

CAUSE NO. D-1-GU-09-002143

STATE OF TEXAS,

Plaintiff,

v.

INTERCEPT, LLC.
d/b/a Shopcartusa.com,
d/b/a Diduprice.com,
d/b/a Flyingprices.com,
d/b/a Digitalsaver.com, and
d/b/a Pricingdepot.com,

Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

LM NOV 30 2009

At 8:51A M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this date, came for hearing the above-entitled and numbered cause in which the STATE OF TEXAS (hereinafter "Plaintiff" or "State"), acting by and through Attorney General of Texas, GREG ABBOTT, is Plaintiff, and INTERCEPT, LLC (hereinafter "Defendant" or "Intercept"), is the Defendant. Plaintiff and Defendant agree to entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

I. INTRODUCTION

1.1 Plaintiff sued Defendant in the public interest under the Deceptive Trade Practices Act ("DTPA")¹. The lawsuit alleges that Defendant has misrepresented the sponsorship or approval of goods or services.

¹ Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 et seq. (Vernon 2002 and Supp. 2008).

1.2 The Plaintiff and Defendant have consented to (a) settlement of the State's lawsuit without trial or adjudication of any issue of fact or law and without Defendant admitting liability for any of the matters alleged in the Petition and (b) entry of this judgment by this Court. This Agreed Final Judgment ("Judgment") settles only the State's claims against Defendant, its current officers, agents, servants, employees, principals, members, attorneys, acting in such capacities on Defendant's behalf, (collectively "Releasees") as alleged in Plaintiff's Original Petition and shall not act as a bar to any claim by the State nor preclude the State from seeking remedy against other persons, corporations, or entities, other than Releasees, including persons who may be subject to portions of this Judgment as persons acting in active concert or participation with Defendant.

NOW, THEREFORE, the Plaintiff and Defendant having requested the Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

II. STIPULATIONS

The parties agree to the entry of this Judgment and, at their request, the court **FINDS** that:

- 2.1 It has jurisdiction over the subject matter of this action;
- 2.2 It has jurisdiction over the Defendant;
- 2.3 Venue is proper in Travis County, Texas;
- 2.4 The activities of Defendant constitute trade and/or commerce;
- 2.5 Entry of this judgment is in the public interest;
- 2.6 This judgment is non-appealable;
- 2.7 Defendant acknowledges notice of this permanent injunction and acceptance of the same; therefore no writ need be issued; and
- 2.8 The court shall have continuing jurisdiction to enforce this judgment.

2.9 The Defendant will promptly effectuate the dissolution of the Defendant limited liability company and will not enter into any trade or commerce in Texas from the Effective Date onward.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

III. DEFINITIONS

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

3.1 “**Advertising**” or “**Advertisement(s)**” means any message created, published and/or distributed under the direction or control of the Defendant to the general public or any segment thereof, including but not limited to communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), and communications made in print, which includes but is not limited to letters, pamphlets, flyers, newspapers, magazines, periodicals, and books.

3.2 “**Assisting Others**” means knowingly formulating or providing, or arranging for the formulation or provision of the following goods or services to any person or entity: (a) performing customer service functions, including but not limited to receiving or responding to Consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other written marketing material, including, but not limited to the text of any Internet website, email or other electronic communication; (c) providing names of, or assisting in the generation of list(s) of, potential customers; and (d) performing marketing services or materials of any kind.

3.3 “**Consumer**” as used herein means a consumer who is a resident of the State of

Texas.

3.4 **“Effective Date”** means the date upon which this Agreed Final Judgment and Permanent Injunction is filed with the Court.

3.5 **“Price Comparison Web site”** means any Internet Web site that displays price listings from more than one retailer for specific goods, allowing Consumers to purchase the good from the desired retailer.

IV. PERMANENT INJUNCTION

4.1 **IT IS FURTHER ORDERED THAT** Defendant Intercept, LLC will not engage in any trade or commerce in Texas from the Effective Date onward.

4.2 **IT IS FURTHER ORDERED THAT** Defendant, its officers, agents, servants, employees, principals, members, attorneys, and all other persons in active concert or participation with the Defendant who receive actual notice of this injunction shall be permanently enjoined, restrained, or prohibited from:

- A. Engaging in false, misleading, or deceptive acts or practices in the conduct of trade or commerce;
- B. Causing confusion or misunderstanding as to the sponsorship, approval, or certification of goods or services;
- C. Misrepresenting or Assisting Others in misrepresenting that goods or services have sponsorship or approval which they do not have;
- D. Misrepresenting or Assisting Others in misrepresenting that goods or services are of a particular standard, quality or grade, if they are another;
- E. Misrepresenting that Defendant’s price-comparison services are unbiased or

neutral;

- F. Misrepresenting or Assisting Others in misrepresenting that goods or services are of a particular standard, quality, or grade, including but not limited to misrepresenting any merchant or business as "Sponsored," "Customer Certified," "Rated Best Place to Shop," and "Lowest Legitimate Price" unless Defendant has conducted an independent review of the merchant and such endorsements have been substantiated through Consumer reviews or other verifiable method of substantiation; and
- G. Failing to permit Consumers to post negative merchant reviews.

