

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED

2009 NOV -6 A 9:51

IN RE COMMONWEALTH)
MARKETING GROUP, INC.)

Washington Superior Court
Docket No. 844-11-09
SUPERIOR COURT
WASHINGTON COUNTY

ASSURANCE OF DISCONTINUANCE

WHEREAS, Commonwealth Marketing Group, Inc. ("CMG"), is a Pennsylvania corporation with offices at 1 Millennium Drive, Uniontown, Pennsylvania 15401, that offers certain types of "shopping cards" and discount programs under the names "USA Credit" and "USA Benefits";

WHEREAS, CMG has marketed its shopping cards using descriptions such as the "USA Credit Platinum shopping card with a \$7,500 initial credit line and 0% interest on purchases";

WHEREAS, CMG's shopping cards can be used to buy merchandise offered through CMG (for instance, CMG's "USA Shopping Club"), but not otherwise;

WHEREAS, CMG has sold its shopping cards and discount programs on the Internet and also, in a number of cases, through telemarketing;

WHEREAS, beginning in or around 2004, CMG sold its shopping cards and discount programs to some Vermont residents through telephonic offers;

WHEREAS, under the Vermont Consumer Fraud Act, "home solicitation sales" are subject to a three-business-day right to cancel, 9 V.S.A. § 2451a (d);

WHEREAS, a "home solicitation sale" includes a transaction "solicited wholly or in part by telephone with a consumer at the residence or place of business or employment of the consumer," 9 V.S.A. § 2451a(d);

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

WHEREAS, 9 V.S.A. § 2454, and, for telemarketing, the Vermont Attorney General's Consumer Fraud Rule (CF) 113, available at <http://www.atg.state.vt.us/display.php?smod=131>, describe the kinds of disclosures of this right to cancel that must be made by a seller of goods or services;

WHEREAS, under CF 113.02(a), in every telephonic home solicitation sale, the seller must furnish to the consumer, prior to debiting a bank account or otherwise initiating payment, a receipt or contract of sale containing the date of the transaction, the name and address of the seller, and, in immediate proximity to the signature line on the contract or on the front page of the receipt and in ten-point boldface type, the following notice:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date you receive both this contract or receipt and the complete notice of cancellation explaining this right as required by Vermont law, which should be attached.

WHEREAS, CF 113.02(b) also requires the seller to send to the consumer, again prior to initiating payment, two copies of a long-form notice of cancellation, attached to the contract or receipt and easily detachable, which notice must contain the following information in ten-point boldface type:

NOTICE OF CANCELLATION

You may cancel this transaction, without any penalty or obligation, within three business days of receiving this notice and a contract or receipt pertaining to the transaction.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to [name of seller] at [address of seller's place of business] no later than midnight of the third business day after you receive this notice and your contract or receipt.

WHEREAS, in addition to the two written notices described above, a seller in a telephonic sale must *orally* inform the consumer of his or her right to cancel the transaction prior to the buyer's receipt of those written notices, CF 113.02(c);

WHEREAS, failure to comply with CF 113 is an unfair and deceptive act and practice in commerce under the Consumer Fraud Act, CF 113.05;

WHEREAS, until three business days have elapsed from the date the consumer has actually received these notices, the transaction is cancelable at will, CF 113.03, and *Gramatan Home Investors Corp. v. Starling*, 470 A.2d 1157, 1161 (Vt. 1983);

WHEREAS, based on both information provided by CMG and the Attorney General's allegation that CMG's transactions with Vermont consumers fall within the definition of a "home solicitation sale" within the meaning of 9 V.S.A. § 2451a(d) and/or a "telephonic home solicitation sale" within the meaning of Vermont Attorney General's Consumer Fraud Rule (CF) 113.01(a), 166 Vermont consumers entered into telephonic transactions with CMG that were not consistent with the above-described notification requirements, because the required written disclosures were not provided for the up-front fee required in connection with CMG's shopping card offer, disclosures were not made on the required contract or receipt, and/or the disclosed right to cancel did not provide for a full refund of the amount paid by the consumer to CMG;

WHEREAS, these 166 Vermont consumers paid a total of approximately \$19,250 to CMG;

AND WHEREAS, the State of Vermont, through its Attorney General, and CMG (collectively, the "Parties") are willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459;

THEREFORE, the Parties agree as follows:

1. CMG shall comply with all state and federal laws and regulations governing the sale of goods and services in or into the State of Vermont, including, but not limited to, the Vermont Consumer Fraud Act and rules enacted thereunder, and the federal Telemarketing Sales Rule, 16 C.F.R. Part 310.

2. Within thirty (30) days of the Parties' execution of this Assurance of Discontinuance, CMG shall provide a full refund to all Vermont consumers who paid money to CMG, or whose bank account was debited by CMG, as the result of a transaction solicited or consummated by CMG or its agents wholly or in part by telephone. The refund amounts shall be equal to the total of all unrefunded payments made to CMG by these consumers, or debited by CMG from their bank account, including payments for other products and services offered by CMG or its agents through an "upsell" from a telephone call between the consumer and CMG. The refunds shall be sent in the form of a check, by first-class mail, postage prepaid, to each eligible consumer's last-known address, along with a letter in substantially the same form as Exhibit 1 hereto, except that if the mailing is returned with a forwarding address, CMG shall resend the mailing to the forwarding address.

