

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

FILED
2011 MAR 24 AM 9:39

RICHARD R. BECKER, CLERK

THE STATE OF TENNESSEE, *ex rel*
ROBERT E. COOPER, JR.,
ATTORNEY GENERAL and REPORTER,)
D.C.

Plaintiff,)

Docket No. UC-1160

v.)

ACTION INTEGRATED MARKETING,)
INC.; and JAY D. MURPHREE,)
Individually, and as President, Chief)
Executive Officer and Owner of Action)
Integrated Marketing, Inc.,)

Defendants.)

AGREED FINAL JUDGMENT

I. PREAMBLE

1.1 Plaintiff, the State of Tennessee, by and through Robert E. Cooper, Jr., the Attorney General and Reporter, at the request of the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance and Defendants Action Integrated Marketing, Inc. ("AIM") and Jay D. Murphree, individually, (collectively, "Defendants") have agreed on a basis for settlement of the matters investigated by the Attorneys General and as alleged in Plaintiff's Complaint, and to the entry of this Agreed Final Judgment ("Judgment") against Defendants without the need for trial or adjudication of any issue of law or fact or finding of liability of any kind.

1.2 The State of Tennessee and Defendants agree that this Judgment is entered into solely for the purpose of settlement and nothing contained herein may be taken as or construed to be an

admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Defendants expressly deny.

1.3 Defendants recognize and state that this Judgment is entered into voluntarily to ensure understanding of and future compliance with the relevant laws and statutes of the State of Tennessee, and that no promises or threats have been made by the Attorney General's Office or any member, officer, agent or representative thereof to induce Defendants to enter into this Judgment, except as provided herein.

1.4 Defendants further acknowledge that this Judgment constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

1.5 The State of Tennessee and Defendants agree that this Judgment is intended to cover all acts performed by Defendants for motor vehicle sales events, particularly in creating and selling advertising campaigns and associated promotional materials to motor vehicle dealerships located in the State of Tennessee, and that Defendants are hereby fully released from all associated civil State Consumer Protection Law claims up through and including the date of this Judgment. Nothing contained herein shall be construed to waive any individual right of action by any consumer or any local, state, federal or other governmental entity, unless as specifically provided herein.

1.6 This Consent Judgment shall not be construed as, or be evidence of, admissions by Defendants, nor shall it be construed as a finding by this Court of any violation of the Tennessee Consumer Protection Act, Tenn. Code Ann § 47-18-101 *et seq.*, or any other law.

1.7 Defendants further agree that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of this Judgment and for all other purposes; and

WHEREAS the Court approves the terms of the Parties' agreement and adopts them as its own determination of the Parties' respective rights and obligations.

NOW THEREFORE, for purposes of affecting this Judgment, it is therefore ORDERED, ADJUDGED AND DECREED that

II. GENERAL

2.1 Defendant AIM is a for-profit Georgia corporation, which does business in the State of Tennessee, including in Davidson County.

2.2 Defendant Jay D. Murphree is an adult individual residing in the State of Georgia. Specifically, Mr. Murphree resides at 642 Park Drive NE, Atlanta, Georgia 30306-3614.

2.3 This Court has jurisdiction over the subject matter, issues and parties to this Judgment and venue is proper in Davidson County.

2.4 Certain provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.* govern Defendants' business practices.

2.5 The Tennessee Attorney General and Reporter is the proper party to commence these proceedings under the authority of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Tennessee.

III. DEFINITIONS

3.1 **"Advertise," "advertising," and "advertisement"** as used herein shall include the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

3.2 **"Defendants"** shall mean Jay D. Murphree, individually, and Action Integrated Marketing, Inc. (AIM), under its own name or any other business name, its principals, officers,

directors, agents, servants, representatives, salespersons, employees, successors and assigns, and all persons acting on behalf, and at the direction, of AIM, directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, including all persons and entities that receive actual notice of this Consent Judgment.

