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**Update: *Federal Trade Commission v. Applied Marketing Sciences, LLC, et al.*
United States District Court, Central District of California**

In early October 2014, the Federal Trade Commission (FTC) and Defendants Applied Marketing Sciences, LLC, Standard Registration Corporation, Worldwide Information Systems, Incorporated, and Liam O. Moran stipulated to an Order for Permanent Injunction and Monetary Judgment for violations of Section 5 of the FTC Act, 15 U.S.C. §45. The Complaint charged that the defendants participated in deceptive acts or practices in the advertising, marketing, promoting, offering for sale, or selling of prize promotions.

The FTC filed suit on the basis that the above-named defendants were running a sweepstakes in which consumers would receive personalized mailings advising that they had won a cash prize not more than \$2 million, and that they needed to pay a twenty or thirty dollar fee to collect their prize. The consumers who paid the fee, mostly individuals over the age of 65, received nothing in return.

The details of the judgment are as follows:

- Over \$11 million (the amount the consumers lost due to their participation in the sweepstakes)
- Joint and several liability for the corporate and individual defendants.
- The judgment is suspended in its entirety until the individual defendant, Moran, turns over the proceeds from the sale of his home. Moran has nine months to sell the property, after which time the home will be auctioned with FTC approval. While Moran still owns his home, he must allow the FTC to have a voluntary lien on and security interest in the property. Upon the sale of Moran's home, the remainder of the judgment is suspended.
- The full judgment will be due immediately if any of the defendants are found to have misrepresented their financial position.

Besides the judgment, the Order sets out terms regarding the defendants' conduct going forward:

- They are permanently banned from conduct involving prize promotions.
- They are permanently prohibited from misrepresenting any material fact to consumers regarding any goods or services.
- Defendants must submit a sworn acknowledgment of receipt of the Order within seven days.
- For five years after the entry of the Order, each corporation and the individual defendant, for any business he is a majority owner or controls, directly or indirectly, must deliver a copy of the Order to: all principals, officers, directors, and LLC managers and members;

all employees, agents, and representatives who participate in conduct related to the subject of this Order; and any business entity resulting from any change in structure. Delivery of the Order must occur within seven days for current personnel, and before assumption of duties for anyone else. Each defendant must obtain a signed and dated acknowledgment of the receipt of the Order within 30 days from any person to whom the Order had been delivered as specified.

- One year after the entry of the Order, each defendant must submit a sworn compliance report including address information, all businesses in which a defendant is involved, the activities of each business, how the defendant complies with the Order, and a copy of any acknowledgments not previously submitted.
- Moran, the individual defendant, must also provide address information for all residences, all business activities, and his involvement in each business activity.
- For twenty years following the entry of the Order, each defendant must submit a sworn compliance notice within 14 days of a change in any designated point of contact, the structure of any corporate defendant, or of any entity in which a defendant has an ownership interest or controls, directly or indirectly, that may affect compliance obligations arising out of the Order.
- Moran, the individual defendant, also has to report any change in name, address, or role in any business activity.
- Defendants must create accounting records showing the revenues from all goods or services sold; personnel records, including name, address, phone number, job title, dates of service, and any reason for termination; records of all consumer complaints and refund requests, and any response; all records to prove compliance, including all submissions to the Commission; and copies of marketing materials. Defendants must create said records for twenty years, and maintain each such record for five years.

The Order also includes terms for monitoring compliance:

- Within 14 days of receipt of a written request from the Commission, defendants must submit additional sworn reports, appear for depositions, and produce documents for inspection and copying.
- The Commission can also obtain discovery under Federal Rules of Civil Procedure 29, 30, 31, 33, 34, 36, 45, and 69 from defendants without further leave of court.
- The defendants must permit employees or affiliates to be interviewed, but counsel may be present.
- The Commission may also, through its representatives, pose as a consumer, supplier, or other entity to any defendant.

For more information, please contact me at 816.527.9445, braden@kennyhertzperry.com, or online at www.kennyhertzperry.com.

About Kennyhertz Perry: Kennyhertz Perry is a business and litigation law firm representing clients in highly-regulated industries. Founded by two veteran Kansas City attorneys, John

Kennyhertz and Braden Perry, Kennyhertz Perry brings a unique mix of top law firm quality expertise, practical experience, and pragmatic business solutions.

About Braden Perry: A former federal enforcement attorney and veteran in regulatory compliance and white collar defense, Mr. Perry has expertise and consults with clients throughout the United States in areas of internal investigations, enforcement matters, regulatory issues, and corporate transactions, including advising on mergers and acquisitions in highly complex regulatory structures. Mr. Perry has a deep understanding and first-hand experience with antitrust, securities, financial institutions, commodities, the Foreign Corrupt Practices Act (FCPA), and other emerging compliance and enforcement issues. Mr. Perry is a frequent contributor to financial and legal publications, including Lawyers.com, LawTV, Compliance Crossing, and NerdWallet.com.