

FIRST JUDICIAL DISTRICT AT JUNEAU

Plaintiff,

VS.

Defendant.

STATE OF ALABAMA, FIRST DISTRICT
AT JUNEAU
FEB 02 2012
SLS
Deputy

Case No. 1JU-13-498 Civil

CONSENT JUDGMENT

I. INTRODUCTION

1. The State of Alaska, through the Office of the Attorney General (“State”), and Defendant Onboard Media, Inc. (“Defendant”), enter into this Consent Judgment (“Judgment”) on the terms and conditions set forth below.

2. The State and Defendant acknowledge that each party has agreed to the entry of this Judgment solely for the purposes of settlement. Nothing in this Consent Judgment shall constitute an admission or concession by Defendant to any actual or potential violation of law.

3. This Judgment shall bind Defendant, its employees, officers, directors, managers, subsidiaries, affiliates, successors, assigns, and agents authorized to act on behalf of Defendant.

4. The Defendant hereby accepts and expressly waives any defect in connection with service of process issued to Defendant by the State.

II. DEFINITIONS

5. As used in this Judgment, the following words or terms shall have the following meaning:

(a) “**Buyer’s Guarantee**” shall refer to any customer service program or program offered or provided by Defendant regarding the return, repair, or replacement of merchandise from Participating Merchants.

(b) “**Clear and conspicuous**” or “**Clearly and Conspicuously**” when referring to a statement or disclosure, shall mean that such statement or disclosure is disclosed in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable and understandable by a consumer. A statement shall not contradict or be inconsistent with any other information presented with it. In addition:

- An audio statement or disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear the entire statement and comprehend it.
- A video statement or disclosure shall be of a size and shade and appear on the screen for a duration sufficient for a consumer to read and comprehend the entire statement.
- In print advertisements and other promotional material, the specific statement or disclosures shall be in the minimum type size required in this Consent Judgment or by applicable law and in a contrasting color calculated to draw attention to the statement or disclosure.

(c) **“Effective Date”** is the date this Consent Judgment is approved and signed by a superior court judge.

(d) **“Endorse”** or **“Endorsement”** means the delivery of any advertising message that a consumer is likely to believe reflects the opinions, findings, or experience of a person or entity other than that of the Participating Merchant.

(e) **“Port Lecturer”** means the person or persons hired by Defendant who conduct, or assist in conducting, promotional activities on board cruise ships.

(f) **“Participating Merchant”** means an individual or entity that enters into an agreement with Defendant to be promoted on board a cruise ship or is otherwise part of Defendant’s Shopping Program.

(g) **“Promotional Presentation”** means a presentation (including a shopping lecture, gemstone talk, or seminar of any kind), either live or recorded, promoting Participating Merchants or brands.

(h) **“Shopping Program”** means a program operated by Defendant to promote shopping opportunities with Participating Merchants, and includes on board Promotional Presentations and promotional materials in written, video, and electronic form.

(i) **“Cruise Line”** means a cruise line that contracts with defendant to provide promotional services for Participating Merchants.

(j) **Primary Shopping Show**” means the first Promotional Presentation hosted on the cruise ship and promoted as the primary shopping show for a specific voyage.

III. INJUNCTIONS

A. Compliance With The Consumer Protection Act

6. In the course of offering or providing on board shopping programs, Defendant shall not, directly or through Port Lecturers, engage in acts or practices that violate Alaska’s Unfair and Deceptive Trade Practices and Consumer Protection Act, AS 45.50.471 *et seq.*, including, but not limited to:

(a) Failing to Clearly and Conspicuously disclose that Defendant and Port Lecturers receive promotional fees and commissions from Participating Merchants;

(b) Allowing Port Lecturers to represent they will assist passengers in negotiating the best prices or getting “deals” with Participating Merchants while failing to disclose that the Defendant and Port Lecturers receive promotional fees and commissions from Participating Merchants based on passenger sales;

(c) Representing that a cruise line or promotion company has selected, recommended, or approved Participating Merchants when in fact retailers pay to be in the program;

(d) Failing to Clearly and Conspicuously disclose limitations to a Buyers Guarantee or making misrepresentations about the nature or scope of such Guarantee;

(c) Failing to comply with requirements for disclosures in written promotional materials on board cruise ships as provided by AS 45.50.474;

(f) Disparaging businesses that do not participate in the Shopping Program or disparaging merchandise purchased by consumers from non-Participating Merchants;

(g) Making false or misleading statements of fact concerning the existence of or reasons for price reductions.

