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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
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FILED

SEP 23 2009

Division of Consumer Affairs

By: Frank J. Marasco
Deputy Attorney General
(973) 648-3070

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

Administrative Action

DANCE GALAXY, LLC

CONSENT ORDER

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), including the Refund Policy Disclosure Act, N.J.S.A. 56:8-2.14, et seq. (“Refund Policy Act”), and the Regulations promulgated thereunder, specifically, the Regulations Governing Deceptive Mail Order Practices, N.J.A.C. 13:45A-1.1 et seq. (“Mail Order Regulations”), the Regulations Governing General Advertising Practices, N.J.A.C. 13:45A-9.1 et seq. (“Advertising Regulations”), and the Regulations Governing the Disclosure of Refund Policy in Retail Establishment, N.J.A.C. 13:45A-15.1 et seq. (“Refund Policy Regulations”), have been or are being committed by Dance Galaxy, Inc.,

a New Jersey corporation with a principal place of business located at 4201 Tonnelle Avenue, 2nd Floor, North Bergen, New Jersey 07047, as well as its owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and assigns (collectively, "Respondent") (hereinafter referred to as the "Investigation");

WHEREAS the Respondent has voluntarily and fully cooperated with the Division and provided information to assist with the Investigation;

WHEREAS the Respondent denies that it has committed any violation of the CFA, Refund Policy Act, Mail Order Regulations, Advertising Regulations and Refund Policy Regulations; and

WHEREAS the Division and Respondent (collectively, the "Parties") have reached an amicable agreement thereby resolving the issues in controversy and concluding this matter without the need for further action, and Respondent having voluntarily cooperated and consented to the entry of the within order ("Consent Order") without having admitted any violation of law or finding of fact, and for good cause shown,

IT IS on this 23rd day of Sept., 2009 **ORDERED AND AGREED** as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is filed with the Division ("Effective Date").

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 “Additional Consumer” shall refer to any Consumer who submits to the Division directly or through another agency a written Consumer complaint concerning Respondent’s business practices after the Effective Date.

2.2 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

2.3 “Advertise,” “Advertisement” or “Advertising” shall 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 inset, bill board, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, radio, commercial or any other medium. For purposes of the Advertising Regulations, “Advertise” shall be defined in accordance with N.J.A.C. 13:45A-9.1.

2.4 “Affected Consumer” shall refer to the Consumers listed on Exhibit A who either directly or indirectly submitted to the Division a complaint concerning Respondent’s business practices up to and including the Effective Date that remains unresolved.

2.5 “Any” includes “all” and vice versa.

2.6 “Attorney General” shall refer to the Attorney General of New Jersey and the Office of the Attorney General.

2.7 “CALA” shall refer to Consumer Affairs Local Assistance offices within counties and/or municipalities in the State.

2.8 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

2.9 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

2.10 “Identify” or “Identity” means to provide a Person’s full name, business or other address, place of employment, job title, function, responsibilities and/or duties.

2.11 “Include[s] and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

2.12 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and/or N.J.A.C. 13:45A-9.1 and Includes dance costumes, shoes and jewelry.

2.13 “Person” shall be defined in accordance with N.J.S.A 56:8-1(d).

2.14 “Represent” shall mean 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.

2.15 “Restitution” shall refer to all methods undertaken by Respondent to resolve Consumer complaints Including the issuance of credits or refunds or the reversal of credit card or debit card charges.

- 2.16 “Sale” shall be defined in accordance with N.J.S.A 56:8-1(e).
- 2.17 “State” shall refer to the State of New Jersey.
- 2.18 “Website” shall refer to Respondent’s website located at www.dancegalaxyinc.com

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair and/or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, including the CFA, Refund Policy Act, Mail Order Regulations, General Advertising Regulations and Refund Policy Regulations.

3.2 Respondent shall deliver Merchandise within six (6) weeks, as required by the Mail Order Regulations, N.J.A.C. 13:45A-1.1(b).

3.3 Upon Respondent’s failure to deliver Merchandise within six (6) weeks, Respondent shall provide a full refund, advise the Consumer of the expected delay or the substitution of Merchandise, or send the Consumer substituted Merchandise, in accordance with the Mail Order Regulations, N.J.A.C. 13:45A-1.1(b).

