

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202</p>	
<p>STATE OF COLORADO <i>ex rel.</i> John W. Suthers, Attorney General, Plaintiff, v. Jennifer Proffitt-Payne, Cody Payne, Great Lakes Circulation, Inc.; D2D Consulting, LLC; Reviste, Inc.; Rivista, Inc.; American Cash Awards, Inc.; Monitoring Services Network, Inc.; Youth Incentive Marketing, Inc.; Direct Youth Marketing; Magazines, Inc.; and Fun Sales, Inc. Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General MARK T. BAILEY #36861* Assistant Attorney General mark.bailey@state.co.us VIRGINIA SCIABBARRASI #39753* Special Assistant Attorney General ginny.sciabbarrasi@state.co.us JAY B. SIMONSON, 24077* First Assistant Attorney General jay.simonson@state.co.us 1525 Sherman Street, 7th Floor Denver, CO 80203 (303) 866-4059 (303) 866-4916 Fax *Counsel of Record</p>	<p>Case No.: 2012CV2479</p>
<p>COMPLAINT</p>	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado through the undersigned counsel, states and alleges against Defendants Jennifer Proffitt-Payne, Cody Payne, Great Lakes Circulation,

Inc.; D2D Consulting, LLC; Reviste, Inc.; Rivista, Inc.; American Cash Awards, Inc.; Monitoring Services Network, Inc.; Youth Incentive Marketing, Inc.; Direct Youth Marketing; Magazines, Inc.; and Fun Sales, Inc. as follows:

INTRODUCTION

1. This matter is a civil law enforcement action by the State of Colorado, *ex rel.* John W. Suthers, under the Colorado Consumer Protection Act, §§ 6-1-101 – 6-1-1121, C.R.S. (2012) (“CCPA”), to preliminarily and permanently restrain and enjoin Defendants from engaging in deceptive trade practices, to recover statutory civil penalties, to obtain restitution, to disgorge unjust proceeds, and to recover attorney fees and costs.

2. Certain Defendants are engaged in a nationwide scheme employing deceptive trade practices to sell magazine subscriptions door-to-door, including engaging sales crews who use false and misleading statements to pressure consumers into purchasing magazine subscriptions. Certain Defendants also handle these door-to-door subscriptions, including processing the payments, making deposits, ordering the magazines, handling customer service for the orders, ordering supplies, and processing refunds.

3. These Defendants have created a system where, rather than paying valid refunds owed to customers, Defendants would routinely change their company names and direct their customer service representatives to state that the company had gone out of business, and there was no way to refund the customer. In other instances, refunds would not be processed unless there was a complaint filed with the Better Business Bureau or the Attorney General’s office.

PARTIES

4. John W. Suthers is the duly elected Attorney General for the State of Colorado and has express authority under § 6-1-103, C.R.S. (2012) to enforce and prosecute violations of the CCPA.

5. Defendant Jennifer Proffitt-Payne is currently the owner and operator of Defendant Monitoring Services Network, Inc. She also owns American Cash Awards, Inc. and co-owns Great Lakes Circulation, Inc. with her estranged husband, Cody Payne. Ms. Proffitt-Payne’s most recent address is 2656 South Kittredge Park Road, Evergreen, Colorado 80439.

6. Defendant Cody Payne is the estranged husband of Jennifer Proffitt-Payne and was the owner of Great Lakes Circulation, Inc., D2D Consulting, LLC, Reviste, Inc. a/k/a Rivista, Inc., and Magazines, Inc. Mr. Payne’s last known address is 2656 South Kittredge Park Road, Evergreen, Colorado 80439.

7. Defendant Monitoring Services Network, Inc. is a Montana corporation that commenced operations in Colorado on January 1, 2011. Its principal place of business is 2656 South Kittredge Park Road, Evergreen, Colorado 80439.

8. American Cash Awards, Inc. was formed in Colorado in 2004. Its principal street address is listed with the Colorado Secretary of State at 26055 Columbine Trail, Kittredge, Colorado 80457. Prior street addresses include 17301 West Colfax Avenue, Suite 401, Golden, Colorado 80401 and 26055 Columbine Trail, Kittredge, Colorado 80457. Its current status with the Colorado Secretary of State is “Delinquent.”

9. Great Lakes Circulation, Inc. was formed in Colorado in 2005. Its principal street address is located at 29029 Upper Bear Creek, #110, Evergreen, Colorado 80439. Other addresses for the company include 2556 Kittredge Park Road, Evergreen Colorado 80439, P.O. Box 1060, Evergreen, Colorado 80439, and 17301 West Colfax Avenue, Suite 409-410, Golden, Colorado 80401. Its current status with the Colorado Secretary of State is “Delinquent.”