B. Monitoring And Discipline Of Port Lecturers

7. Defendant shall establish, within 45 days of the Effective Date of this Consent Judgment, written policies and procedures to ensure compliance with this Consent Judgment. Such policies and procedures shall include disciplinary sanctions, including suspension or termination of Port Lecturers, for violations of this Consent Judgment.

8. Defendant shall require the video recording of all Primary Shopping Shows. For all other types of Promotional Presentations that are not recorded by video, Defendant shall require Port Lecturers to make all reasonable efforts to make audio recordings of each and every Promotional Presentation if they are not otherwise subject to video recording. Defendant shall require Port Lecturers to send, within five (5) days of completion of the cruise, and by overnight delivery, all such video and audio recordings, without editing, to Defendant. If circumstances arise under which a port lecturer is unable to deliver such recordings to Defendant within five (5) days,

Defendant shall document the reason for such delay. At the conclusion of the 2013 Alaska cruise season, the State agrees to meet with Defendant to determine whether and the extent to which such audio recordings will be required for subsequent seasons. Defendant shall also provide on July 15 and September 30, 2013, or at other times reasonably requested by the Alaska Attorney General's Office, a written report detailing Defendant's efforts to ensure compliance with the audio recording of all Promotional Presentations.

9. For purposes of identifying specific Promotional Presentations, Defendant shall require Port Lecturers to state, at the start of each audio or video recording, the Port Lecturer's name, the name of the ship, the date, and the title of the presentation (*e.g.*, Ketchikan Port Lecture, Diamond and Gem Seminar). Defendant will request that the cruise lines videographer date stamp each video recording and each copy supplied to Defendant. Port Lecturer is not required to state the date if the date is stamped by the videographer.

10. Upon request by the State for copies of any or all video recordings and/or audio recordings of Promotional Presentations, Defendant shall deliver to the Alaska Attorney General's Office true, unedited copies of such recordings that Defendant has received in accordance with Paragraph 8 by electronic mail or by overnight mail within five (5) business days, or within a different time frame mutually agreed to by the parties.

11. Defendant shall maintain a written record of all video and audio recordings of Promotional Presentations on a spreadsheet or in other summary form. The summary must include the identifying information provided in Paragraph 9. For each cruise season in Alaska, Defendant shall provide to the Alaska Attorney General's Office on July 15 and September 30 a written summary reflecting the video and audio recordings for the preceding months. This information shall be preserved for at least three years.

C. **Disclosures Of Compensation And Affiliations And Conduct Of Port Lecturers**

12. In addition to the identifying information required in Paragraph 9 for each videotape, at the beginning of each Promotional Presentation a Port Lecturer shall Clearly and Conspicuously make the following disclosure:

My name is _____ and I am your Port Lecturer [or other title].
The retailers you hear about in today's presentation have paid a fee to be included in the shopping program, and many of the retailers also pay commissions that are based on their sales to passengers.

13. Defendant, directly or through Port Lecturers, shall not represent that Defendant, a cruise line, or a Port Lecturer has selected, recommended, or guaranteed a Participating Merchant, or use other terms suggesting that a Participating Merchant has been vetted or approved based on quality of merchandise, pricing, customer service or other standards unless such representation is supported by verifiable, factual information. Defendant may represent that Participating Stores offer a 60-day guarantee, or that Defendant offers a 60-day guarantee on all merchandise

purchased from Participating Merchants, subject to Paragraph 14 and the provisions set forth in Part D.