3. Within sixty (60) days of the Parties' execution of this Assurance of Discontinuance, CMG shall provide the Attorney General's Office with a list of the consumers described in paragraph 2, above, their last-known addresses, the amount of the refund check sent to each of them, and whether the refund was returned as undeliverable.

4. Also within sixty (60) days of the Parties' execution of this Assurance of Discontinuance, CMG shall pay to the State of Vermont, in care of the Attorney General's Office, the total amount of refund checks under paragraph 2, above, that were returned to CMG as undeliverable, which, at its option, the Attorney General's Office may attempt to forward to the consumers at a new address, or treat as unclaimed funds.

5. For a period of three (3) years from the date of the Parties' execution of this Assurance of Discontinuance, CMG shall continue in force the shopping card and other entitlements for which the Vermont consumers described in paragraph 2, above, paid money to CMG. If, upon closing these consumers' accounts, CMG customarily reports the action to a credit reporting agency, it shall report the action only as "account closed."

6. Within ten (10) days of the Parties' execution of this Assurance of Discontinuance, CMG shall pay a civil penalty to the State of Vermont, in care of the Attorney General's Office, in the amount of twenty thousand dollars (\$20,000.00).

7. This Assurance of Discontinuance shall be binding on CMG, its officers, directors, managers, agents, successors and assigns. CMG shall promptly take reasonable steps to ensure that copies of this document are provided to all officers, directors, managers and agents of the company.

8. This Assurance of Discontinuance resolves any and all claims which the State of Vermont has, had or may have against CMG and its officers, directors, managers, agents, partners, parents, affiliates, successors and assigns, and which arise out of, are connected to, or in any way related to CMG's sales of shopping cards and discount programs within or into the State of Vermont, including without limitation any and all claims under the Vermont Consumer Fraud Act and rules enacted thereunder (including the Vermont Attorney General's Consumer Fraud Rule (CF) 113), and the federal Telemarketing Sales Rule, 16 C.F.R. Part 310, from the beginning of time through December 4, 2008, the date that CMG was notified of the Attorney General's investigation of this matter.

9. This Assurance of Discontinuance constitutes the entire agreement of the Parties with respect to the matters referred to herein, and it may not be modified, altered or changed except upon by a written instrument signed by all the Parties hereto. The Parties agree and acknowledge that any attempted oral change or modification of this Assurance of Discontinuance shall be null, void and unenforceable, even if the Parties or their representatives purport to make a mutual oral agreement for such change or modification.

10. This Assurance of Discontinuance may be executed in counterparts, each of which when so executed shall be an original, but all such counterparts shall together constitute but one and the same instrument. Facsimile or other electronically transmitted signatures shall have the full force and effect of original ink signatures.

11. The Parties represent and warrant that the persons executing their signatures on this Assurance of Discontinuance are authorized to do the same.

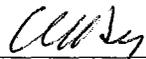
12. The Parties further represent and warrant that they have read this Assurance of Discontinuance, that after consultation with counsel they fully understand all of the terms of this Assurance of Discontinuance, and that they have executed this Assurance of Discontinuance voluntarily, without undue physical or economic duress, in full knowledge of its significance, and with the intent to be legally bound hereby.

IN WITNESS WHEREOF, the Parties have set their hands and seals as of the date set forth below.

Date: 10/22/09

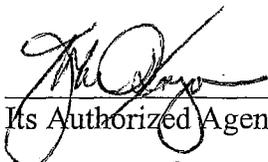
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General

Date: 11/3/09

COMMONWEALTH MARKETING GROUP, INC.

by: 
Its Authorized Agent

John P. Fozza
Name

General Counsel
Title

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109 State Street
Montpelier, VT
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APPROVED AS TO FORM:



Elliot Burg
Assistant Attorney General
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For the State of Vermont



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535 Smithfield Street
Suite 1300
Pittsburgh, PA 15222-2315
For Commonwealth Marketing
Group, Inc.

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Exhibit 1

Dear [Name of Consumer]:

Commonwealth Marketing Group, Inc. ("CMG), which some years ago sold you a "USA Credit Platinum" shopping card (a card used to buy merchandise only from CMG), has entered into a settlement with the Vermont Attorney General's Office to resolve claims that CMG allegedly did not provide you with proper notice of your three-business-day right to cancel your purchase.

Enclosed is a check for a full refund of the amount of money you paid to CMG for your shopping card. Provided that you do not become delinquent in payments or otherwise violate the terms and conditions of the shopping card, your card will remain effective for an additional three years from the date of this letter, after which your account with us will be closed.

If you have any questions about this refund, you may call the Vermont Attorney General's Consumer Assistance Program at 1-800-649-2424.

Sincerely,

Commonwealth Marketing Group

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Montpelier,
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