



GRANTED

The moving party is hereby **ORDERED** to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

William Blair Sylvester

William Blair Sylvester

District Court Judge

DATE OF ORDER ON ATTACHMENT

DISTRICT COURT, ARAPAHOE COUNTY,
COLORADO

7325 S. Potomac Street
Englewood, Colorado 80112

STATE OF COLORADO, ex rel. JOHN W. SUTHERS,
ATTORNEY GENERAL,

Plaintiff,

v.

MORPHCORP LLC, a Colorado Corporation, and
MAXWELL MACMASTER, Individually,

Defendants.

▲ COURT USE ONLY ▲

Attorneys for Plaintiff:
JOHN W. SUTHERS
Attorney General
AMY L. PADDEN, 28372*
Assistant Attorney General
MARIA E. BERKENKOTTER, 16781
First Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203
(303) 866-5079
(303) 866-4916 Fax
*Counsel of Record

Case No.:

STIPULATED FINAL JUDGMENT

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through undersigned counsel, and Defendants Morphcorp LLC and Maxwell MacMaster, having each consented to the entry of this Stipulated Final Judgment without trial or other adjudication of fact or law herein, and the Court, having considered this matter and being fully advised in the premises, FINDS, CONCLUDES AND ORDERS AS FOLLOWS:

JURISDICTION

1. This Court has jurisdiction over the subject matter of this action and the parties hereto, and the Complaint states claims upon which relief can be granted under the Colorado

Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 through § 6-1-908 (2005) (“CCPA”).
Venue is proper in Arapahoe County, State of Colorado.

2. This Court is authorized to issue a permanent injunction and other relief pursuant to Colo. Rev. Stat. §§ 6-1-110(1), 6-1-112(1), and 6-1-113(4) (2005) of the CCPA.

PERMANENT INJUNCTION

3. Defendants, their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with Defendants with notice of this Permanent Injunction, are permanently enjoined from the following:

- a. Stating, claiming, or representing, in connection with the advertisement, attempted sale, or sale of the “Family Yearbook” or any other product represented to contain genealogical information, that Defendant MacMaster or any other officer, agent, servant, or employee of Defendant Morphcorp has a last name other than his or her actual last name;
- b. Stating, claiming, or representing claiming that the Family Yearbook is compiled, authored, sponsored, or announced by “contributing family member(s)”;
- c. Stating, claiming, or representing, in connection with the advertisement, attempted sale, or sale of the “Family Yearbook” or any other product represented to contain genealogical information, that Defendant MacMaster or any other officer, agent, servant, or employee of Defendant Morphcorp is a relative of or related to any consumer unless he or she is so related;
- d. Stating, claiming, or representing that the “Family Yearbook” contains 2000 years of history regarding a specific family or that it represents a complete revision of the family’s classic history;
- e. Stating, claiming, or representing that the product is a “Family Yearbook” without a clear and conspicuous disclosure in all advertisements, order forms, reservation forms, and in the “Family Yearbook” itself, that it is not published yearly and that it contains no pictures of members of the specific family, unless such a disclosure is untrue;
- f. Including any jokes or recipes in the “Family Yearbook” without a clear and conspicuous disclosure in all advertisements and in the “Family Yearbook” itself, that the jokes and recipes have no connection to and did not originate with the consumer’s family;

- g. Advertising that any price for the “Family Yearbook” is a “special pre-publication price” or “pre-publication price”; and
- h. Representing a price to be a “regular price” unless Defendants can substantiate that the “regular” or reference price is a bona fide price at which they intend to sell a significant number of products and at which such merchandise was actively offered for a reasonably substantial period of time.

As used in subparagraphs e. and f. above, “clear and conspicuous” means readily understandable and presented in such size, color, contrast, location, and audibility, compared to the other matter with which it is presented, as to be readily noticed and understood. If a statement modifies, explains, or clarifies other information with which it is presented, it shall also be presented in close proximity to the information it modifies and it shall not be obscured. The content of the disclosures required by subparagraphs e. and f. above shall be printed in a type size that is the same or greater a font and type size as used for the majority of the text of the advertisements, order forms, reservation forms, or “Family Yearbook” in which the disclosure appears.

4. Defendants will return the photographs to the consumers should the consumer so request the return of submitted photographs. Consumer must be able to identify the photographs that belong to them in order for Defendants to return the photographs to the consumer.