14. Port Lecturers shall not misrepresent the nature or extent of, or consumer benefit associated with, a Defendant's Buyer's Guarantee, and shall not state or imply that non-Participating Merchants do not offer guarantees.

15. Port Lecturers shall not represent or imply that they can obtain, or assist in obtaining "deals," lowest prices, bargain prices, prices not attainable elsewhere, or similar representations from Participating Merchants on behalf of consumers, unless the representation is supported by verifiable, factual information.

16. Port Lecturers shall not represent or imply that passengers will pay "duty-free" prices, that passengers do not have to pay sales taxes at ports in Alaska, or make other similar false representations regarding prices. If Defendant has verified that a Participating Merchant sells products for which the retailer has extended a rebate to match duty free prices in other locations, the Port Lecturer may make a representation reflecting the retailer's policy. Defendant shall retain copies of all documents reviewed to verify the policy.

17. Port Lecturers shall not make representations or engage in conduct that conflicts with or is contrary to the provisions in this Consent Judgment at any time during a cruise, including "desk hours" or at other times when interacting with or assisting individual passengers.

18. In response to passenger inquiries, Port Lecturers shall not misrepresent the amount of commission or the nature of incentive they or Defendant receives from a Participating Merchant. Port lecturers shall disclose that Participating Merchants pay a fee to be included in presentations, on the in-stateroom TV, on the shopping map and other publications, and that some merchants pay commissions based on sales.

D. Requirements Related To The Buyer's Guarantee

19. On all shopping maps, magazines, guidebooks and other documents that Defendant creates and distributes to passengers, and in all pre-recorded video programming displayed to passengers, Defendant shall provide the following information relating to the Buyer's Guarantee in a prominent and easily readable format:

The stores on the map [in this brochure, video, etc.] have agreed to provide you with a 60-day guarantee that is detailed in full on your shopping map. This guarantee excludes loss, theft or buyer's negligence. Many stores in port, including stores that do not participate in the program, offer their own guarantees."

In addition, the full guarantee language shall be Clearly and Conspicuously printed on all shopping maps and in all magazines distributed by Defendant to passengers: This specific language shall be submitted to the Office of the Attorney General for approval within 20 days after the Effective Date. This Paragraph shall not be construed to limit Defendant from taking additional steps to disclose the

nature and extent of a Buyer's Guarantee, or to provide information about how a consumer may seek assistance from, or submit claims to, Defendant.

E. Non-Disparagement

20. Port Lecturers shall not disparage, either directly or by implication, the goods or services of any business, located in a port of call in Alaska, or any business, regardless of location, that conducts advertising or promotional services for Alaskan businesses.

21. Port Lecturers shall not disparage, either directly or by implication, merchants that do not participate in Defendant's Shopping Program.

22. Port Lecturers shall not disparage merchandise purchased by consumers from non-Participating Merchants.

23. Port Lecturers shall not state or suggest that it is risky or unsafe to shop at stores that do not participate in the Shopping Program.

24. Port Lecturers shall not discourage or deter consumers from entering, visiting, or transacting business with stores that are not part of the Shopping Program.

25. Port Lecturers shall not engage in any conduct that deters or discourages a consumer from transacting business with a particular merchant or directs the consumer to a different merchant for reasons relating only to a financial or other benefit accruing to the Port Lecturer.

26. Defendant shall not disparage, either directly or by implication, non-Participating Merchants. Defendant shall not include in any merchant agreement a term that prohibits a merchant from making referrals to or recommendations for non-Participating Merchants.

27. Defendant shall not unreasonably deny participation, or charge discriminatory prices for participation, by Alaskan businesses that wish to be promoted in Defendant's Shopping Programs. Defendant has offered and will continue to offer a "Spirit of Alaska" program or similar low-cost option for local Alaskan merchants that wish to be promoted in Defendant's Shopping Program.

28. Paragraphs 20-27 do not preclude a Port Lecturer from discussing documented concerns about a merchant relating to customer service, quality, or other issues if such concerns are based on verifiable, factual information involving specific transactions between passengers and the merchant. Defendant shall retain all documents relating to the concerns expressed about such merchant.

