

**IN THE DISTRICT COURT OF THE STATE OF OKLAHOMA
OKLAHOMA COUNTY**

STATE OF OKLAHOMA, ex rel.,)	
W.A. DREW EDMONDSON,)	
ATTORNEY GENERAL OF)	
OKLAHOMA,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
PUBLISHERS CLEARING HOUSE,)	
a New York limited partnership,)	
)	
Defendant.)	

PETITION

COMES NOW, the plaintiff, State of Oklahoma, by and through W.A. Drew Edmondson, Attorney General, Jane Wheeler, Assistant Attorney General, and Thomas A. Bates, Assistant Attorney General, and for its action against the Defendant, Publishers Clearing House, alleges and states as follows:

JURISDICTION AND VENUE

1. This petition is filed and these proceedings are instituted under the provisions of the Consumer Protection Act, 15 O.S. 751 et. seq., and the Consumers Disclosure of Prizes and Gifts Act, 21 O.S. 996.1 et. seq.
2. Standing of the Attorney General to commence this action is conferred by 15 O.S. 756.1 and 15 O.S. 761.1.
3. Defendant Publishers Clearing House ("PCH") is a New York partnership conducting business within the State of Oklahoma.

PARTIES

4. Plaintiff is the State of Oklahoma, by and through W.A. Drew Edmondson, Attorney General, who is authorized pursuant to 15 O.S. 756.1 of the Oklahoma Consumer Protection Act to bring this action.
5. Defendant Publishers Clearing House ("PCH") is a New York limited

partnership engaged in the business of marketing magazine subscriptions and other merchandise through promotional sweepstakes. PCH's principal place of business is located at 382 Channel Drive, Port Washington, New York 11050. PCH advertises through multiple mailings to consumers in Oklahoma and throughout the country.

6. Whenever in this petition reference is made to any act of Defendant's, such reference shall be deemed to mean the personal acts of the Defendant or acts of the Defendant's, officers, shareholders, directors, employees, agents, or other representatives, acting within the scope of their employment or authority.

**FIRST CAUSE OF ACTION:
VIOLATIONS OF THE CONSUMER PROTECTION ACT**

7. At all times relevant to this action, Defendant PCH has been in the business of direct mail marketing of magazine subscriptions and other consumer products through "sweepstakes" promotion offers.

8. Defendant is one of the largest direct mail solicitors in the United States in terms of sales, size and number of mailings to consumers. Defendant's annual sales in 1997 were approximately \$375 million. In 1997 Defendant sent out approximately 100 million pieces of mail to consumers throughout the United States, including the State of Oklahoma. Defendant uses these mailings, or "sweepstakes" promotion offers to sell a wide assortment of merchandise, including, but not limited to magazines, video tapes, audio tapes, cassettes, compact disks, coins and figurines.

9. Defendant, in the regular course of business, identifies and targets a clearly defined consumer population, which it solicits frequently and continuously through numerous sweepstakes promotion offers. A substantial percentage of this targeted population consists of elderly consumers.

10. Defendant uses a variety of graphic and copy techniques to create the content of its sweepstakes promotion offers. Such techniques include varying the size, color, and type of font in the sweepstakes promotion offers.

11. Defendant, in the regular course of business, as part of its sweepstakes promotions efforts and as a means of selling its merchandise to Oklahoma consumers, has engaged in deceptive and unfair trade practices that are prohibited by the Consumer Protection Act. Defendant's deceptive and unfair trade practices include, but are not limited to:

A. Misrepresenting, directly or by implication, that consumers have won or that there is a significant likelihood that they will win a substantial prize in the sweepstakes, including but not limited to, by using phrases such as "you are scheduled to become the first ever recipient of our "Millionaire Plus award," "the day you will definitely win," "You are now in line to win a prize so exciting..." "YOU ARE SCHEDULED TO WIN OUR FIVE MILLION DOLLAR SUPERPRIZE" "you are now scheduled to win \$1,000,000.00." "Now you may join the ranks of previous Publishers Clearing House winners because you have been selected as a CERTIFIED CASH WINNER OF UP TO \$100,000.00. ..." "URGENT NOTIFICATION [consumer's name] YOU HAVE RECEIVED FINAL APPROVAL TO WIN

\$1,000,000.00 IN THE PUBLISHERS CLEARING HOUSE SWEEPSTAKES." " The Prize Patrol is now scheduled to arrive at your [city] home at 6:00 p.m. on Thursday August 20th." "[Y]ou are now on Final Standby Alert to win the instant \$5,000,000.00 SuperPrize." See Exhibits A through D, M attached hereto.

