

Cause No. _____

IN THE MATTER OF
THE STATE OF TEXAS

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IN THE DISTRICT COURT

AND

TRAVIS COUNTY, TEXAS

NEWPORT CREATIVE
COMMUNICATIONS

_____ JUDICIAL COURT

ASSURANCE OF VOLUNTARY COMPLIANCE

1. Newport Creative Communications, Inc. (“Newport”) is registered as a fundraising consultant in the Commonwealth of Massachusetts and in all jurisdictions where required. As part of its role as a fundraising consultant, Newport has several employees who work with smaller charitable organizations assisting them in charitable appeals involving direct mail solicitations which include a sweepstakes promotion and other promotions to persons residing in the States. The sweepstakes promotions typically utilize a pre-selection sweepstakes in which a winner has been randomly selected in advance by a third party. The identity of the winner is not disclosed to Newport or the charity utilizing Newport until after the sweepstakes period has ended. Newport's principal place of business is in Massachusetts.

2. For the purposes of this Assurance of Voluntary Compliance (“AVC”), the States are Arkansas, California, Kentucky, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin (collectively the “States”).

3. The States, based upon information provided by consumers and by Newport on an informal basis, allege that Newport engaged in a pattern and practice of misleading and deceptive advertising and solicitation practices in violation of their respective state deceptive

trade practices laws and charitable solicitation laws¹. The allegations concern many of the sweepstakes mailings used in conjunction with the charitable appeal of Newport’s clients. Newport denies this allegation, but has voluntarily agreed to address this issue by entering into this AVC to set standards for future sweepstakes mailings involving charitable appeals.

STATES’ POSITION

4. The statements contained in this “States’ Position” Section represent the position of the States, and Newport does not admit the truth of any of the statements contained in this “States’ Position” Section.

5. More than 30 charities² hired Newport to design fundraising mailings containing a “Sweepstakes” or prize promotion, subject to the charities’ approval, and to produce and send those mailings to prospective contributors in the States.

¹ ARKANSAS – Ark. Code Ann. § 4-28-401 *et seq.* and Ark. Code Ann. § 4-88-101 *et seq.*; CALIFORNIA - Gov. Code sections 12580 *et seq.*; Bus. and Prof. Code sections 17200 and 17500 *et seq.*; KENTUCKY – KRS 367.170 *et seq.*; MASSACHUSETTS - Regulation of Business Practices for Consumers’ Protection, M.G.L. c. 93A, 2, 4, and 5 and 940 C.M.R. 3.16. Solicitation of Funds for Charitable purposes, M.G.L. c. 68, 18-35; MICHIGAN - Charitable Organizations and Solicitations Act, 1975 PA 169, as amended, MCL 400.271 *et seq.*; MINNESOTA - Minn. Stat. § 8.31, 309.55, Charitable Solicitation Act and Minn. Stat. § 523F.67 False Statement in Advertising; MONTANA - Unfair Trade Practices and Consumer Protection Act of 1973 MCA 30-14-101 *et seq.*; NEVADA - Deceptive Trade Practices Act, NRS Chapter 598, Deceptive Trade Practices Act re Charitable Solicitations, NRS 598.1305; NEW JERSEY - Consumer Fraud Act N.J.S.A. 56:8-1 *et seq.*; Charitable Registration and Investigation Act N.J.S.A. 45:17A-18 *et seq.*; Charitable Fund Raising Regulations N.J.A.C. 13:48-1 *et seq.*; NORTH CAROLINA - Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 (1994), Solicitation of Contributions Act, N.C.G.S. § 131F-1 *et seq.*; OHIO – Ohio Revised Code § 1716.01 *et seq.*; OREGON - Unlawful Trade Practices Act, ORS 646.605 *et seq.*; Charitable Solicitations Act, ORS 128.801 *et seq.*; PENNSYLVANIA- Solicitation of Funds for Charitable Purposes Act, 10 P.S. § 162.1 *et seq.*; Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*; SOUTH CAROLINA - Unfair Trade Practices Act, S.C. Code Ann., Sections 39-5-10 *et seq.* (1976, as amended)(SC), Solicitation of Charitable Funds Act, S.C. Code Ann., Section 33-56-10 *et seq.*; TENNESSEE - Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, Solicitations of Charitable Funds Act, Tenn. Code Ann. § 48-101-501 *et seq.*; TEXAS - Bus. & Com. Code Ann. § 17-41 *et seq.* (“DTPA”); VIRGINIA - Solicitation of Contributions Law, Va. Code (1950), as amended, § 57-48 *et seq.*; WASHINGTON - Consumer Protection Act, Chapter 19.86 RCW; Charitable Solicitations, Chapter 19.09 RCW; WISCONSIN - Fraudulent Representations, Stat. Sec. 100.18(1). Charitable Solicitation Law, Wis. Stats. Secs. 440.455 & 440.46; Prize Notice Law, Wis. Stats. Sec. 100.171.