3.4 Respondent shall maintain a sufficient quantity of Advertised Merchandise available to meet reasonably anticipated Consumer demand, as required by N.J.A.C. 13:45A-9.2(a)(1).

3.5 In its Advertisement and/or Sale of Merchandise, Respondent shall not Represent that any Merchandise is “in stock,” if such is not the case.

3.6 Respondent shall direct those Persons who are responsible for responding to Consumer complaints to Identify themselves to Consumers and, if referral to another employee is required, will inform the Consumer, providing the employee's Identity.

3.7 Respondent shall Clearly and Conspicuously post its refund policy on its Website, Including all terms and conditions, in accordance with N.J.S.A. 56:2.16 and 56:2.17 and N.J.A.C. 13:45A-15.2.

3.8 Respondent shall honor all the terms and conditions of its refund policy.

3.9 Respondent shall provide make any and all promised refunds within 5 days of a Consumer's request for same.

5. FUTURE CONSUMER COMPLAINTS

4.1 For a period of one (1) year from the Effective Date, the Division shall forward to Respondent copies of any Additional Consumer complaints received by the Division or forwarded to the Division by any CALA office. The Division shall forward to Respondent the Additional Consumer complaint within thirty (30) days of the Division's receipt thereof.

4.2 During this one (1) year period, the Division shall notify the Additional Consumers, in writing, of the following: (a) that the Additional Consumer complaint has been forwarded to Respondent; (b) that he/she should expect a response from Respondent within thirty (30) days; and (c) the right to refer the Additional Consumer complaint to the ADR Unit for binding arbitration if Respondent disputes the Additional Consumer complaint and/or requested relief.

4.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Respondent shall send a written response to each Additional Consumer, with a copy to the

following: The New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

4.4 If Respondent does not dispute the Additional Consumer's complaint and requested relief, Respondent's written response shall so inform the Additional Consumer. Respondent shall contemporaneously forward to such Additional Consumer the appropriate Restitution. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by certified check, money order or other guaranteed funds made payable to the Additional Consumer.

4.5 If Respondent disputes the Additional Consumer's complaint and/or requested relief, Respondent's written response shall include copies of all documents concerning the Respondent's dispute of the complaint.

4.6 Within forty-five (45) days of Respondent's receipt of the Additional Consumer complaint, Respondent shall notify the Division as to whether such Additional Consumer complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer complaint has been resolved;
- (c) An identification of any Restitution provided to the Additional Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event Respondent's written response was returned as undeliverable, the efforts Respondent had undertaken to locate the Additional Consumer; and

- (f) Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that an Additional Consumer Complaint has been resolved, the Additional Consumer Complaint shall be deemed closed for purposes of this Consent Order.

4.7 If within sixty (60) days of Respondent's receipt of the Additional Consumer complaint: (a) Respondent has not notified the Division that an Additional Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Additional Consumer complaint has not been resolved; or (c) Respondent has notified the Division that the Additional Consumer refuses Respondent's offer of Restitution, the Division shall forward such Additional Consumer complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing the Additional Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit A).

4.8 If Respondent refuses to participate in the ADR program, the arbitrator may enter a default against the Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay all arbitration awards within thirty (30) days of the arbitrator's decision. Respondent's failure or refusal to participate in the arbitration process or to pay an arbitration award timely shall constitute a violation of this Consent Order.

4.9 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

4.10 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

4.11 At the conclusion of the one (1) year period, the complaint resolution procedure set forth above shall automatically renew for successive one (1) year periods unless either the Division or Respondent provides written notice of termination within thirty (30) days of the anniversary date.

5. SETTLEMENT PAYMENT

5.1 The Parties have agreed to a settlement of the Investigation in the amount of Seventy-Two Thousand Two Hundred Sixty-Six and 82/100 Dollars (\$72,266.82) ("Settlement Payment").