F. Requirements For Merchant Agreements

29. Defendant shall require that all agreements with Participating Merchants contain the following terms, or substantially similar terms. Nothing in this Paragraph shall be construed to limit Defendant from requiring additional provisions intended to promote compliance with this Consent Judgment.

(a) Merchant shall use its best efforts to provide to Defendant copies of all customer complaints received from Defendant's Alaska cruise ship passengers,

whether the complaint is sent directly by the passenger, a governmental agency, or the Better Business Bureau, unless it is clear from the complaint that a copy was already provided to Defendant.

(b) Merchant shall extend an unconditional 90-day (from date of purchase) merchandise guarantee, to include repair, replacement, or full refund, for all products purchased by any passenger of a Cruise Line. Merchant also agrees that under no circumstances shall a restocking fee be charged to any passenger of any Cruise Line covered in the agreement. Merchant agrees that any repair or exchange item that requires shipping to a passenger must be shipped directly to the passenger at the Merchant's expense. For purposes of determining quality and value of jewelry, which may result in a passenger requesting an exchange or partial refund, only appraisals from independent graduate gemologists, not affiliated with any retail jeweler will be acceptable.

(c) If Merchant supplies written materials to Port Lecturers for distribution to passengers, the written materials must include the following disclaimer in 14 point typeface and in a contrasting color calculated to draw attention to the disclosure:

"This [These] featured business[es] has [have] paid to be included in the [Map/Shopping Guide/Promotion].

(d) Merchant acknowledges that Merchant has reviewed Alaska's Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 to 45.50.561, and Alaska's Retail Advertising Regulations, 9 AAC 05.010 to 05.900, and shall comply

with them. Merchant also acknowledges that it is the expressed intent of the Alaska Attorney General to conduct investigations, which may include undercover investigations, to ensure compliance with the Consent Judgment dated February __, 2013.

G. Requirements For Customer Service

30. Defendant shall designate an employee or agent to receive and respond to complaints from the Alaska Attorney General's Office. The designated employee's name, mailing address, phone and fax numbers, and email address shall be provided to the Alaska Attorney General's Office.

31. Before closing any claim or complaint that has come to the attention of the Defendant, Defendant shall directly contact the claimant or complainant to determine whether he or she has accepted the resolution, and shall not rely solely on the Participating Merchant's representation that the matter has been resolved.

IV. MONITORING AND RECORD KEEPING

A. Attorney General Investigations

32. Defendant acknowledges that the Attorney General intends to exercise his authority to use undercover investigators to ensure compliance with this Consent Judgment. Defendant acknowledges that Investigators acting under the legal authority of the Attorney General may surreptitiously record on board promotional activities or shoreside store visits or sales transactions in audio and/or video formats as consistent with that authority.

B. Record Keeping

33. Defendant shall retain, for a period of at least three years from the date the record was created, all records necessary to demonstrate full compliance with each provision of this Consent Judgment, including:

(a) Accounting records or other financial documents reflecting commissions, payments, or other incentives provided to Defendant or Port Lecturers from Participating Merchants;

(b) Records related to training, monitoring, and personnel records of Port Lecturers, including disciplinary records reflecting the date and reason for discipline;

(c) Records relating to claims under a Buyer's Guarantee Program or consumer complaints relating to any aspect of the Shopping Program or to transactions with Participating Merchants;

(d) Copies of promotional materials, including shopping maps, documents distributed by Port Lecturers, guidebooks, coupon books, and recordings of Promotional Presentations.

34. Upon request, Defendant shall provide books, records or other documents to the Attorney General's Office, and shall answer questions relating to compliance with this Consent Judgment. Defendant shall make requested books, records, or other documents available within fourteen (14) days of the request, at the

Office of the Alaska Attorney General in Anchorage, Alaska, or at such other location within the State, or within such time as is mutually agreed by Defendant and the State. This Paragraph shall not limit Plaintiff's right to obtain documents, records, testimony or other information pursuant to any law, regulation, or rule. Nothing in this Paragraph is intended to supersede or modify the requirements related to video recordings set forth in Paragraphs 10 and 11.