²American Association of State Troopers Scholarship Foundation, American Breast Cancer Foundation, American Foundation for Disabled Children, Cancer Foundation for Melanoma Research, Cancer Recovery Foundation of America, Cherish Our Children International, Childhood Leukemia Foundation, Defeat Diabetes Foundation, Disabled and Retired Police Officers Educational Fund, Firefighters Charitable Foundation, Foundation for Children with Cancer, Foundation for Melanoma Research, Good Counsel Homes, Huntington Disease Society, Institute for

6. The States contend that certain promotions created by Newport for its charity clients are deceptive in that they mislead some consumers and create the belief that the consumer has already won the sweepstakes promotion.

7. The States contend that marketing materials for solicitations for donations on behalf of Newport's charity clients that use sweepstakes promotions were prepared upon the advice and consent of its charitable clients and using recommendations made by Newport. These materials contained certain phrases and representations when read in the context and presentation of the materials that were misunderstood by many consumers and have been deemed to be deceptive and misleading by the States. Examples of such representations at issue include, but are not limited to:

- a. “WARNING NONTRANSFERABLE TIME SENSITIVE \$6000 U.S. Value”;
- b. “Very positive news for you Mr. Sample! \$6,000 cash payment to be confirmed upon reply by deadline. Payment schedule enclosed”;
- c. “A total of \$6000 has been approved for payment”;
- d. “Cash payment to be confirmed for Mr. John Q. Sample upon reply by deadline”;
- e. “Mr. Sample. . . I'm dumbfounded! Why haven't you claimed the \$6500 cash prize?”;
- f. “ENCLOSED: PRIZE CHECK RELEASE NOTICE”;
- g. “VERIFICATION OF UNPAID REWARD”;

Child Innovation, Israel Children’s Cancer Foundation, Kids Wish Network, Little Shelter, Miracle Flights for Kids, National Emergency Medical Association (and its progeny), National Cancer Center, National Missing Children’s Locate Center, National Association for the Terminally Ill, Opportunities for the Blind, Partnership for Caring, Save Our Sight Foundation, Survivors and Victims Empowered, United Society for Family and Children, United States Deputy Sheriff’s Association, National Cancer Coalition, and the United States Municipal Police Association.

- h. “Secure Document ... For this communication, maximum Confidentiality & Security features are in effect!”;
- i. “Personal Tax Statement”;
- j. “Ms. Jean B. Sampleperson YOU ARE OUR \$6,000 WINNER It's as simple as that. There are absolutely no strings attached. Just send in your \$6,000 Award Claim Form and then watch your mailbox for the \$6,000 prize”;
- k. Using official-looking stamps including, but not limited to, those stating “Prize Notification Selection”;
- l. Enclosing a “Draft Press Release” in the mailing, tailoring it to the recipient of the mailing and asking the recipient to approve it for release;
- m. Personalizing mailings that indicate that the “author” (or president of the charity) or other individual is personally interested in the recipient winning the sweepstakes;
- n. Using a false or deceptive “office” or “official” to indicate that the letter came from a public servant, official or office;
- o. Using a “Risk Status Report” or any direct or implied representation that gives the sense that the recipient is about to forego an opportunity to claim his or her prize money along with words to reinforce that sense of urgency such as “CANCEL,” “FORFEIT,” “REINSTATE,” “EXTREMELY IMPORTANT”;
- p. Representing that the mailing is from or that the prize award will be handled by fictitious departments within an organization, or persons

associated with such departments such as references to “Prize Administration Department,” a “Prize Processing Supervisor,” or a “Sweepstakes Distribution Officer”;

- q. Providing a “Winner Match Number” that contains the consumers’ “match number,” misleading the consumers to believe that their number may be the winning number;
- r. Indicating that if the recipients do not return their envelope with their entry form that someone else will get the monetary prize;
- s. Indicating that security measures have been “enhanced” for “winner confirmation processing” or that the communiqué is “confidential” or “expedited” and then saying that the security measures are in place to protect the imminent disbursement of money;
- t. Representing that failing to respond has “serious consequences”;
- u. Using envelopes with the appearance of being from a governmental entity or any term misrepresenting the nature of the item enclosed;
- v. Implying that the document is a “tax document” or including any reference on the envelope to imply that the enclosed material contains tax information; and
- w. Mailing to a consumer a solicitation in a window envelope with what appears to be a check inside, when there are expressions such as “Great news! Check inside” which suggests or implies that the recipient has already won.