“Defendants” or **“AIM”** shall not mean an **“independent contractor,”** who is a person who provides services and who, in the provision of such services, is free from direction and control over the means and manner of providing the services, subject only to the right of Defendants to specify the desired result. Independent contractor status cannot be a subterfuge to avoid employee status, including an apparent agency relationship, and the service(s) performed by the independent contractor must be outside the usual course of the business of Defendants.

3.3 **“Effective Date”** shall mean the date by which all Parties have executed the Consent Judgment.

3.4 **“Individual States”** and **“States”** shall mean each Signatory Attorney General who is participating in the Multistate Working Group.

3.5 **“Multistate Working Group”** shall mean the Attorneys General and their staffs representing Georgia¹, Idaho, Illinois, Kentucky, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee and Washington.

3.6 **“Parties”** shall mean Defendants and the Individual States.

3.7 **“Signatory Attorney(s) General”** shall mean the Attorney General, or his or her designee, of each state in the Multistate Working Group.

¹ With respect to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. 10-1-395, is statutorily authorized to undertake consumer protection functions for the State of Georgia. When the entire group is referred to as the **“Individual States,”** **“States,”** **“Attorneys General,”** or **“Multistate Working Group,”** such designation, as it pertains to Georgia, refers to the Administrator of the Fair Business Practices Act.

3.8 “State Consumer Protection Laws” shall mean the consumer protection laws under which the Signatory Attorneys General have conducted their investigation.²

IV. COMPLIANCE PROVISIONS & INJUNCTIONS

Pursuant to Tenn. Code Ann. § 47-18-108:

4.1 Defendants shall not engage in any violations of State Consumer Protection Laws.

4.2 In all advertisements or otherwise, Defendants shall not make false, deceptive or misleading representations of fact concerning any motor vehicle sales promotion or event, contests, or prize offers.

4.3 In all advertisements, Defendants shall clearly and conspicuously disclose all material terms, limitations, exclusions, conditions and restrictions relating to any offer in close proximity to any terms or conditions to which they relate.

4.4 Defendants shall not explicitly or implicitly make false or misleading claims in an advertisement regarding the origin of vehicles offered for sale, including, but not limited to:

- a) that the vehicles included are from some other source than the dealer’s normal used vehicle inventory when such is not the case;
- b) that the vehicles included have been brought onto the lot specifically for this sales event when such is not the case;
- c) that the vehicles included will only be available for sale at the event when such is not the case; and/or

² Georgia, Georgia Fair Business Practices Act, O.C.G.A. 10-1-390 *et seq.*; Idaho, Idaho Code § 48-601 *et seq.*; Illinois, 815 ILCS 505/1 *et seq.*; Kentucky, KRS 367.170 *et seq.*; North Carolina, N.C.G.S. 75-1.1 *et seq.*; Ohio, Ohio Consumer Sales Practices Act, O.R.C. 1345.01 *et seq.* and the Substantive Rules thereunder, Ohio Admin. Code 109: 4-3-01 *et. eq.*; Oregon, ORS 646.605 *et seq.*, OAR 137-020-0010 *et seq.*; Pennsylvania, Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-1 *et seq.* and the Pennsylvania Automotive Industry Trade Practices, 37 Pa. Code §301.1 *et seq.*; Tennessee, Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*, § 47-18-106; Washington, RCW 19.86.020.

- d) that the vehicles included will be removed from the lot following the sale, when such is not the case.

Additionally, in the event Defendants advertise, through the use of the term "Repo Joe" or otherwise, that repossessed vehicles, auction cars and/or lease terminations are to be offered in a dealer's sale, Defendants shall clearly and conspicuously disclose in the advertising for the sale that all of the dealer's inventory of pre-owned vehicles, including repossessed vehicles, will be available for sale at the same event.

