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FILED

APR 26 2010

JOHN F. MALONE
J.S.C.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
UNION COUNTY
DOCKET NO.: UNN-C-122-09

PAULA T. DOW, Attorney General of the State of
New Jersey, and SHARON M. JOYCE, Acting
Director of the New Jersey Division of Consumer
Affairs,

Plaintiffs,

v.

BRAKE-O-RAMA, INC., d/b/a JERSEY
AUTOMOTIVE WAREHOUSE, JANE and
JOHN DOES 1-10, individually and as owners,
officers, directors, shareholders, founders,
managers, agents, servants, employees,
representatives and/or independent contractors of
BRAKE-O-RAMA, INC. d/b/a JERSEY
AUTOMOTIVE WAREHOUSE, and XYZ
CORPORATIONS 1-10,

Defendants.

Civil Action

FINAL CONSENT JUDGMENT

The Parties to this Action and Final Consent Judgment (the "Parties") are plaintiffs Paula T. Dow, Attorney General of the State of New Jersey, and Sharon M. Joyce, Acting Director of the New

Jersey Division of Consumer Affairs (collectively, "Plaintiffs"), and defendant Brake-O-Rama, Inc. d/b/a Jersey Automotive Warehouse ("Defendant" or "Brake-O-Rama"). As evidenced by their signatures below, the Parties do consent to the entry of this Final Consent Judgment (hereinafter "Consent Judgment") and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

PRELIMINARY STATEMENT

On August 28, 2009, Plaintiffs commenced this Action by Order to Show Cause, alleging violations by Defendant of, and seeking recovery under, the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations"), and the Regulations Governing Automotive Repairs, N.J.A.C. 13:45A-26C.1 et seq. ("Automotive Repair Regulations"). Defendant denied the allegations.

IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:

1. JURISDICTION

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to this Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

2. VENUE

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Union County.

3. EFFECTIVE DATE

3.1 This Consent Judgment shall be effective on the date that it is entered with the Court ("Effective Date").

4. DEFINITIONS

As used in this Consent Judgment, the following words or terms shall have the following meanings:

4.1 "Action" refers to the action entitled Anne Milgram, et. al. v. Brake-O-Rama, Inc., d/b/a Jersey Automotive Warehouse, Superior Court of New Jersey, Chancery Division, Union County, Docket No. UNN-C-122-09, and all pleadings and proceedings related thereto.

4.2 "Advertise", "Advertisement" or "Advertising" mean any written, oral or electronic statement, illustration or depiction that is designed to create interest in the purchase of, impart information about the attributes of, publicize the availability of, or effect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, "infomercial" or any other medium. For purposes of the Advertising Regulations, "Advertisement" shall be defined in accordance with N.J.A.C. 14:45A-9.1.

4.3 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

- 4.4 "Consumer" shall refer to any Person who is offered Merchandise for Sale.
- 4.5 "Division" means the New Jersey Division of Consumer Affairs.
- 4.6 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes automotive repair services and motor vehicle inspection services.
- 4.7 "Motor Vehicle" shall be defined in accordance with N.J.A.C. 13:45A-26C.1, for purposes of the Automotive Repair Regulations.
- 4.8 "Person" shall be defined in accordance with N.J.S.A. 56:8-1(d).
- 4.9 "Represent" means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed.
- 4.10 "Restitution" shall refer to all methods undertaken by Defendant to resolve Consumer complaints including, but not limited to, the issuance of credits or refunds or the reversal of credit card or debit card charges.
- 4.11 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(d).

5. BUSINESS PRACTICES

5.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with such applicable State and/or Federal laws, rules, and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA, the Advertising Regulations and the Automotive Repair Regulations.

5.2 Defendant shall not engage in the Advertisement and/or Sale of automotive repair services including, but not limited to, wheel alignments, transmission flushes, power steering flushes

and coolant flushes, which Defendant lacks the necessary equipment or is otherwise unable to perform.

5.3 Defendant shall not charge Consumers for automotive repairs that are not performed.

5.4 Defendant shall not Represent to Consumers that a Brake-O-Rama location can perform certain automotive repairs, when such location lacks the necessary equipment to perform such repairs.

5.5 Defendant shall not Represent to Consumers that certain automotive repairs were performed, when such is not the case.

5.6 Defendant shall not engage in the Advertisement and/or sale of motor vehicle inspection services which Defendant is not licensed by MVC to perform.