8. The use of deceptive mailings and the foregoing conduct violates the States' charitable solicitation laws and/or deceptive trade practices laws.

NEWPORT'S POSITION

9. The statements contained in this "Newport's Position" Section represent the position of Newport only, and the States do not admit the truth of any of the statements contained in this "Newport's Position" Section.

10. Newport contends that its sweepstakes promotions are and have been lawful and do not violate any consumer protection statutes or charitable solicitation laws of the States. Newport contends that its sweepstakes promotions utilizing the pre-selected winner format are not and have not been deceptive, and do not have and have not had the tendency or capacity to mislead consumers as to the likelihood of a consumer's winning a sweepstakes, and do not constitute violations of any of the States' applicable statutes.

11. Newport contends that the sweepstakes promotions contain clear and conspicuous statements that no donation is required and that a donation will not increase the recipient's chances of winning in the mail piece, on the entry form, and in the sweepstakes rules. Newport further contends that each of its mailings include the sweepstakes rules, which contain the non-donation method of entry, the procedures to enter the sweepstakes, the odds of winning, the entry deadline dates, and the prize(s) to be awarded. Newport further contends that the greater majority of persons who respond do so without making a donation.

12. Newport further contends that such solicitations contain a clear and conspicuous statement of the procedures by which a recipient's name may be removed from the charity's mailing list and that such names are suppressed in a timely fashion.

13. Newport contends that any requests for refunds are processed in a timely fashion and that it is unaware of any requests by any individual that have not been satisfied.

14. It is Newport's position that its conduct has not resulted in a violation of any state laws, including but not limited to either any State's deceptive trade practices act or charitable solicitation laws. Nevertheless, with respect to the direct mail solicitations utilized by its Sweepstakes Division on behalf of its charitable organization clients, Newport is willing, solely for the purposes of settlement and in order to avoid the costs, expenses, and risks associated with litigation, to agree to the entry of the following AVC without adjudication of any issue of fact or law and without admitting liability.

GENERAL AGREEMENTS

15. The parties have agreed to resolve the issues raised during the States' inquiry by entering into this AVC. The parties are willing to agree to the entry of this AVC without adjudication of any issue of fact or law and without any determination of liability for any of the matters alleged, solely for the purpose of settlement. Nothing contained herein shall be taken as or construed to be an admission or concession of any violation of law, or of any other matter of fact, or of any liability or wrongdoing.

16. Newport voluntarily enters into this AVC with the States and will provide, as may be requested, a certified corporate resolution signed by the secretary of the corporation that will state: "BE IT RESOLVED, that John Pannell, is hereby authorized and empowered on behalf of Newport, to enter into an Assurance of Voluntary Compliance with the State of Texas, in settlement of the dispute summarized therein upon the terms and conditions contained in this Assurance of Voluntary Compliance which is attached hereto and incorporated herein by reference."

17. The States recognize that while Newport agrees to be bound by the injunctive relief at the time of the entry of this AVC, the scheduling, printing, processing and mailing of charitable solicitation packages require advance planning. Newport agrees that the injunctive terms will be complied with and will be reflected in the mailings they create or send no later than December 1, 2005. Newport further agrees to comply with all terms as soon as practicable.

INJUNCTIVE RELIEF

18. For purposes of this section, “represent” means to state, or to imply through statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or through any other manner or means by which meaning might be conveyed. For purposes of this Assurance, this definition applies to other forms of the word “represent,” including without limitation “representation.” In determining the express or implied meaning of a representation that appears from the outside of a mailing envelope, only matter visible without opening the envelope shall be considered.

19. Newport shall, upon the entry of this AVC, cease creating sweepstakes, contest or prize promotion mailings that represent that the recipient of a sweepstakes, contest, or prize promotion mailing has won, is the winner, or unconditionally will be the winner of a sweepstakes or a prize unless:

- a. Such person or their entry has won or will be determined to be the winner, and
- b. The representation is not false, deceptive, or misleading, and
- c. The prize and its value are clearly and conspicuously disclosed in the representation itself.

