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Division of Law
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FILED

APR 18 2012

Division of Consumer Affairs

By: Jah-Juin Ho
Deputy Attorney General
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC
SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

Administrative Action

DR. LEONARD'S HEALTHCARE
CORP. d/b/a DR. LEONARD'S, CAROL
WRIGHT GIFTS, DRL HEALTHCARE
CORP. and HEALTHCARE DIRECT,
INC.

CONSENT ORDER

Respondent.

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"), and the regulations promulgated thereunder, N.J.A.C. 13:45A-1 et seq., specifically the Regulations Governing General Advertising Practices, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations"), have been or are being committed by Dr. Leonard's Healthcare Corp. d/b/a Dr. Leonard's, Carol Wright Gifts, DRL Healthcare Corp. and Healthcare Direct, Inc. with a main business address of 100 Nixon Lane, Edison, New Jersey 08837, ("Dr. Leonard's" or "Respondent"), (hereinafter referred to as the "Investigation");

WHEREAS the Division alleges that Respondent, among other things, has charged Consumers optional service fees via telephone without express authorization and has made Misrepresentations as to the efficacy of Merchandise;

WHEREAS the Division alleges that Respondent solicited consumers through a negative option marketing tactic known as “free-to-pay” conversion. In free-to-pay conversions, consumers are enrolled for a free trial period. If the consumer takes no steps to affirmatively cancel membership during the trial period, the consumer is thereafter billed, in perpetuity, on a monthly basis;

WHEREAS the Federal Trade Commission has found negative options problematic in instances where there is inadequate disclosure, misrepresentations of the terms of the offers, failure to obtain informed consent, and failure to provide effective means for consumers to cancel a negative option;

WHEREAS Respondent believes that the negative option programs it offers are fully and completely compliant with all applicable state and federal laws;

WHEREAS Respondent denies that it has committed any violation of the CFA and/or the Advertising Regulations, and has agreed to enter into this Consent Order to bring this matter to closure and avoid future expenses; and

WHEREAS the Division and Respondent (collectively, the “Parties”) having reached an amicable agreement resolving the issues in controversy and concluding this Investigation 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 violation of law or finding of fact, and for good cause shown:

IT IS ORDERED and **AGREED** as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is signed by the Director of 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 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). For purposes of the Advertising Regulations, “Advertisement” shall be defined in accordance with N.J.A.C. 13:45A-9.1. These definitions apply to other forms of the word “Advertisement” including, without limitation, “Advertise.”

2.2 “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.

2.3 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such type, 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.

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

2.5 “FDA” shall refer to the U.S. Food and Drug Administration.

2.6 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).

2.7 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.8 "Recurring Order" shall refer to any service, subscription, plan, program, order, or other agreement which is automatically renewed over a period of time and in which Consumers are charged for such service, subscription, plan, program, or other agreement unless they cancel before the renewal period.

2.9 "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. This definition applies to other forms of the word "Represent" including, without limitation, "Representation" and "Misrepresent."

2.10 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.11 "State" shall refer to the State of New Jersey.

3. BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair 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, but not limited to, the CFA and Advertising Regulations.

3.2 For the Sale of Merchandise conducted via telephone, Respondent shall not charge Consumers optional fees without Clearly and Conspicuously disclosing such fees and providing Consumers the opportunity to accept or decline such fees.

3.3 For the Sale of Merchandise conducted via telephone, prior to processing an order, Respondent shall verbally notify Consumers of the total cost of their purchase and

identify each component which comprises the total cost (e.g. shipping and/or handling, service fees, priority replacement, etc.).

3.4 Respondent shall obtain a Consumer's express authorization to purchase any Merchandise which involves a Recurring Order.

3.5 In any price reduction Advertisement for Merchandise, Respondent shall specify the period of time within which the price reduction shall be applicable, in accordance with N.J.A.C. 13:45A-9.3 and N.J.A.C. 13:45A-9.4.

4. REPRESENTATIONS AND WARRANTIES

4.1 Respondent Represents and warrants that it presently offers Consumers a bi-annual newsletter entitled "Passport to Health: Health Beats." Respondent Represents that prior to the Division's investigation, Respondent's Passport to Health newsletters did not contain the membership cancellation disclosure referenced in this subsection. Respondent Represents and warrants that the Passport to Health Spring/Summer 2010 newsletter and all issues thereafter have contained and will continue to Clearly and Conspicuously contain the following language, or substantively similar language, in at least 12-point bold font:

You are receiving this newsletter as a benefit of your paid membership in Passport to Health. To speak with Customer Service, or to cancel your membership in Passport to Health, please call toll free [toll-free number].