10. D2D Consulting, LLC, Reviste, Inc. and Rivista, Inc. are company names created as alternatives to Great Lakes Circulation, Inc. Reviste, Inc. was formed in 2008 and its principal place of business is listed with the Colorado Secretary of State at 2656 S Kittredge Park Road, Evergreen, Colorado 80439. Its current status with the Colorado Secretary of State is “Delinquent.” Rivista, Inc. and D2D Consulting, LLC are not registered with the Colorado Secretary of State.

11. Fun Sales, Inc. was formed in 2003 with the Colorado Secretary of State and its principal place of business is listed at 2656 S Kittredge Park Road, Evergreen, Colorado 80439. Its current status with the Colorado Secretary of State is “Noncompliant.” Direct Youth Marketing is not registered with the Secretary of State, but processed orders for magazine sales through D2D Consulting, LLC.

12. Magazines, Inc. was formed in Indiana and was first registered with the Colorado Secretary of State as a foreign corporation in 2005. It was later converted to a domestic corporation. Its principal place of business is listed at 29029 Upper Bear Creek, Suite 110, Evergreen, Colorado 80439. Its current status with the Colorado Secretary of State is “Noncompliant.” The Department of Labor lists the address for Magazines, Inc. at 2656 S. Kittredge Park Road, Evergreen, Colorado 80439, and the sole employee as Cody Payne.

13. Youth Incentive Marketing, Inc. was formed in 2004 with the Colorado Secretary of State and its principal place of business is listed at 26055 Columbine Trail, Kittredge, Colorado 80457. Its current status with the Colorado Secretary of State is “Delinquent.”

JURISDICTION AND VENUE

14. This Court has jurisdiction to enforce the CCPA under section 6-1-103 and section 6-1-110, C.R.S. (2012), and to enter appropriate orders prior to and following an ultimate determination of liability.

15. Under section 6-1-103 of the CCPA, venue is proper in the City and County of Denver as to all Defendants, because a deceptive trade practice occurred in the City and County of Denver.

RELEVANT TIMES

16. The conduct giving rise to the claims for relief in this Complaint was occurring on or around 2003 and continues through the present date. Plaintiff therefore timely files this action pursuant to C.R.S. section 6-1-115 because Plaintiff commenced the action within three years of the date on which false, misleading, and deceptive acts or practices occurred, and such practices were part of a continuing series of false, misleading, and deceptive practices.

ACTS OF AGENTS

17. Whenever reference is made in this Complaint to any act or practice of Defendants, such allegation shall be deemed to mean that the principals, owners, employees, independent contractors, agents, and representatives of such Defendants performed, directed, or authorized such act or practice on behalf of said Defendants, while actively engaged in the scope of their duties.

PERSONAL LIABILITY

18. This action is brought against corporate Defendants Great Lakes Circulation, Inc.; D2D Consulting, LLC; Reviste, Inc.; Rivista, Inc.; American Cash Awards, Inc.; Monitoring Services Network, Inc.; Youth Incentive Marketing, Inc.; Direct Youth Marketing; Magazines, Inc.; and Fun Sales, Inc.

19. This action is also brought against Jennifer Proffitt-Payne and Cody Payne, individually.

20. Defendant Jennifer Proffitt-Payne has at all relevant times directly controlled, authorized, approved, and cooperated or participated in the unlawful conduct by Defendants Great Lakes Circulation, Inc.; D2D Consulting, LLC; Reviste, Inc.; Rivista, Inc.; Magazines, Inc.; Fun Sales, Inc.; Direct Youth Marketing; American Cash Awards, Inc., Monitoring Services Network, Inc.; and Youth Incentive Marketing, Inc.

21. Defendant Cody Payne has at all relevant times directly controlled,

authorized, approved, and cooperated or participated in the unlawful conduct by Defendants Great Lakes Circulation, Inc.; D2D Consulting, LLC; Reviste, Inc.; Rivista, Inc., Magazines, Inc.; Fun Sales, Inc.; Youth Incentive Marketing, Inc.; and Direct Youth Marketing.

PUBLIC INTEREST

22. Through the deceptive trade practices of their business, vocation, or occupation, Defendants, through their owners, officers, members, and agents, have deceived and misled consumers in Colorado and around the country by falsely claiming that their magazine sales were to benefit the military, charities, or local schools and failing to honor requests for refunds.

23. Accordingly, these legal proceedings are in the public interest.

24. In addition to harming consumers, Defendants' deceptive trade practices have injured legitimate businesses who have acted in accordance with the law and without the unfair advantage of the deception used by Defendants.

STATUTORY BACKGROUND

25. The CCPA prohibits certain enumerated deceptive trade practices as set forth in C.R.S. § 6-1-105(1) in the course of any person's business, vocation, or occupation.