MONETARY RELIEF

5. Defendant shall pay thirty thousand dollars (\$30,000) as a civil penalty pursuant to Colo. Rev. Stat. § 6-1-112(1) (2005). Such funds shall be paid to the General Fund of the State of Colorado within five (5) days of entry of this Stipulated Final Judgment by the Court.

6. Defendant shall pay twenty-five thousand dollars (\$25,000) to the Colorado Department of Law within five (5) days of entry of this Stipulated Final Judgment by the Court for reimbursement of Colorado’s actual costs and attorney fees.

7. Defendants have represented that they have provided refunds to all consumers who have requested them. In reliance on that representation, Colorado is not seeking restitution payments for Morphcorp customers. If Defendants’ representation that they have provided refunds to all consumers who have requested them is later found to be inaccurate, Colorado reserves the right to seek restitution against Defendants. Defendants agree to continue to provide refunds to consumers who request them.

8. The payment referred to in paragraphs 5 and 6 above shall be made payable to the Colorado Department of Law with a reference to “Morphcorp” and shall be delivered to the

attention of the First Assistant Attorney General of the Business Regulation Unit, Consumer Protection Section.

CONSIDERATION

9. Defendants are entering into this Stipulated Final Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of litigation. Defendants' execution of this Stipulated Final Judgment shall not be considered an admission by Defendants. Nothing herein constitutes approval by the State of Defendants' past or future practices, and Defendants shall not make any representation to the contrary.

10. This Stipulated Final Judgment is intended to resolve finally and fully all of the disputes between the Attorney General and Defendants arising out of the conduct alleged in the Complaint.

11. The State acknowledges by its execution hereof that this Stipulated Final Judgment constitutes a complete settlement and release of all claims on behalf of the State against Defendants, and all subsidiaries and affiliates, past and present, and past and present general partners, officers, directors, employees, agents, servants, limited partners, and members of its Executive Committee, and representatives of any of them, and the successors and assigns of each thereof (all such released parties shall be collectively referred to as the "Releasees"), with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted prior to the effective date of this Stipulated Final Judgment under the CCPA and relating to or based upon the acts or practices which are the subject of this Stipulated Final Judgment. Notwithstanding the foregoing, the State may institute an action or proceeding to enforce the terms and provisions of this Stipulated Final Judgment or to take action based on future conduct by the Releasees. Nothing herein shall be construed as waiver of any private rights, causes of action, or remedies of any person against Releasees with respect to the acts and practices covered by this Stipulated Final Judgment.

RETENTION OF JURISDICTION

12. This Court shall retain jurisdiction of this matter for the purpose of enabling any party to this Stipulated Final Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification or execution of this Stipulated Final Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

13. This Stipulated Final Judgment shall not be construed to affect the rights of any private party to pursue remedies pursuant to Colo. Rev. Stat. § 6-1-113 (2005) of the CCPA or under any other statutes through actions in common law.

14. The parties understand and agree that a violation of any term of this Stipulated Final Judgment shall give rise to the contempt remedies and penalties provided under Colo. Rev. Stat. § 6-1-112(2) (2005).

ACKNOWLEDGMENT

15. Defendants acknowledge that they have thoroughly reviewed this Stipulated Final Judgment with their attorney, that they understand and agree to its terms, and that they agree that it shall be entered as the Order of this Court.

AGREED TO BY:

JOHN W. SUTHERS
Attorney General

/s/ _____
MARIA E. BERKENKOTTER, 16781
First Assistant Attorney General
AMY L. PADDEN, 28372*
Assistant Attorney General
Consumer Protection Section
Business Regulation Unit
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
PHONE: (303) 866-5079
FAX: (303) 866-4916

Attorneys for Plaintiffs
*Counsel of Record

Date: January 31, 2006

/s/ _____
BURTON WHERRY
Wherry & Carlstead, LLC
425 S. Cherry St., Ste. 920
Denver, CO 80246

Attorney for Defendants

/s/ _____
MAXWELL MACMASTER

Individually and on behalf of Morphcorp LLC

Date: January 19, 2006

SO ORDERED THIS _____ DAY OF _____, 2006:

District Court Judge

Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Fifth Floor, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.

Court: CO Arapahoe County District Court 18th JD

Judge: Sylvester, William Blair

File & Serve reviewed Transaction ID: 10474677

Current date: 2/3/2006

Case number: 2005CV5767

Case name: STATE OF COLORADO vs. MORPHCORP LLC et al

/s/ Judge William Blair Sylvester