V. PAYMENT TO THE STATE

35. Defendant shall pay the amount of \$75,000.00 to the State. This payment is for consumer protection enforcement, education, and investigation, and may be used for investigative and enforcement activities related to compliance with the Consumer Protection Act or for other uses permitted by state law, at the discretion of the Attorney General.

36. The Payment made by Defendant under this Consent Judgment shall be made payable to the State of Alaska, and delivered to the Office of the Attorney General, 1031 W. 4th Avenue, Suite 200, Anchorage, Alaska 99501.

VI. ENFORCEMENT

37. A violation by Defendant of the terms of this Consent Judgment is a violation under AS 45.50.551(a), allowing the State to pursue civil penalties of up to \$50,000 for each violation, in addition to allowing the State to seek injunctive or other relief necessary to address the violation. If the State believes that Defendant has violated a term or terms of the Consent Judgment, the State shall provide Defendant

fifteen (15) calendar days' notice ("Notice") of the violation before filing a motion requesting the imposition of civil penalties and/or seeking injunctive relief or other remedies. Within the 15-day period, Defendant may respond to the allegation in the Notice and the parties may attempt resolution of the State's concerns. The State agrees that in determining whether to seek penalties, consideration will be given to the degree of willfulness of the violation, the frequency or lack of frequency of the violation, the reasonableness of the measures taken by Defendant to prevent the violation, and the responsiveness of Defendant to address the violation. Nothing in this provision precludes the State from filing an enforcement action or other action necessary to protect consumers from immediate harm, nor does it preclude the State from following the procedure set forth in Paragraph 43.

38. As an alternative to seeking civil penalties for a violation of the Consent Judgment as set out in Paragraph 42, and at the sole discretion of the Attorney General, if a Port Lecturer violates any term of the Consent Judgment the State shall be entitled to a payment of \$5,000 from Defendant under the following conditions: (a) The State shall file with this Court an Affidavit of Noncompliance that specifies the factual basis for the violation of the Consent Judgment by the Port Lecturer; (b) Defendant may contest the State's Affidavit of Noncompliance by filing a responsive affidavit within ten (10) days of the date of service of the State's Affidavit; (c) upon a finding of noncompliance by the Court, the State is entitled to declare immediately due and payable a payment from Defendant in the amount of \$5,000.00. The State may

immediately collect that amount, and it may obtain injunctive or other relief necessary to address the noncompliance.

39. If in the course of its monitoring activities, Defendant discovers that any employee of Defendant, or a Port Lecturer contracted by Defendant, has failed to comply with any term of this Consent Judgment, and if (a) Defendant takes immediate corrective action, and (b) reports the violation to the Alaska Attorney General, the Attorney General agrees to refrain from seeking penalties as set forth in Paragraphs 37 and 38 unless the Attorney General reasonably determines that Defendant's corrective action was inadequate or ineffective in light of the violation. Nothing in this provision is intended to restrict the right of the Attorney General to obtain injunctive or any other relief necessary to address the noncompliance.

VII. RELEASE

40. This Consent Judgment resolves any and all of the State's claims under the Consumer Protection Act which have been or could have been asserted in the State's Complaint or addressed by the terms of this Consent Judgment. Nothing in this Consent Judgment shall be interpreted to resolve any criminal liability, or any liability for conduct occurring after the Effective Date, or conduct not reasonably discoverable prior to the Effective Date.

VIII. GENERAL AND ADMINISTRATIVE PROVISIONS

41. This Court will retain jurisdiction of this matter for all purposes, including enabling the parties to apply to the Court for such further orders as may be necessary or appropriate or for enforcing the terms of the Consent Judgment.

42. This Consent Judgment is subject to modification, waiver or addition only by the written agreement of the parties. The Parties agree to take action and execute such additional documents as may be necessary or appropriate to carry out the provisions and purposes of this Consent Judgment.