4.3 **IT IS FURTHER ORDERED THAT**, if Defendant's officers, principals, or members own or operate a Price Comparison Web site, they shall, at least 30 days prior to conducting any business in Texas, inform the Texas Attorney General's Consumer Protection Division in writing of the intent to conduct such business.

V. CIVIL PENALTIES AND ATTORNEY'S FEES

5.1 **Judgment is hereby ordered against Defendant.** It is ordered that upon execution of this agreement, Defendant shall pay Plaintiff in the amount of TEN THOUSAND DOLLARS and No/100 Dollars (\$10,000) as reimbursement of Plaintiff's investigative costs and attorney's fees, and such sum is due and payable on or before the Effective Date of this Judgment.

5.2 **Judgment is further entered in favor of Plaintiff in the amount of THREE HUNDRED THOUSAND and No/100 Dollars (\$300,000) as civil penalties.** Plaintiff shall not abstract the Judgment, file the Judgment as a lien against Defendant's property or assets, or otherwise enforce the above Judgment for civil penalties unless:

(a) Defendant uses a Price Comparison Web Site to engage in trade or commerce in Texas;

(b) Defendant engages in any of the activities prohibited by paragraphs 4.1-4.2 of this Judgment;

(c) Defendant, its officers, agents, servants, employees, and any other persons in active concert or participation with Defendant attempt to circumvent the terms of this Judgment;

(d) Defendant, its officers, agents, servants, employees, and any other persons in active concert or participation with Defendant fail to promptly effectuate the dissolution of the Defendant limited liability company; or

(e) Defendant fails to pay Plaintiff's attorney's fees in accordance with paragraph 5.1 above.

5.3 The amount of attorney's fees shall be tendered by the Defendant in the form of a certified check or money order made payable to the Office of the Attorney General of Texas, bearing the Attorney General case number (#083089995) and shall be delivered to the Office of the Attorney General, Consumer Protection Division, 300 W. 15th St., 9th Floor, Austin, Texas 78701.

VI. MISCELLANEOUS PROVISIONS

6.1 This Judgment, and the terms and conditions herein, apply only to Consumers who are located in the state of Texas, and to transactions, subscriptions, advertising, notices, disclosures, or calls which occur, in whole or in part, in the state of Texas.

6.2 Defendant shall not effect any change in its forms of doing business or its organizational identities as a method of avoiding the terms and conditions set forth in this Judgment.

6.3 With respect to Defendant's practices alleged herein, nothing in this Judgment shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Defendant.

6.4 No representations, warranties, or inducements have been made by the Texas Attorney General to Defendant and no representations, warranties, or inducements have been made by Defendant to the Texas Attorney General concerning this Judgment, other than those representations, warranties, and covenants contained in this Judgment.

6.5 If any clause, provision, or section of this Judgment shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Judgment, and this Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

6.6 Any failure by any party to the Judgment to insist on strict performance by any other party of any provision of this Judgment shall not be deemed a future waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right to insist upon the specific performance of any and all of the provisions of this Judgment.

6.7 Plaintiff is authorized to monitor compliance with this Judgment by all lawful means, including but not limited to, posing as a Consumer in any communication with Defendant, Defendant's employees or agents, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice to Defendant or Defendant's counsel.

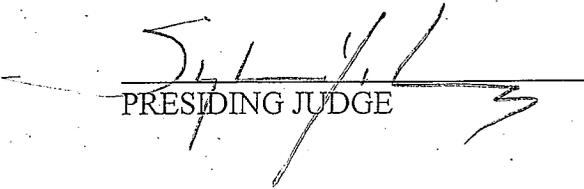
6.8 To the extent that any provision of this Judgment conflicts with any local or federal law which now exists, or is later enacted or amended, such law and not this Judgment shall apply where such conflict exists. For the purposes of this Judgment, a conflict exists if conduct prohibited by this Judgment is required or expressly permitted by such law, or if conduct required by this Judgment is prohibited by such law.

6.9 All costs of court expended or incurred in this cause are adjudged against the Defendant.

6.10 After signing by the Court, this agreement constitutes final judgment.

6.11 All relief not expressly granted herein is denied.

SIGNED this 30 day of November, 2009.


PRESIDING JUDGE

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

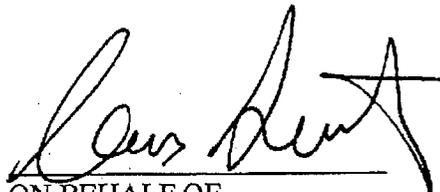
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Chief, Consumer Protection & Public Health Division

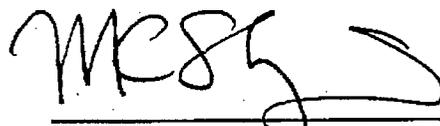
INTERCEPT, LLC.



ON BEHALF OF
INTERCEPT, LLC



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