5.2 The Settlement Payment represents Fifty Thousand and 00/100 Dollars (\$50,000.00) as civil penalties, pursuant to N.J.S.A. 56:8-13, Seven Thousand Six Hundred Thirteen and 11/100 Dollars (\$7,613.11) as reimbursement of the Division's attorneys' fees, and Fourteen Thousand Six Hundred Fifty-Three and 71/100 Dollars (\$14,653.71) as reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

5.3 Of the Settlement amount, the Respondent shall pay Seven Hundred Fifty and 00/100 Dollars (\$750.00) on or before the Effective Date by certified check or money order made payable to "New Jersey Division of Consumer Affairs" and forwarded to the undersigned:

Frank J. Marasco
Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Division of Law

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

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

5.5 For a period of one (1) year from the Effective Date, the balance of the Settlement Payment, Seventy-One Thousand Five Hundred Sixteen and 82/100 Dollars (\$71,516.82) (“Suspended Payment”), shall be suspended and automatically vacated at the end of the one (1) year period, provided: (a) Respondent complies in all material respects with the restraints and conditions set forth in this Consent Order; (b) Respondent does not engage in any acts or practices in violation of the CFA, the Refund Policy Act, the Mail Order Regulations, the Advertising Regulations and/or the Refund Policy Regulations; and (c) Respondent makes the required payment under Section 5.3.

5.6 In the event the Respondent fails to comply with Section 5.5 above, the Suspended Payment shall be immediately due and payable upon written notice (“Notice of Noncompliance”) by the Division to Respondent c/o William Z. Shulman, Esq., 115 River Road, Hudson River Crossings, Edgewater, New Jersey 07020.

5.7 In the event the Respondent cures the noncompliance within (10) ten days, the Suspended Amount shall return to its suspended status and the Division shall withdraw the Notice of Noncompliance. In the event Respondent fails to cure the noncompliance within ten (10) days, the Division may move on notice to Respondent by Order to Show Cause or Motion and to have a

Judgment entered for the Suspended Payment. Respondent shall have the right to submit opposition to any application for an Order to Show Cause or Motion filed by the Division and to contest same on any return date.

6. GENERAL PROVISIONS

6.1 This Consent Order 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 Order.

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

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

6.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Division and Respondent.

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

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

6.7 This Consent Order shall be binding upon Respondent as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any persons who have authority to control or who, in fact, control and direct its business.

6.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

6.9 This Consent Order is agreed to the by the Parties and entered into by the Division for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order 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 acts or practices of the Respondent; and (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, Refund Policy Act, Mail Order Regulations, Advertising Regulations and/or Refund Policy Regulations. This Consent Order 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 Order; or (b) any action or proceeding involving a Released Claim (as defined in Section 8) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.10 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order 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 Order.

6.11 The Parties represent and warrant that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms, and that this person has done so with authority to legally bind the respective party.

7. RELEASE

7.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned upon Respondent making the Settlement Payment in the manner specified in Section 6, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA, Refund Policy Act, Mail Order Regulations, Advertising Regulations and/or Refund Policy Regulations arising from the Investigation as well as the matters specifically addressed in this Consent Order (“Released Claims”).

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; and (b) any claims against Respondent by any other agency or subdivision of the State.

8. PENALTIES FOR FAILURE TO COMPLY

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

8.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order, the CFA, Refund Policy Act, Mail Order Regulations, Advertising Regulations and/or Refund Policy Regulations shall constitute a second and succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondent may be subjected to enhanced penalties, as provided therein, upon a Court's finding that Respondent has committed a violation of the injunctive provisions of this Consent Order, the CFA, Refund Policy Act, Mail Order Regulations, Advertising Regulations and/or Refund Policy Regulations .

9. COMPLIANCE WITH ALL LAWS

- 9.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- (a) Relieving Respondent of its obligation 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 such laws, regulations or rules; or
 - (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent 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 Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

10. NOTICES UNDER THIS CONSENT ORDER

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order 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 Division:


Frank J. Marasco, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For Respondent:

William Z. Shulman, Esq.
115 River Road, Suite 201
Edgewater, New Jersey 07020

IT IS ON THE 23rd DAY OF Sept., 2009 SO ORDERED.


ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: 
DAVID M. SZUCHMAN, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

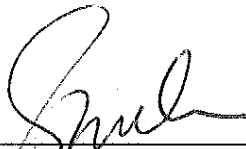
FOR THE DIVISION:

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By:  _____
Frank J. Marasco
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101


Dated: 9/15, 2009

FOR THE RESPONDENT:

By:  _____
William Z. Schulman, Esq.
115 River Road, Suite 201
Edgewater, New Jersey 07020

Dated: 9/9, 2009

DANCE GALAXY, INC.

By:  _____
Richard Francois
4201 Tonnelles Avenue
North Bergen, New Jersey 07047

Dated: Sept 9, 2009