

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

CLAIM NO: HC09C04850

BEFORE: MR JUSTICE BRIGGS

DATE: 21<sup>st</sup> APRIL 2011



IN THE MATTER OF THE ENTERPRISE ACT 2002, THE CONSUMER  
PROTECTION FROM UNFAIR TRADING REGULATIONS 2008



BETWEEN

THE OFFICE OF FAIR TRADING

Claimant

And

- (1) PURELY CREATIVE LIMITED
- (2) STRIKE LUCKY GAMES LIMITED
- (3) THE WINNERS' CLUB LIMITED
- (4) MCINTYRE & DODD MARKETING LIMITED
- (5) DODD MARKETING LIMITED
- (6) ADRIAN WILLIAMS
- (7) WENDY RUCK
- (8) CATHERINE CUMMINGS
- (9) PETER HENRY

Defendants

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PENAL NOTICE  
ORDER  
AND  
UNDERTAKINGS

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**IF YOU, THE WITHIN NAMED DEFENDANTS, DO NOT COMPLY WITH THESE UNDERTAKINGS YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND IMPRISONED OR FINED.**

**ANY OTHER PERSON WHO KNOWS OF THESE UNDERTAKINGS AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANT TO BREACH THEIR TERMS MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND IMPRISONED OR FINED.**

**UPON** a Claim under section 215 of the Enterprise Act 2002 ("EA") and Regulation 19 of the Consumer Protection from Unfair Trading Regulations 2008 ("CPRs") issued on 22 December 2009.

**AND UPON** the Court reading the Claimant's statement of case dated 22 December 2009.

**AND UPON** reading those documents on the court file recorded as having been read.

**AND UPON** the hearing of this matter taking place between 13 January 2011 and 18 January 2011 and the judgment being handed down on 2 February 2011 and a further hearing on 17 March 2011.

**AND UPON** the Court having found that the commercial practices annexed to this Order as Annexes 1-5 constituted unlawful commercial practices under regulations 3, 5 and 6 and paragraph 31 of Schedule 1 to the CPRs

**THE DEFENDANTS UNDERTAKE THE FOLLOWING:**

Each Defendant will not (whether by himself, his employees or agents or otherwise) continue or repeat the conduct described in paragraphs 1 – 5 below;

Each Defendant will not (whether by himself, his employees or agents or otherwise) engage in such conduct in the course of his business or another business;

Each Defendant will not (whether by himself, his employees or agents or otherwise) consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3) of the EA).

Namely:

1. Create the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact taking any action recommended by the defendant in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost which is either
  - a. a substantial proportion of the unit cost to the Defendant of the provision to the consumer of the thing described as a prize or other equivalent benefit; or,
  - b. in the case of a charge stated to be for delivery and insurance, used by the defendant to finance in whole or in part its acquisition, handling or other cost of the making available of that thing other than the actual cost of its delivery to the consumer and insurance (if any) in transit.
2. Give, whether by act or omission, a misleading impression as to the value to the consumer or a thing described as a prize or equivalent benefit by:
  - a. a misrepresentation as to its geographical origin,
  - b. a misrepresentation or omission as to the nature of a holiday.
  - c. a misrepresentation or omission as to the likely take up cost of a holiday.
3. Omit to identify the minimum cost liable to be incurred by a consumer in responding by premium rate telephone call to the promotion of a thing described as a prize or equivalent benefit. Minimum cost means the cost attributable to the time needed to obtain on the telephone information about the most frequent award necessary in order to enable the consumer to claim it.
4. Give consumers the misleading impression that they have been fortunate to have won a most frequent award in a scratch card competition when all or substantially all recipients of the scratch cards are winners of at least such awards.
5. Describe a cost that the consumer is invited to incur as relating to a particular product or service, such as delivery or insurance, when in fact that is not the case.

**And the Defendants further undertake:**

- a. From 17 March 2011 to ensure that all promotions commissioned, whether 'mailing promotions' or 'insert promotions', comply with the above undertakings. 'Mailing promotions' mean promotions sent by the

Defendants to consumers. 'Insert promotions' mean promotions distributed to consumers by being inserted by distributors and publishers into publications.

- b. From 17 March 2011 in respect of insert promotions that have not launched and do not comply with the Undertakings, to halt production, cancel all deliveries and media bookings and destroy stock. 'Promotions that have not launched' means promotions which have not been made available to consumers or sent to distributors prior to 17 March 2011.
- c. From 17 March 2011 in respect of mailing promotions that do not comply with the Undertakings to cease production and cancel distribution and to destroy stock produced.
- d. To complete distribution of insert promotions that have been launched before 17 March 2011 where major prize winning cards are randomly seeded into promotional stock by 31<sup>st</sup> May 2011 and to fulfil all claims received. All participation routes will remain available to recipients until the closing date and no later than 30 June 2011.
- e. In respect of mailing promotions circulated before 17 March 2011 to fulfil all claims. All participation routes will remain available to recipients until the closing date and no later than 30 June 2011.
- f. From 17 March 2011 to reject or return any payment sent pursuant to a requirement of the relevant promotion (whether a mailing promotion or an insert promotion) in order to receive a product offered by the Defendants where that promotion was in breach of the CPRs .

**AND IT IS ORDERED THAT:**

- 1. This Order bind DM plc and any other interconnected bodies corporate in as provided in s. 223 of the EA.
- 2. The Defendants have permission to appeal.
- 3. The First to Ninth Defendants pay 85% of the Claimant's costs of and incidental to, these proceedings to be assessed if not agreed.

MIB

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CHANCERY DIVISION  
MASTER/JUSTICE

BETWEEN

THE OFFICE OF FAIR TRADING

Claimant

and

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- (9) PETER HENRY

Defendant

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DRAFT UNDERTAKINGS AND ORDER

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The General Counsel  
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EC4Y 8JX

Case Officer: Clare Exell  
Ref: LU07/0097/PG  
Tel: 020 7211 8820  
Clare.Exell@oft.gsi.gov.uk

This Order was sealed by Mr D Stevens  
Chancery Associate (Tel: 020 7947 6322 ) to whom all enquiries  
regarding this Order should be made between the hours 9.00-10.15am  
and after 4.15pm. When corresponding with the Court please address  
forms or letters to: The Court Manager  
Chancery Chambers, Thomas Moore Building, Royal Courts of Justice  
Strand, London WC2A 2LL (DX 44450 Strand) and quote the case number.

DAVIES + PARTNERS

Dx: 149320

GRACESTON 18

Ref: NGT/ATL