5.7 Defendant shall not charge Consumers for motor vehicle inspection services, then take the motor vehicle to a MVC operated inspection facility.

5.8 Defendant shall not Represent that any Brake-O-Rama location is a vehicle inspection facility, if such location does not possess the necessary license from MVC to perform such inspections.

5.9 Defendant shall not induce Consumers to authorize additional automotive repairs by Representing that it would perform repairs that it lacked the necessary equipment to perform.

5.10 Defendant shall provide Consumers with a written estimate or obtain from Consumers prior written authorization or oral approval to proceed with automotive repairs, in accordance with N.J.A.C. 13:45A-26C.2(a)(3).

5.11 Defendant shall provide Consumers with signed copies of estimates and/or invoices, as required by N.J.A.C. 13:45A-26C.2(a)(4).

5.12 Defendant shall conspicuously post the notice of consumer rights, as required by N.J.A.C. 13:45A-26C.2(a)(11).

5.13 Defendant shall take all reasonable steps to ensure that each and every Motor Vehicle presented for repairs is evaluated and repaired in a manner consistent with all industry standards.

6. SETTLEMENT AMOUNT

6.1 The Parties have agreed to a settlement of the Action in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "Settlement Amount").

6.2 The Settlement Amount comprises Two Hundred Thousand and 00/100 Dollars in (\$200,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13, Thirty-Seven Thousand and 00/100 Dollars (\$37,000.00) in reimbursement of the Plaintiffs' attorneys' fees, pursuant to N.J.S.A. 56:8-19, and Thirteen Thousand and 00/100 Dollars (\$13,000.00) in reimbursement of the Plaintiffs' investigative costs, pursuant to N.J.S.A. 56:8-11.

6.3 The Defendants shall pay One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00) of the Settlement Amount ("Settlement Payment") according to the following schedule:

- (a) Defendant shall pay Thirty-Five Thousand and 00/100 Dollars (\$35,000.00) on or before May 17, 2010; and
- (b) Commencing on September 1, 2010, Defendants shall make thirty-six (36) payments of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) on the first day of each month until August 1, 2013.

6.4 All payments in satisfaction of the Settlement Payment shall be made by wire transfer or certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

New Jersey Division of Consumer Affairs
Office of Consumer Protection
P.O. Box 45025
Newark, New Jersey 07101
Attention: Case Management Tracking Unit

6.5 Upon making the Settlement Payment, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

6.6 Upon written request by Plaintiffs, Defendant agrees to supply updated certified financial information once a year until the Settlement Payment is satisfied. If, after review of such information, Plaintiffs conclude that Defendant is capable of satisfying the Settlement Payment in an accelerated manner, Plaintiffs may make an application to the Court for an accelerated payment schedule.

6.7 For a period of one (1) year from the Effective Date, the One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00) balance of the Settlement Amount, which comprises civil penalties, pursuant to N.J.S.A. 56:8-13 ("Suspended Penalty"), shall be suspended and automatically vacated at the end of that period, provided:

- (a) Defendant complies with the restraints and conditions set forth in this Consent Judgment;
- (b) Defendant makes the Settlement Payment as required under Section 6.3; and
- (c) Defendant complies in good faith with all the requests made by Plaintiffs pursuant to Section 6.6

6.8 In the event Defendants fail to comply with Section 6.7, the entire Suspended Penalty shall be immediately due and payable upon notice by the Plaintiffs. In any such notice, however,

Plaintiffs shall provide Defendant with the specific details of the alleged noncompliance and Defendant shall be afforded a fifteen day (15) day period within which to cure any such noncompliance concerning non-monetary issues and a ten (10) day period within which to cure any such noncompliance concerning a monetary issue. In the event of Defendant's failure to cure any such noncompliance, Plaintiffs may move on short notice or by Order to Show Cause to have a Judgment entered for the Suspended Penalty.

7. DISMISSAL OF ACTION

7.1 The entry of this Consent Judgment constitutes a dismissal with prejudice of the Action.

8. GENERAL PROVISIONS

8.1 This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

8.2 This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State.

8.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

8.4 This Consent Judgment contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Plaintiffs and Defendants.

8.5 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

8.6 This Consent Judgment shall be binding upon the Parties as well as their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment be used to avoid compliance with this Consent Judgment.

