV 07027  
**Case Title:** STATE OF OHIO EX REL vs POSUCCESS LLC

So Ordered

A handwritten signature in cursive script, appearing to read "Dan J. Adkins".