4.2 Respondent Represents and warrants that it shall not make any express or implied Representation in its Advertisements that any Merchandise has the capacity to affect the nature or function of a person's body without reasonable verification from the vendor of the Merchandise of such Representations.

4.3 Respondent Represents and warrants that it shall not make any express or implied Representations in its Advertisements that any Merchandise has been tested and/or approved by the FDA, without reasonable verification of such Representations.

4.4 Respondent Represents and warrants that during the Solicitation of a Recurring Order via telephone, Respondent shall continue to verbally notify Consumers of the material terms of such Recurring Order, including but not limited to: (a) the approximate date on which Consumers will begin incurring recurring charges for their membership, (b) the amount of each charge; (c) the frequency period or cycle for each charge; (d) the duration of the Recurring Order (or that the recurring charges will continue until the membership is cancelled if there is no fixed duration); and (e) the process for canceling Recurring Orders. Notification of such material terms shall not substantially deviate in speed or sound level from the whole of Respondent's telephone call with such Consumer.

4.5 Respondent Represents and warrants that at least thirty (30) days prior to a Consumer incurring recurring charges, Respondent will provide Consumers with written notification of their purchase of a Recurring Order. Respondent further Represents and warrants that such notification shall Clearly and Conspicuously disclose in at least 10-point bold font: (a) the date upon which the notification was sent; (b) the date on which Consumers may begin exercising program benefits; (c) the approximate date on which Consumers will begin incurring charges (charges shall not accrue prior to such date); (d) the amount of each charge; (e) the frequency period or cycle for each charge; (f) the duration of the Recurring Order; (g) any membership numbers; and (h) the process for canceling Recurring Orders.

5. SETTLEMENT PAYMENT

5.1 The Parties have agreed to a settlement of the Investigation in the amount of Thirty-Five Thousand Forty-Three and 36/100 Dollars (\$35,043.36) ("Settlement Payment").

5.2 The Settlement Payment consists of Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$22,500.00), which shall be donated to a mutually agreed upon New Jersey charitable organization which promotes recycling within the State, and reimbursement of the Division's attorneys' fees of Eight Thousand Six Hundred Seventy-Five 00/100 Dollars (\$8,675.00), pursuant to N.J.S.A. 56:8-19, and the Division's investigative costs of Three Thousand Eight Hundred Forty-Eight and 36/100 Dollars (\$3,848.36), pursuant to N.J.S.A. 56:8-11.

5.3 The Settlement Payment shall be made by bank check, attorney trust account check, or other guaranteed funds made payable to the "New Jersey Division of Consumer Affairs" and forwarded to the undersigned:

Attention: Supervisor
Case Management Tracking
New Jersey Department of Law and Public Safety
Division of Consumer Affairs
124 Halsey Street
P.O. Box 45024
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 moneys paid. All interest in the moneys, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

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 Parties.

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 interests 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, managers, agents, employees, representatives, subsidiaries, successors and assigns, and any Person 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 entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (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 and/or the Advertising Regulations. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 7) 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 filing 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 their signatories to this Consent Order have authority to act for and bind the respective Parties.

6.12 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

6.13 This Consent Order constitutes a final agency action and shall be effective upon filing.

7. RELEASE

7.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment referenced in Section 5, 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 and/or the Advertising Regulations arising out of 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; (b) actions to enforce this Consent Order; and (c) 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 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 and/or the Advertising Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties, as provided therein.

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 any 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 Respondents 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:

Assistant Deputy of Enforcement, Office of Consumer Protection
Division of Consumer Affairs
State of New Jersey
Office of the Attorney General
124 Halsey Street - 7TH Floor
P.O. Box 45025
Newark, New Jersey 07101

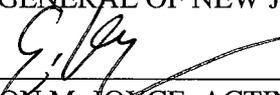
For the Respondent:

Brett S. Krantz, Esq.
One Cleveland Center, 20th Floor
1375 East Ninth Street
Cleveland, Ohio 44114-1793

Joe Albanese
Dr. Leonard's Healthcare Corp.
100 Nixon Lane
Edison, New Jersey 08837

IT IS ON THE 18th DAY OF April, 2012 SO ORDERED.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: 
SHARON M. JOYCE, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS
Eric Kanetsky

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

FOR THE DIVISION:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: 
Jah-Juin Ho
Deputy Attorney General

Dated: April 17, 2012

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

FOR THE RESPONDENT:

DR. LEONARD'S HEALTHCARE CORP. d/b/a
DR. LEONARD'S and CAROL WRIGHT GIFTS:

By: 
Joe Albanese
Vice President, Chief Financial Officer

Dated: April 3, 2012