

NO. DV-0504134-J

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, T E X A S
	§	
INTERNATIONAL ASSOCIATION OF	§	
BENEFITS, F/K/A INTERNATIONAL	§	
ASSOCIATION OF BUSINESSES,	§	
A/K/A IAB,	§	
Defendant.	§	191 st JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this date, came for hearing the above-entitled and numbered cause in which the STATE OF TEXAS (“State” or “Plaintiff”), acting by and through Attorney General of Texas, GREG ABBOTT, is Plaintiff, and INTERNATIONAL ASSOCIATION OF BENEFITS, F/K/A INTERNATIONAL ASSOCIATION OF BUSINESSES, A/K/A IAB (“IAB”), is Defendant. Through their respective attorneys of record, Plaintiff and Defendant agree to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

STIPULATIONS

The parties agree to the entry of this Judgment and, at their request, the Court finds that:

1. It has jurisdiction over the subject matter of this action;
2. It has jurisdiction over the Defendant;
3. Venue is proper in Dallas County, Texas;
4. The activities of Defendant constitute trade and/or commerce;
5. Entry of this judgment is in the public interest;
6. This judgment is non-appealable;
7. Nothing in this Agreed Judgment in any way effects an individual’s cause of action

under the DTPA, or any other laws or regulations of this State;

8. Defendant acknowledges notice of this permanent injunction and acceptance of the same; therefore no writ need be issued.
9. The court shall have continuing jurisdiction to enforce this judgment.

DEFINITIONS

For the purposes of this Agreed Final Judgment and Permanent Injunction, the following definitions shall apply:

1. “DTPA” shall mean the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2005).
2. “Clear and conspicuous” and “Clearly and conspicuously” mean:
 - A. For print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
 - B. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to comprehend it.
 - C. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through

visual or audio means, the message may be made through the same means by which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for an ordinary consumer to read and comprehend it. The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

3. “Defendant’s plan” and/or “IAB’s plan” means Defendant’s goods and/or services marketed to consumers as providing any discounts or lowered costs for health related costs, whether medical, dental, or similar or related services.

INJUNCTION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant, its officers, agents, servants, employees, and all other persons in active concert or participation with the Defendant who receive actual notice of this injunction shall be permanently enjoined, restrained, and prohibited from engaging in the following conduct:

1. Failing to disclose in a clear and conspicuous manner in all oral and written communications to consumers that Defendant’s plans are not insurance.
2. Using terms of art from insurance in oral and written communications to consumers

regarding IAB's plan, including but not limited to, the following terms:

- A. Co-pay;
 - B. Pre-existing conditions;
 - C. Coverage; and
 - D. Deductible.
3. Representing to consumers the cost of any health care service with the IAB plan, unless the following conditions are met:
- A. There is a factual basis for the representation;
 - B. The entire cost of the health care service is disclosed; and
 - C. Any representation regarding any portion of the cost which will be paid or reimbursed by IAB has a factual basis.
4. Representing to consumers in any oral or written communications that Defendant's plan offers discount health care, access to discount health care, ranges of discounts or savings on health care, or access to ranges of discounts or savings on health care, unless Defendant has a factual basis for those representations and the discounts or savings represented are in fact realized by at least ten percent of the Defendant's members over a six month or greater time period within the preceding three years.
- A. For purposes of compliance with this provision, the factual basis shall be the difference between the price of the product or service charged to a consumer who pays cash at the time of receiving the product or service without the Defendant's card, and the price charged to a consumer who presents the Defendant's card at the time of receiving the product or service.

5. Representing that health care providers will give represented discounts to consumers who present Defendant's card at the time of the transaction unless Defendant has, or has contracted with a network organization who has, at some point in the prior twelve months, confirmed in writing with the health care provider the following information:
 - A. The provider's current name, address, and telephone number;
 - B. That the provider is accepting new patients; and
 - C. That the provider has agreed to accept Defendant's members and bill those members for health care services according to the fee schedule Defendant has represented will be charged to consumers.
6. Representing to consumers that there are health care providers who participate in the program in the consumer's local area unless Defendant has made a list of all providers, whom Defendant has confirmed will participate as set forth in "5" above, reasonably available for inspection by consumers prior to any purchase.
7. Representing to consumers that members of Defendant's plan can access hospital providers except under the following conditions:
 - A. Each time an oral or written representation regarding access to hospital providers is made, Defendant clearly and conspicuously discloses all material conditions, restrictions, and costs associated with access to the hospital providers, including but not limited to:
 - i. Waiting periods;
 - ii. Pre-certification and/or pre-qualification requirements; and
 - iii. Deposit or pre-payment requirements.