43. The acceptance of the Consent Judgment by the State, or a decision by the State not to bring an enforcement action, shall not be deemed approval of Defendant's promotional, advertising or business practices. Neither Defendant nor anyone acting on Defendant's behalf shall represent or imply that the State of Alaska has approved or authorized any promotional, advertising, business practice, or other conduct by Defendant.

44. Nothing in this Judgment shall be construed as relieving Defendant of the obligation to comply with all federal, state, or local laws, regulations, ordinances or rules, nor shall any provisions of the Consent Judgment be deemed to be permission to engage in any acts or practices prohibited by law, regulation, or rule.

45. Nothing in this Consent Judgment shall be construed to limit the authority of the Attorney General to protect the interest of the State or the people of the State. Nothing herein precludes the State from pursuing any action with respect to Defendant's acts or practices not covered by this Consent Judgment.

46. Failure by any party to insist upon the strict performance by another party of the provisions of this Consent Judgment shall not be deemed a waiver of the provisions of this Consent Judgment. Notwithstanding such failure, a party shall have the right to insist upon the specific performance of any and all provisions of this Consent Judgment.

47. If any clause, provision or section of this Consent Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Judgment and this Consent Judgment shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

48. The Defendant shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent any part of this Consent Judgment or the spirit or purposes of this Consent Judgment.

49. This Consent Judgment shall be governed by and construed in accordance with Alaska Law. If, after the effective date of the Consent Judgment, there

is a change in Alaska statutes or regulations with respect to the matters governed by this Consent Judgment, compliance with the new law shall be deemed compliance with the Consent Judgment.

50. Nothing in this Consent Judgment shall require Defendant to take any action that is contrary to any Maritime Law of the United States, of the nation of vessel registry, or of any applicable international convention.

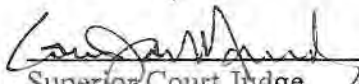
55. With the exception of the amount designated as "Payment to the State" set forth in Paragraph 35 of this Consent Judgment, the State agrees that if the State settles with another company that provides on board promotional services for cruise lines on terms that are materially different and more favorable than those contained in this Consent Judgment, the State will work with Defendant on an amendment to ensure that the terms agreed to by Defendant are not less favorable than terms agreed to with another settling party or parties.

The signatures of the parties indicate their consent and agreement to enter into this Consent Judgment.

SO ORDERED, ADJUDGED, and DECREED,

FILED IN CHAMBERS
State of Alaska
First Judicial District at Juneau
By: TC on : 3-21-13

This 20 day July, 2013 at Juneau, Alaska.


Superior Court Judge

Consent Judgment
State of Alaska v. Onboard Media, Inc.

CERTIFICATION

Copies Distributed

Date 3-21-13

To C. Drinkwater

D. Hickey

B. Nault


W. Featherly

By TC

This Consent Judgment is STIPULATED AND AGREED TO by:

For the State of Alaska:

Michael C. Geraghty
Attorney General

By: 
Cynthia C. Drinkwater
Senior Assistant Attorney General
Alaska Bar No. 8808159

2/4/13
Date

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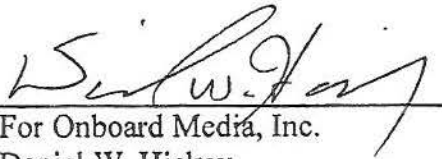
[State of Alaska v. Onboard Media, Inc. consent Judgment Signature Page]

STATE OF ALASKA

For the State of Alaska:
Cynthia C. Drinkwater
Senior Assistant Attorney General
Alaska Bar No. 8808159

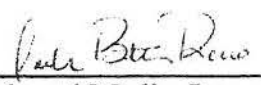
Dated: _____

ONBOARD MEDIA, INC.



For Onboard Media, Inc.
Daniel W. Hickey
Alaska Bar No. 7206026

Dated: 2-4-2013



For Onboard Media, Inc.
Sarah Beth Reno
President
Onboard Media, Inc.

Dated: 2-4-13