20. Without in any way limiting the scope of the foregoing paragraph, Newport shall, immediately upon the entry of this Assurance, cease creating and sending mailings utilizing sweepstakes or promotions which include the following acts and practices:

- a. Using any term that misrepresents, either directly, or by implication, that the recipient:
 - i. is guaranteed to be the winner of the prize;
 - ii. has been or is confirmed or verified to be the winner;
 - iii. has received or definitely will receive a prize check;
 - iv. has attained an improved, enhanced or elevated status in the sweepstakes or prize promotion over other timely entrants or that the recipient has an improved or elevated chance of winning the prize over other recipients including, but not limited to, through the use of congratulatory expressions; or
 - v. is subject to “serious” consequences or is “at risk” by failing to reply, *provided however*, that statements that accurately reflect the sweepstakes, promotion or contest’s deadline date shall not be deemed to violate this section.
- b. Using a payment schedule or schedules so that the recipient believes that he or she will be receiving a prize on a date certain, unless such recipient has in fact won a prize and the payment schedule is true;
- c. Misrepresenting directly, or by implication, that the contents of a mailed communication require the recipient’s urgent attention, *provided however*, that a mailing that includes a request for a prompt response shall include a

clear and conspicuous disclosure of the sweepstakes entry deadline date on the face of the first page of any mailing and in the contest rules;

- d. Misrepresenting directly, or by implication, that a governmental entity played some role in approving or originating the mailing, or that the postal service or government provided any degree of heightened attention or protection to the mailing;
- e. Misrepresenting directly, or by implication, that the recipient is the only person, or is one of only a few persons, to whom the communication has been delivered or that the group of persons to whom the communication has been delivered is smaller than it actually is, *provided however*, that a statement that accurately reflects the odds of the recipient's winning shall not be deemed to violate this section;
- f. Setting out the recipient's name in a list of winners in a solicitation (unless the recipient is actually a winner of the sweepstakes);
- g. In offering a prize promotion communication that involves a pre-selection process, failing to utilize an independent third party to pick a number at random which it keeps secret from the sponsor until the end of the promotion, failing to ensure that the pre-selected winning number is within the range of numbers actually mailed for that sweepstakes (or designate as the winning number a preselected alternative number that is within such mailed range), or if the winning pre-selected number is not returned at the end of the sweepstakes, failing to award a prize offered in a

random drawing from among eligible entries in accordance with the sweepstakes mailings' official rules;

- h. Misrepresenting directly, or by implication, that a sweepstakes prize will or may be awarded in a non-random manner or that any entry has, will have, or may have any advantage over other timely entries in a sweepstakes;
- i. Misrepresenting directly, or by implication, the likelihood of the recipient winning any sweepstakes or prize;
- j. Misrepresenting directly, or by implication, in a solicitation in relation to any sweepstakes, prize or entry that its employees or others acting on its behalf, real or fictitious, have personal feelings concerning or a personal relationship with recipient of the communication, including, but not limited to, representations that:
 - i. they have a shared interest with the recipient;
 - ii. they have any belief, feeling, or opinion relating specifically to the recipient, such as representing that the recipient deserves to win;
 - iii. they have taken or refrained from taking or will take or will refrain from taking any action concerning the recipient;

Provided however, that the foregoing does not prohibit general expressions of goodwill. Such expressions shall not expressly state or imply that a recipient or potential donor should, deserves to or is entitled to win or have improved chances of winning a sweepstakes, prize or other benefit;

- k. Misrepresenting directly, or by implication personalized dramatizations of business processes or winner-selection methodologies or otherwise such as describing the following:
 - i. fictitious conversations, meetings, events or other actions purporting to have taken place that relate specifically to the recipient, including but not limited to, conversations between or meetings of employees or representatives of Newport or its charity clients specifically relating to the recipient;
 - ii. fictitious conversations, meetings, events or actions to be set in the future and relating specifically to the recipient where such events are unlikely to occur;
 - iii. fictitious documents purportedly prepared or drafted for possible future use which relate specifically to the recipient, including but not limited to, internal documents, reports, and communications between Newport and others that pertain to the recipient;
- l. Misrepresenting directly, or by implication that sweepstakes entries from donors and non-donors are treated differently or that an advantage is granted to a donor or a disadvantage to a non-donor;
- m. Using a fictitious department, fictitious title, fictitious return address or any misleading representation that there is a division, department, specific individual or separate entity that handles sweepstakes or prize promotions for the charitable organizations; and

- n. Making any materially false, deceptive, or misleading statement, or engaging in any unfair or unconscionable act or practice or making any material omission as it relates to the subject of this AVC.