- B. There are no conditions, restrictions, or costs associated with accessing hospital providers that would prevent IAB's average member from accessing hospital providers.
8. Assessing a "one-time," "enrollment," "administrative," or "sign-up" fee unless and until the following conditions are met:
- A. Any such fee, and its material terms and conditions, are clearly and conspicuously disclosed to consumers before assessing the fee. Such disclosures shall include, but not be limited to, the following:
 - i. The amount of the fee;
 - ii. The purpose of the fee;
 - iii. Whether or not the fee is refundable; and
 - iv. If refundable, a clear description of the steps consumers must take to receive the refund.
 - B. Any such fee must be a nominal amount, directly related to costs incurred by Defendant in enrolling consumers in its plan.
9. Representing that Defendant offers a "money-back" or "satisfaction" guarantee unless all monies paid by consumers to Defendant, including but not limited to, enrollment fees and monthly fees, are refundable under the guarantee.
10. Requiring consumers to cancel the plan in writing unless Defendant clearly and conspicuously discloses in all written and oral communications to consumers that written cancellations are required. Such disclosures shall include:
- A. The address to which written cancellations should be sent; and

- B. The fax number to which written cancellations should be sent, if facsimile notification is an accepted means of cancellation.
11. Failing to cancel the plan for a consumer if the consumer has complied with the requirements to cancel.
- A. If the consumer was sold the plan prior to clear notice of cancellation requirements being given, failing to cancel the plan for the consumer if the consumer has communicated, either orally or in writing, that he or she wishes to cancel.
12. Charging a consumer's credit card, drafting or debiting a consumer's bank account, or billing the consumer after the effective date of cancellation, unless:
- A. Stopping a scheduled charge, draft, debit, or bill is not possible; and
 - B. Defendant removes the charge, credits back the bank account, or sends a revised bill within 3 business days of the effective date of cancellation as defined in "C" below.
 - C. The effective date of cancellation shall be the date Defendant, or any entity marketing or selling Defendant's plan, receives the cancellation in the case of oral or facsimile cancellations, and the date the cancellation is postmarked in the case of cancellations sent by mail.
13. Failing to disclose to a consumer who has attempted to cancel Defendant's plan that the consumer's method of cancellation was not effective
- A. It is a violation of this provision to fail to give specific correct instructions for proper cancellation if a consumer cancels orally and the Defendant requires

cancellations to be submitted in writing.

14. Representing that Defendant is offering the plan at a “special” or discounted price for a limited time unless:
 - A. The “special” or discounted price represents a price which is lower than the customary fee for the plan;
 - B. The “special” or discounted price is available for a limited time;
 - C. The expiration date of the “special” or discounted price offer is clearly and conspicuously disclosed; and
 - D. All material terms, conditions, and restrictions regarding the offer are clearly and conspicuously disclosed in all communications of the offer to consumers.

15. Using customer testimonials, unless:
 - A. All representations regarding Defendant’s plan have a factual basis;
 - B. The full name of the person making is kept in Defendant’s offices and shall be made available to whomever inquires for as long as the testimonial is being used, and for at least one year thereafter;
 - C. All material relationships, whether current or past, between Defendant and the person making the testimonial are clearly and conspicuously disclosed in all oral and written communications of the testimonial to consumers; and
 - D. All representations in the testimonial regarding price reductions, savings, and/or discounts received on health care services are in reference to price reductions, savings, and/or discounts received solely through the use of Defendant’s plan, and not the result of combining Defendant’s plan with a

health insurance plan, or any other plan.