8.7 Except as otherwise explicitly provided in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

8.8 This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in, this Consent Judgment nor any action taken hereunder shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of the Defendant; and (b) an admission by the Defendant that any of its acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate any of the Consumer protection laws of the State. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Judgment; or (b) any action or proceeding involving a Released Claim (as defined in Section 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

8.9 The Parties Represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

8.10 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

9. RELEASE

9.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendant making the Settlement Payment in the manner specified in Section 6, Plaintiffs hereby agree to release Defendant from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs could have brought prior to the Effective Date against Defendant for violations of the CFA, the Advertising Regulations and the Automotive Repair Regulations as alleged in the Action, as well as the matters specifically addressed in this Consent Judgment (the "Released Claims").

9.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) private rights of action, provided however, that nothing herein shall prevent Defendant from raising the defense of set-off against any Affected Consumer who has received Restitution; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant by any other agency or subdivision of the State.

10. MONITORING FOR COMPLIANCE

10.1 Within sixty (60) days of the Effective Date, Defendant shall implement a compliance program for the purposes of determining and securing compliance with this Consent Judgment on the part of Defendant's owners, officers, directors, senior executives, managerial employees, non-managerial employees and agents.

10.2 Within thirty (30) days of the Effective Date, Defendant shall submit a copy of the Consent Judgment to each of its owners, officers, directors, senior executives and managerial employees. Within forty-five (45) days of the Effective Date, Defendants shall provide Plaintiffs with an acknowledgment that the above-referenced Persons have been supplied with a copy of the Consent Judgment along with an alphabetical list of the names, titles and business addresses of such Persons. Defendant agrees to a continued obligation to keep all of its owners, officers, directors, senior executives and managerial employees informed of the terms set forth herein. With respect to non-managerial employees and agents, Defendant agrees to provide a letter-notice summarizing the material terms of this Consent Judgment specifically relevant to non-managerial employees or agents.

10.3 Defendant shall make all documents related to its automotive repair business, including estimates, invoices and receipts, records available at no cost to Plaintiffs for inspection and copying during regular business hours upon reasonable notice and in accordance with State law.

10.4 Defendant shall provide Plaintiffs with access to any equipment used in the performance of automotive repairs for inspection during regular business hours upon reasonable notice and in accordance with State law.

11. FORBEARANCE ON EXECUTION AND DEFAULT

11.1 Defendant agrees to pay all reasonable attorneys' fees and costs including, but not limited to Court costs, associated with any successful collection efforts by the Plaintiffs pursuant to this Consent Judgment.

11.2 On the Effective Date, Defendant shall provide the Plaintiffs with a writing containing the current address, telephone number and facsimile number for service of process in the event of

default until its obligations under this Consent Judgment are completed. Within five (5) days of relocating to a new address or obtaining new telephone or facsimile numbers, Defendant shall provide a writing containing such information to the Plaintiffs.

11.3 In the event of Defendant's default under Sections 6 this Consent Judgment, service upon Defendant shall be effective upon mailing a notice via First Class Mail accompanied by a confirmed receipt facsimile transmission. Alternatively, Plaintiffs may effect service in the manner provided under Section 14.1.

12. PENALTIES FOR FAILURE TO COMPLY

12.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

12.2 The Parties agree that any future violations of the injunctive provisions of this Consent Judgment, the CFA, the Advertising Regulations and/or the Automotive Repair Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Defendant may be liable for enhanced civil penalties.

13. COMPLIANCE WITH ALL LAWS

13.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendant of its obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendant pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Defendant may otherwise have

pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

14. NOTICES UNDER THIS CONSENT JUDGMENT

14.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Plaintiffs or Defendant pursuant to this Consent Judgment shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Plaintiffs:

Jeffrey Koziar, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Defendant:

Jaime R. Placek, Esq.
McManimon & Scotland
1037 Raymond Boulevard, Suite 400
Newark, New Jersey 07102

IT IS ON THE 26 DAY OF APRIL, 2010 SO ORDERED, ADJUDGED
AND DECREED.



HON. JOHN F. MALONE, P.J. CH.

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: April 20, 2010

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-7819

FOR DEFENDANT:

McMANIMON & SCOTLAND

By: Jaime R. Placek, Esq.
Jaime R. Placek, Esq.
1037 Raymond Boulevard, Suite 400
Newark, New Jersey 07102
Telephone: (973) 622-3655

Dated: April 19, 2010

FOR DEFENDANT

By: Eugene DeAngelo, Jr.
Eugene DeAngelo, Jr.
President

Dated: 4/16, 2010