4.5 Defendants shall not make or imply a false premise for a sale of motor vehicles. This prohibition includes, but is not limited to: a) representing that any sale conducted by Defendants or their clients is being conducted, sponsored, or operated by any bank, lending institution, fleet company, liquidation company, repossession company, auto auction, law enforcement entity, governmental unit or other entity, unless such claims are in fact true and Defendants have sufficient documentation to prove such claims are true; or b) representing in any context that Defendants or their clients are in the vehicle liquidation business.

4.6 Defendants shall not explicitly or implicitly make false or misleading claims regarding the premise of a sale, the offering prices of any vehicles, monthly payments, any other terms of payment, the interest rate and/or availability of credit, the amount of the down payment, or the availability of significant discounts or savings.

4.7 Defendants shall comply with the Fair Credit Reporting Act and the Truth in Lending Act in all of their advertising and sales practices.

4.8 Defendants shall fully comply with each Individual State's motor vehicle dealer and salesperson licensing requirements and shall not contract with an independent contractor to conduct

a sale unless the independent contractor is in compliance with all motor vehicle dealer and salesperson licensing requirements.

4.9 Defendants shall not advertise in a manner which may create a false sense of urgency based upon misrepresentations related to the source or nature of the vehicles offered for sale. Defendants shall be permitted to state that the promotion or event is of finite temporal duration if in fact it is, and to state the time at which the promotion or event terminates.

4.10 When advertising the price of a motor vehicle, Defendants shall include within the price all mandatory charges for non-governmental fees, including any documentary fees as required by applicable law.

4.11 Defendants shall not use footnotes or asterisks in their advertisements that confuse, contradict, materially modify, and/or unreasonably limit the material terms of more prominent content of the advertisement.

4.12 Defendants shall not misrepresent, expressly or by implication, the terms of this Judgment.

4.13 Upon the entry of this Judgment, Defendants shall immediately provide notice of this Judgment to any employee or independent contractor of AIM who participates in a sales event on behalf of Defendants, including their independent contractors. This notice shall be in the form set forth in Appendix A. Defendants shall obtain confirmation of receipt from all persons required to receive this notice. The requirements of this Paragraph may be satisfied electronically. Defendants shall maintain all acknowledgments for a period of one (1) year and shall, within three (3) working days of receipt of a request by the State, produce a copy of such acknowledgment form.

4.14 Defendants shall not represent or imply that any of the Individual States acquiesce or approve of Defendants' past business practices, current efforts to reform their policies and procedures, or any further practices, which Defendants may adopt or consider adopting.

4.15 Effective immediately upon execution by Defendants of this Judgment, and for a subsequent period of five years, Defendants agree to maintain records of all advertisements which Defendants publish, broadcast or otherwise disseminate, cause to be published, broadcast or otherwise disseminated, or which are published, broadcast or otherwise disseminated by anyone else pursuant to an agreement or contract with Defendants, in the State of Tennessee. These records shall include a copy of the advertisement, shall identify the sponsoring motor vehicle dealership, and shall identify the dates of the sales and other promotional events, and shall be sufficient to substantiate the representations or claims made in the advertisement about the source of the dealer's inventory at the events.

4.16 Defendants shall, within fourteen (14) days of receipt of a written request by an authorized representative of the Signatory Attorney General, produce a copy of any advertisement from that state which Defendants are required to maintain under Paragraph 4.15.

4.17 It shall be a violation of this Judgment for Defendants to sell or provide any materials that would enable any other individual or business entity, including, but not limited to, motor vehicle dealerships and/or independent contractors, to engage in any act or practice that would violate this Judgment were the act or practice committed directly by Defendants. Defendants shall not direct, train, instruct, or induce any person or business entity to perform any act prohibited, or to refrain from performing any act required, by this Judgment.

4.18 Notwithstanding the foregoing, Jay D. Murphree shall not be liable for any acts or omissions by AIM, its successors or affiliates, which occur after such time as Mr. Murphree is no

longer the Chief Executive Officer of, or an owner in whole or in part of, AIM or the successors or affiliates; and provided he did not direct or oversee the conduct which resulted in said act or omission at the time it occurred.