- B. Misrepresenting the amount or size of the prize to be awarded to winning consumers. See Exhibit E attached hereto.
- C. Misrepresenting directly or by implication, that consumers will improve their chances of winning a prize in the PCH sweepstakes by ordering magazines or merchandise offered by PCH. See Exhibits D-4, E-1, E-2, F-7, G-1, J-7 and L-3 attached hereto.
- D. Prescribing an entry method for consumers who do not order magazines or merchandise that is not clearly stated and is significantly more cumbersome than the entry methods for consumers who order. See Exhibit A-6, A-11, B-4, D-6, E-11, F-7 and H-5 attached hereto.
- E. Misrepresenting, directly or by implication, that absolute deadlines exist, or the deadlines that in fact exist, for responding to Defendant's sweepstakes promotion offers, and thereby creating a false sense of urgency that lead consumers to believe that they must return their entries within a short amount of time or forfeit their chances of winning a prize. See Exhibits B-1, B-2, C, E, G, H-5 and I-2 attached hereto.
- F. Misrepresenting, directly or by implication, that officials at PCH have a personal relationship with and stake in the consumers' winning a prize from Defendant, by use of letters, memoranda and cards signed by PCH representatives that appear to be personalized, in order to establish a relationship of trust between Defendant and consumers. See Exhibit B-2, C-4, D-4, E-1, E-3, G-1, G-2, I-1, J and L-3 attached hereto.
- G. Misrepresenting, directly or by implication, that the PCH sweepstakes promotion offers are endorsed, ratified, or legalized by the United States of America or a governmental agency by (1) using official looking emblems that resemble a government agency; (2) using envelopes that resemble official government mailings; (3) using warning notices that cite the possibility of government action, or that cite government codes or form numbers, where the U.S. Postal Service does not require the use of codes or form numbers; and (4) using forms that resemble those available from the U.S. Postal Service to send official certified mail. See Exhibits A-1, A-2, C-5, E-8, E-9, F-2, F-3, F-4, F-6, I-2 and P-1 attached hereto.
- H. Misrepresenting, directly or by implication, that the Defendant's sweepstakes promotion offers are delivered by means other than bulk mail, including but not limited to: by first class mail, express mail, certified mail, priority mail, express carrier, overnight delivery, special delivery, hand delivery and air mail. See Exhibits A-1, A-2, D-1, E-8, E-9 and H-2 attached hereto.
- I. Misrepresenting consumers' odds of winning. See Exhibits B-2, D-4, E-1, G-1 and K-1 attached hereto.
- J. Misrepresenting, directly or by implication, through television advertising and

the use of devices such as a "green star" on mailings, and Presidents Gold Club Memberships, that a sweepstakes recipient is a member of a select or limited group with a more favorable chance of winning a large cash prize in a sweepstakes. See Exhibits A, K and L attached hereto.

K. Misrepresenting, directly or by implication, that consumers have a greater likelihood of winning or are close to winning a large cash prize through the use of simulated checks, vouchers, and IRS Form 1099. See Exhibits A-9, C-1 and N-1 attached hereto.

L. Misrepresenting, directly or by implication, that a consumer is about to win a large cash prize through the use of correspondence from Farmers State Bank. This correspondence is entitled "Notice of Monetary Transfer". See Exhibit O attached hereto.

12. Defendant's acts and practices as described in paragraph 11 above are unfair, deceptive, and have the tendency or capacity to mislead a substantial number of consumers in violation of 15 O.S. 753 (20).

SECOND CAUSE OF ACTION: TARGETING VULNERABLE CONSUMERS

13. Plaintiff realleges paragraphs 1 through 12 and incorporates them as if set forth fully herein.

14. Defendant targets vulnerable consumers, including but not limited to the elderly (consumers over the age of 65), and consumers with diminished or poor reading, cognitive or comprehension or logic skills, or poor vision, by identifying and repeatedly mailing its sweepstakes promotion offers to these consumers.