26. As relevant here, a person engages in a deceptive trade practice when he/she "[k]nowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property." C.R.S. §6-1-105(1)(b).

27. As relevant here, a person engages in a deceptive trade practice when he/she "[k]nowingly makes a false representation as to affiliation, connection, or association with or certification by another." C.R.S. § 6-1-105(1)(c).

28. As relevant here, a person engages in a deceptive trade practice when he/she "[k]nowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith." C.R.S. § 6-1-105(1)(e).

29. As relevant here, a person engages in a deceptive trade practice when he/she "[f]ails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction." C.R.S. § 6-1-105(1)(u).

30. The CCPA authorizes the Attorney General under C.R.S. § 6-1-110(1) to obtain injunctive relief and orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

31. The CCPA authorizes civil penalties under C.R.S. § 6-1-112 for violations for each consumer or transaction involved, and the Court shall award attorney fees and costs under C.R.S. § 6-1-113(4) in all actions where the Attorney General successfully enforces the CCPA.

FACTUAL ALLEGATIONS

32. Defendants Jennifer Proffitt-Payne and Cody Payne send teams of youth to travel the country and sell magazines door-to-door. While they do business under multiple corporate names, Defendants' operations are centrally controlled in Evergreen, Colorado.

33. Defendants Jennifer Proffitt-Payne, Cody Payne, Great Lakes Circulation, Inc.; D2D Consulting, LLC; Reviste, Inc.; Rivista, Inc.; Youth Incentive Marketing, Inc.; Direct Youth Marketing; Magazines, Inc.; and Fun Sales, Inc., employ sales crews of young individuals to sell magazine subscriptions door-to-door across Colorado and the country.

34. Defendants Great Lakes Circulation, American Cash Awards and Monitoring Services Network act or acted as the processing center for the sales crews. Under the direction of Defendant Jennifer Proffitt-Payne, these Defendants process the sales crews' magazine orders and handle customer complaints and refund requests. These Defendants also handle or handled all bank deposits and expenditures for the sales crews on the road. Great Lakes Circulation also employed sales crews.

35. In addition to the named Defendants, on information and belief, Defendant Proffitt-Payne processed orders and handled customer service for at least 20 other sales crews.

36. The Attorney General has observed hundreds of consumer complaints about Defendants' methods of selling magazines door-to-door. The complaints show a pattern of failure to refund money as requested, failure to deliver magazines that were ordered, and misrepresentations by door-to-door salespeople to trick individuals to purchase magazines.

37. Receipts provided by Defendants stated that a refund would be granted if the consumer requested a refund in writing within three days of purchase.

However, when consumers made valid refund requests, Defendants regularly failed to honor the requests.

38. One technique used by Defendants to avoid honoring refund requests was to change the names of their companies and direct the customer service representatives to state that the company from whom a refund was requested was no longer in business. In other cases, refund requests would simply not be processed. Defendant Proffitt-Payne directed her employees in the central office how to deny refund requests.

39. Defendants' sales crews routinely deceived consumers to believe that they were participating in contests. Numerous consumer complaints allege that the consumer was told that the salesperson was trying to earn points for a trip or for a scholarship. Upon information and belief, these trips and scholarships were not awarded.

40. Defendants' sales crews also routinely deceived consumers to believe that they were raising money for charity or local schools. For example, sales representatives falsely represented an affiliation with St. Jude Children's Hospital, but no proceeds from sales of magazines went to the charity. There are similar consumer complaints regarding local school affiliations.

41. Defendants' sales crews would also tell consumers that they could order magazines to be sent to the troops overseas or for local hospitals. However, after purchasing magazines for this purpose, consumers would receive the magazines at their own address. Magazines that were supposed to be sent to troops overseas were not sent as promised.

42. Defendants' sales crews often stated that the purchase of magazines was tax-deductible. However, the receipts provided to consumers after the sale state in small print that the company is for-profit and therefore, no purchases would be tax deductible.

43. Defendants Proffitt-Payne and Cody Payne were actively and directly involved in the day-to-day operations of sales crews who were going door-to-door. Defendant Proffitt-Payne received complaints in the central office about tactics used by sales crews on the road, but neither she nor Defendant Cody Payne took action to correct the deceptive conduct.

44. While the receipt requests that consumers read the fine print on the receipt and sign, consumer complaints indicate that the high-pressure sales tactics employed by the salespeople either made people feel uncomfortable, or that they believed what they were told by the salesperson regarding the purpose of the solicitation, be it for the military, for local hospitals, or charity. Other complaints indicate that a consumer never was given the receipt by the salesperson.