V. PAYMENT TO THE STATES

5.1 The States are hereby awarded a Civil Penalty against the Defendants in the amount of One Hundred Thirty Thousand Dollars and 00/100 Cents (\$130,000.00). Said Civil Penalty is to or for a governmental unit and is not for pecuniary loss. Said Civil Penalty shall be suspended contingent on the Defendants' full compliance with the terms of the Consent Judgment. If this Court later determines that the Defendants violated this Judgment, Defendants shall pay the Civil Penalty in full via a cashier's check within three (3) business days of entry of the Court's order. In the event of such a determination, Defendants' obligation to pay the suspended amount shall be in addition to any other monetary or other sanctions which may be imposed for such violation. Said amount may be recovered by one or more of the Participating States, but in no event shall the Defendants' obligation to pay the suspended amount exceed One Hundred Thirty Thousand Dollars and 00/100 Cents (\$130,000.00).

5.2 Upon execution of this Judgment, Defendants shall pay the States a sum of One Hundred Fifty Thousand Dollars and 00/100 Cents (\$150,000.00). Such sums are to be divided among the States as they may agree. Defendants shall pay the amount set forth in this paragraph in three (3) installments as follows:

- a) An initial payment of Seventy Five Thousand Dollars and 00/100 Cents (\$75,000.00), upon execution of this consent judgment;
- b) A second payment of Fifty Thousand Dollars and 00/100 Cents (\$50,000.00), on or before December 31, 2011; and

- c) A third payment, of Twenty Five Thousand Dollars and 00/100 cents (\$25,000.00) on or before July 31, 2012.

Specifically, the money received by the State of Tennessee shall be distributed as follows:

- (i) Pursuant to Tenn. Code Ann. § 47-18-108(a)(5), Eight Thousand Dollars (\$8,000.00) will be distributed to the Tennessee Attorney General for attorneys' fees and costs of investigation, prosecution, and monitoring for compliance of this matter, which may be used for consumer protection purposes or other lawful purposes at the sole discretion of the Attorney General.
- (ii) Two Thousand Five Hundred Dollars (\$2,500.00) will be distributed to the State of Tennessee as a payment to the General Fund.
- (iii) Two Thousand Five Hundred Dollars (\$2,500.00) will be distributed to the State of Tennessee to fund a consumer education project(s) or investigative or prosecution costs and expenses for investigation(s) under the Tennessee Consumer Protection Act of 1977 at the sole discretion of the Director of the Division of Consumer Affairs.

Any money received shall first be attributed to attorneys' fees pursuant to paragraph 5.2(i), next to consumer education funding pursuant to paragraph 5.2(iii), and finally to the general fund pursuant to 5.2 (ii). If more than the amount anticipated is received by the State of Tennessee pursuant to paragraph 5.1 or 5.2, it shall be attributed to attorneys' fees pursuant to paragraph 5.2(i).

5.3 Defendants shall be jointly and severally liable for all amounts that are due and owed under this Judgment.

5.4 Any payment amount due hereunder shall be made payable to the State of Tennessee, Office of Attorney General and shall be delivered on or before the due date to the Office of Attorney General, Consumer Protection Division, 425 Fifth Avenue North, Nashville, TN 37243, Attention: Deputy Attorney General, or at such other places as the State may from time to time designate in writing, and shall be made by certified check or money order.

5.5 If Defendants fail to make any payment required under Paragraph 5.2 of this Consent Judgment or any Defendant makes an assignment for the benefit of its or his creditors, files or has

filed against it or him any proceedings under any reorganization, bankruptcy act or similar law, is adjudicated bankrupt, or becomes insolvent, then any unpaid portion of the Fees and Costs due under Paragraph 5.2 shall become immediately due and payable without notice.