15. A significant number of vulnerable consumers who receive Defendant's sweepstakes promotion offers, purchase PCH's magazine subscriptions and merchandise. According to Defendant PCH's own records, 30% of its customers who make purchases are over the age of 65.

16. Defendant PCH creates and manipulates the content of its sweepstakes promotion offers to include representations, terms and merchandise that are specifically designed or chosen to appeal to vulnerable consumers.

17. Defendant PCH's mailings also exploit the concerns of elderly consumers for financial independence, and desire for social contact with family and friends.

18. Defendant PCH also uses other techniques to heighten the impact of the language misrepresenting that the consumer has won or has a significant likelihood of winning, and to minimize the effect of certain material disclosures and/or disclaimers upon vulnerable consumers. These techniques include, but are not limited to, varying the size, color and type of font in the solicitation.

19. The effectiveness of Defendant PCH's techniques as described in paragraph 11 above, is increased by Defendant's use of repeated mailings to vulnerable consumers where the message that consumers are winners of significant prizes and the other misrepresentations set forth in paragraph 11 above are constantly and repetitively made.

20. Defendant PCH employs such devices in its sweepstakes promotion offers, as internal memoranda, personalized letters, greeting cards, photographs, and the signatures of its employees to convince vulnerable consumers that they are receiving special or personal correspondence from Defendant PCH, that they should trust PCH, that PCH will soon award them a large cash prize, and that they should order magazines or merchandise from PCH because PCH will soon award them a large cash prize.

21. Defendant's misrepresentations that its sweepstakes promotion offers are endorsed, ratified or legalized by a governmental agency, as stated in paragraph 11(G) above takes advantage of vulnerable consumers' trust and respect for the government.

22. Defendant's acts and practices as described in paragraphs 13 through 21 above are unfair, deceptive, and have the tendency or capacity to mislead a substantial number of consumers in violation of 15 O.S. 753(20).

THIRD CAUSE OF ACTION: VIOLATIONS OF THE PRIZES AND GIFTS ACT

23. Plaintiff realleges paragraphs 1 through 22 and incorporates them as if set forth fully herein.

24. Defendant PCH, through its mailings and solicitations repeatedly advises consumers that they have already one or are the "guaranteed winner" of a "valuable" prize. In reality the prize is nominal value and is sent to all recipients of the mailing or solicitation.

25. Defendant's acts and practices as described in paragraphs 11(J) and 24 above are in violation of 21 O.S. 996.3(A), 21 O.S. 996.3(C)(5) and 15 O.S. 753(18).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, State of Oklahoma, prays for relief as follows:

26. That the Court adjudge and decree that the Defendant has engaged in the conduct complained of in this petition.

27. That the Court adjudge and decree that the Defendant's acts and practices as described in this petition are in violation of Oklahoma law.

28. That the Court issue a permanent injunction, authorized by 15 O.S. 756.1(A)(2), enjoining and restraining the Defendant, its officers, agents, servants, employees, successors, assigns, and all persons in active concert or participation with the Defendant, from engaging in the conduct outlined in this petition.

29. That the Court assess a civil penalty, pursuant to 15 O.S. 761.1(C) of up to \$10,000.00 per violation, against Defendant, for each and every violation of 15 O.S. 753(20) caused by the conduct outlined in this petition.

30. That the Court make such orders pursuant to 15 O.S. 756.1 as it deems appropriate to provide for restitution or damages to consumers of money acquired by Defendant as a result of the conduct outlined in this petition.

31. That the Court award and allow the Plaintiff, State of Oklahoma, to recover from the Defendant the costs and expenses of this action, including reasonable attorney's fees and investigative costs as provided by 15 O.S. 761.1(D).

32. For such other relief as the Court may deem just and proper to fully and effectively dissipate the effect of the conduct complained of in this petition or which may otherwise seem proper to the Court.

DATED this 24th day of January, 2000.

W.A. DREW EDMONDSON
ATTORNEY GENERAL

JANE F. WHEELER, OBA NO. 9523
THOMAS A. BATES, OBA NO. 15672
ASSISTANT ATTORNEYS GENERAL
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, Oklahoma 73105
Phone: (405) 521-4274
Fax: (405) 528-1867