16. Representing to consumers that the Defendant's plan is commensurate to, superior to, or a replacement for health insurance.
17. Sending facsimile solicitations which do not include:
 - A. The correct and complete name of the person making the facsimile solicitation and the street address of the location of the person's place of business; and
 - B. A toll-free or local exchange accessible telephone number of the person that:
 - i. Is answered in the order in which the calls are received by an individual capable of responding to inquiries from recipients of facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday; or
 - ii. Automatically and immediately deletes the specified telephone number of the recipient.
18. Failing to take appropriate remedial and disciplinary action when Defendant becomes aware that an agent or representative of Defendant is in violation of "17" above.
19. Failing to make a full and complete refund of all enrollment and monthly fees to a consumer who complains in writing to the Attorney General's Office, the Better Business Bureau, or any other government or regulatory agency, that Defendant's plan was misrepresented as health insurance by Defendant, or an agent or representative of Defendant.
20. Failing to take appropriate remedial and disciplinary action when Defendant becomes

aware that an employee, agent, or representative of Defendant is representing Defendant's plan as health insurance to consumers.

21. Failing to make a full and complete refund of all enrollment and monthly fees to a consumer who complains in writing to the Attorney General's Office, the Better Business Bureau, or any other government or regulatory agency, that the discounts available with Defendant's plan were misrepresented by Defendant, or an agent or representative of Defendant.
22. Failing to take appropriate remedial and disciplinary action when Defendant becomes aware that an employee, agent, or representative of Defendant is misrepresenting the discounts available with Defendant's plan to consumers.
23. Failing to make a full and complete refund of all enrollment and monthly fees to a consumer who complains in writing to the Attorney General's Office, the Better Business Bureau, or any other government or regulatory agency, that the providers who are contractually obligated to accept Defendant's plan were misrepresented by Defendant, or an agent or representative of Defendant.
24. Failing to take appropriate remedial and disciplinary action when Defendant becomes aware that an employee, agent, or representative of Defendant is misrepresenting the providers who are contractually obligated to accept Defendant's plan to consumers.
25. Representing to consumers in any oral or written communications of any kind that a public figure or public figures have in any way endorsed Defendant's plan or any of Defendant's products, unless the public figure has expressly and verifiably given Defendant permission to so represent.

26. Failing to make a full and complete refund of all fees of any kind collected from a consumer who has manifested an intent to cancel Defendant's plan at any time within 30 days from the date the Defendant ships, via private mail for which the date of shipment is verifiable, written materials from Defendant which fully and completely disclose all material information regarding Defendant's plan.
27. Representing that there is a link between Defendant's non-profit status and Defendant's ability to provide health care coverage at a low cost, unless there is a factual basis for that representation.
28. Failing to implement procedures to adequately train sales representatives, independent marketing representatives, and customer service representatives on how to fully and completely inform consumers about Defendant's plan.
29. Failing to disclose the terms of this injunction to any person or entity marketing Defendant's plan.

CIVIL PENALTIES, COSTS AND ATTORNEYS' FEES

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff shall have judgment against Defendants in the amount of \$150,000.00, which will be paid as civil penalties and Plaintiff's reasonable attorneys' fees and investigative costs. This amount shall be allocated as follows:

- A. \$75,000.00 shall be paid as civil penalties; and
- B. \$75,000.00 shall be paid as the Plaintiff's reasonable attorneys' fees and investigative costs.

The Defendant shall make full payment of the total funds set out in sections (A) and (B)

above by a money order or certified check made payable to the Office of the Attorney General of Texas, bearing the Attorney General No. 052106523, and shall deliver the money order or certified check to the Office of the Attorney General, Consumer Protection and Public Health Division, 300 West 15th Street, William P. Clements Building, 9th Floor, Austin, Texas 78701. The \$150,000.00 shall be delivered by the Defendant to the Office of the Attorney General after September 1, 2006 and no later than September 15, 2006.

MISCELLANEOUS

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the State of Texas shall have all writs of execution and other process necessary to enforce this Agreed Final Judgment and Permanent Injunction. Defendant, by its signatures below, hereby acknowledge notice of this permanent injunction and acceptance of same; therefore, no writ need be issued.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all costs of Court incurred in this case are taxed against the parties incurring same.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall not represent to the public that this Judgment constitutes approval by Plaintiff or this Court of any of Defendant's actions or business activities.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if in the future any definition or provision in this Judgment is inconsistent with the laws of the State of Texas or any rules or regulations promulgated thereunder, then such laws and/or rules and regulations will prevail over the terms of this Judgment, provided that the remaining terms of the Judgment not affected by such laws, rules, or regulations will remain in full force and effect.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all relief not expressly

granted herein is denied.

SIGNED this _____ day of _____, 2006.

PRESIDING JUDGE

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

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International Association of Benefits

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**ATTORNEYS FOR THE STATE OF
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