Statement of Damages Under Civil Access Pilot Project Rule 2.2

45. Civil Access Pilot Project (“CAPP”) Rule 2.2 requires pleading of all “known monetary damages.” The full extent of monetary harm to consumers is unknown at this time. However, the Attorney General and the Better Business Bureau have received hundreds of consumer complaints, which quoted consumer harm of approximately \$48.00 to \$246.00 per incident. Additionally, the Federal Trade Commission has more than 200 complaints against the Defendants for their deceptive trade practices.

46. During the course of the Attorney General’s investigation, Defendant Jennifer Proffitt-Payne indicated that many files were destroyed when she moved offices in 2011. Therefore Plaintiff does not have the information necessary at this time to fully estimate consumer harm. After discovery, Plaintiff will be in a position to determine the total amount of consumer harm.

47. In addition to the named sales crew Defendants in this action, Defendant Proffitt-Payne processed orders and handled customer service for at least 20 other sales crews, receiving profits from each of these companies. After discovery, Plaintiff will be in a position to determine the total amount of consumer harm from these sales.

FIRST CLAIM FOR RELIEF

(Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property in violation of C.R.S. § 6-1-105(1)(b))
(All Defendants)

48. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 47 of this Complaint.

49. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have knowingly made false representations as to the source, sponsorship, approval, or certification of goods, services, or property, including but not limited to:

- affiliations with local schools;
- affiliations with the military;
- affiliations with charities; and
- affiliations with local hospitals.

50. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado and other States.

SECOND CLAIM FOR RELIEF

(Knowingly makes a false representation as to affiliation, connection, or association with or certification by another in violation of C.R.S. § 6-1-105(1)(c))
(All Defendants)

51. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 - 50 of this Complaint.

52. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have knowingly made false representations as to affiliation, connection, or association with or certification by another, including but not limited to:

- affiliations with local schools;
- affiliations with the military;
- affiliations with charities;
- affiliations with local hospitals; and
- changing the company name to avoid processing properly requested refunds.

53. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado and other States.

THIRD CLAIM FOR RELIEF

(Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith in violation of C.R.S. § 6-1-105(1)(e))
(All Defendants)

54. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 - 53 of this Complaint.

55. Through the conduct described in this Complaint and in the course of their business, occupation, or vocation, Defendants have knowingly made false representations as to the sponsorship, approval, status, affiliation, or connection of a person with goods, services, or property.

56. Through the conduct described in this Complaint and in the course of their business, occupation, or vocation, Defendants have knowingly made false representations as to the characteristics, uses, and benefits of goods or property, by directing its employees to change company names and avoid processing valid refund requests.

57. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado and other States.

FOURTH CLAIM FOR RELIEF

(Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction in violation of C.R.S. § 6-1-105(1)(u)).

(All Defendants)

58. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 - 57 of this Complaint.

59. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants have failed to disclose material information concerning goods, services, or property at the time of sale. Such failures to disclose material information were intended by Defendants to induce consumers to enter into a transaction with Defendants.

60. After making multiple statements to consumers that would lead them to believe that the Defendants are affiliated, associated or connected with charities or other entities, the Defendants fail to inform the consumer that no such affiliation, connection, or association exists.

61. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers from Colorado and other States.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, for the following relief:

- A. An order that Defendants' conduct violates the CCPA, including sections 6-1-105(1)(c), 6-1-105(1)(b), 6-1-105(1)(e), and 6-1-105(1)(u);
- B. A judgment pursuant to C.R.S. § 6-1-110(1) against Defendants to completely compensate or restore to the original position of any person injured by means of Defendants' deceptive practices;
- C. An order pursuant to C.R.S. § 6-1-110(1) requiring Defendants to disgorge all unjust proceeds derived from their deceptive practices to

prevent unjust enrichment;

- D. An order pursuant to C.R.S. § 6-1-110(1) for an injunction or other orders or judgments relating to deceptive practices;
- E. An order pursuant to C.R.S. § 6-1-112(1)(a) for civil penalties payable to the general fund of this state of not more than two thousand dollars for each such violation of any provision of the CCPA with respect to each consumer or transaction involved not to exceed five hundred thousand dollars for any related series of violations;
- F. An order pursuant to C.R.S. § 6-1-112(1)(c) for civil penalties payable to the general fund of this state of not more than ten thousand dollars for each violation of any provision of the CCPA with respect to each elderly person;
- G. An order pursuant to C.R.S. § 6-1-113(4) requiring Defendants to pay the costs and attorney fees incurred by the Attorney General; and
- H. Any such further relief as this Court may deem just and proper to effectuate the purposes of the CCPA.

Respectfully submitted this 23rd day of April, 2012,

JOHN W. SUTHERS
Attorney General

/s/ Mark T. Bailey

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Pursuant to C.R.C.P. 121, § 1-26(7), the original of this document with original signatures is maintained at the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, Colorado 80203, and will be made available for inspection upon request.