5.6 Failure to make any payment when due shall be construed as a violation of this Judgment. Provided, however, that in the event of a failure to make timely payments, Defendants shall be entitled to a written notice from the State of Tennessee of any such delinquent payment and shall be given a period of ten (10) days to make the payment before their payment obligations may be declared in default. Any notice to Defendants provided under this paragraph shall be made by mailing such notice, first class mail, to the following person(s) designated by Defendants:

Peter D. Raymond, Esq.
Reed Smith LLP
599 Lexington Avenue
New York, New York 10022-7650

VI. ENFORCEMENT

6.1 Pursuant to Tenn. Code Ann. § 47-18-108 (c), the Court may impose a civil penalty for each violation of this Judgment in addition to any other remedy allowed by law.

6.2 Nothing in this Judgment shall in any way preclude any investigation or enforcement under any legal authority granted to the State for transactions not subject to this action.

6.3 Any failure of the States to exercise any of their rights under this Judgment shall not constitute a waiver of its rights hereunder.

6.4 The Court retains jurisdiction over this action in order to take any further action deemed necessary to enforce this judgment and to award the State judgment for any costs, including attorney's fees, it incurs in the event of noncompliance by Defendants.

6.5 In the event of the commencement of an enforcement action, any objections to venue are hereby waived by Defendants.

VII. MISCELLANEOUS

7.1 Pursuant to Tenn. Code Ann § 47-18-116, AIM shall pay any and all court costs incurred in this action.

7.2 This Judgment sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Judgment that are not fully expressed herein or attached hereto. Each party specifically warrants that this Judgment is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

7.3 The mailing of a copy of this signed and filed Judgment to Defendants or their attorney shall constitute notice and acceptance by Defendants of all the terms of this Judgment; Defendants have waived the necessity of having a copy of this Judgment served upon them.

7.4 Any signature required to effectuate all or any part of this document, may be executed by the parties in counterparts, each of which signatures shall be deemed an original, and any such document executed in counterparts shall have the same effect and authority. One or more counterparts of this Judgment may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

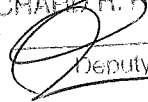
7.5 Defendants further agree to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Judgment.

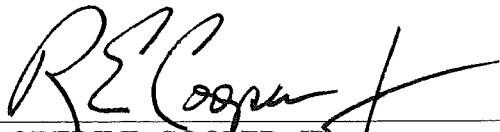
IT IS SO ORDERED this 24~~th~~ day of MARCH, 2011.



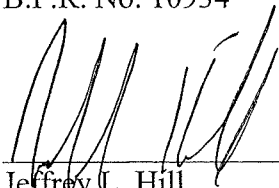
JUDGE

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY
FOR THE STATE OF TENNESSEE:

I hereby certify that this is a true copy
of original instrument filed in my office
this 29 day of Mar 2011
RICHARD H. BOOKER Clerk
By  Deputy Clerk



ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 10934




Jeffrey L. Hill
Senior Counsel
B.P.R. No. 16731

At the request of:

Julie M. McPeak

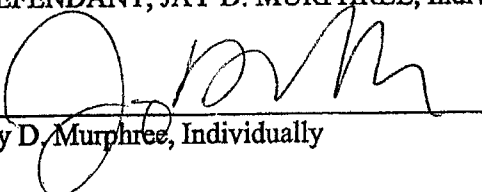
Director
Division of Consumer Affairs of the
Department of Commerce and Insurance

DEFENDANT, ACTION INTEGRATED MARKETING, INC.



President, Action Integrated Marketing, Inc.

DEFENDANT, JAY D. MURPHREE, Individually



Jay D. Murphree, Individually



Local Counsel

Name J. Richard Lodge (BPR #02833)
Address Bass, Berry & Sims PLC
Telephone 150 Third Avenue South, Suite 2800
Nashville, TN 37201
Telephone: 615-742-6254