21. Newport shall include in every mailing an insert, no smaller than two inches by three inches (2" x 3"), in no less than 10 point font and which on the face of the insert clearly and conspicuously discloses the following and contains no other matter on that side: "You have not won. Entry is free. Donating will not increase your chances of winning. You may or may not have a number that is the winning number. Odds that you will win [prize] will be no less than one in _____ [or are estimated at]" In addition, when offering a "second chance" prize when utilizing a pre-selected winner sweepstakes, the statement "Odds are determined based upon the amount of entries received" shall also appear. Unless otherwise provided in this paragraph, the opposite side of the insert shall have the following limitations: (1) the information on the opposite side of the insert shall be information that is unrelated to any sweepstakes promotion; (2) the information shall be truthful, educational and related to a charitable purpose; and (3) it shall not contain any colorful or otherwise attention-distracting graphics. Notwithstanding the foregoing, Newport shall have the option to place the sweepstakes rules on the opposite side of the insert with the following limitations: the size of the insert cannot be smaller than four inches by five inches (4" x 5") and the type size of the rules shall be in no less than 12-point font.

22. Newport shall include in each solicitation, including entry opportunities, a clear and conspicuous statement of the procedure by which a recipient's name may be removed from the company's active mailing list. This request shall apply to all charitable solicitations

involving a sweepstakes mailing. A recipient's name shall be removed from the list within 30 calendar days from the day the recipient requests that his or her name be removed.

23. Newport agrees to comply with the State's charitable solicitation laws, unfair and deceptive trade practices laws, and any other applicable laws as such laws relate to the conduct that is the subject of this AVC.

MONETARY PROVISIONS

24. Newport shall pay \$400,000 to the States within 30 days of receiving written delivery instructions. The States will determine how this payment is to be divided among themselves. Said payment shall be used by the States as and for attorney's fees and other costs of this matter, or to be placed in, or applied to, the consumer protection enforcement fund, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of this matter, or for other uses permitted by state law, at the sole discretion of each signatory State.

OTHER AGREEMENTS

25. Newport shall facilitate the review of all written claims, complaints and requests for refunds of donations relating to any sweepstakes solicitation designed or produced by Newport, including complaints forwarded by any client, consumer, the Better Business Bureau or any state or federal agency or official.

26. The parties stipulate that this Assurance of Voluntary Compliance will be filed with a court of competent jurisdiction in each State where it is permitted or required. Newport waives any further notice of submission to and filing with any Court and agrees to accept service of a conformed copy by first class mail. Should local counsel be required, Newport shall bear its own attorneys' fees for all filings and legal costs related to its defense of this matter.

27. If Newport violates any provision of this agreement and/or applicable laws of the States, the States may seek further relief which may include, but is not limited to, future investigation, litigation, monetary damages and injunctive relief. If there is a court order approving this Assurance of Voluntary Compliance, a state may seek contempt for violation of the practices enjoined by the entry of this AVC. If there is a violation of this AVC and a State seeks enforcement and prevails, the State shall be entitled to attorneys' fees and costs.

28. This AVC shall be binding upon Newport and its successors and assigns and all persons and entities acting in concert with them, including but not limited to, their agents, employees, marketers, clients and contractors.

29. This AVC does not constitute an approval by the States of any of the policies, programs, or marketing practices of Newport and no one associated with Newport shall make any representations to the contrary.

30. The States acknowledge that, by the execution of this AVC, the States' civil claims against Newport under the above-cited state consumer protection and charitable solicitation statutes and relating to or based upon the acts or practices which are the subject of this AVC are hereby released.

31. If a State has reason to believe that any sweepstakes marketing materials created or utilized by Newport on behalf of any client is in violation of its laws, that State will notify Newport at least 10 business days prior to initiating any lawsuit or seeking any type of relief in a court of law.

32. It is agreed that all signers of this AVC played a direct and substantial role in negotiating the terms and language of this AVC. In the event that a dispute arises between the parties to this AVC with regard to interpretation of any word, term, phrase or language of this

document, all of the parties to the AVC shall be collectively considered the drafters of this AVC. Any rule of construction, to the effect that ambiguities are to be resolved against the drafting party, shall be inapplicable.

33. It is expressly agreed by and between the parties hereto that this AVC sets forth all the promises, agreements, conditions and understandings between them and that there are no promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth.

34. Nothing in this AVC shall be construed as a waiver, compromise, or adjudication of any private claims of any person to the extent such claims exist.

AGREED this _____ day of _____, 2006.

In the Matter of
NEWPORT CREATIVE COMMUNICATIONS, INC.

Assurance of Voluntary Compliance

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In the Matter of
NEWPORT CREATIVE COMMUNICATIONS, INC.

Assurance of Voluntary Compliance

CONSENTED TO BY:

THE STATES, AS DEFINED IN PARAGRAPH 2

AND

NEWPORT CREATIVE COMMUNICATIONS

(SIGNATORY PAGES ATTACHED)