

MAY 10 1999

May 3, 1999

Representative Suzanne Jeskewitz
Chairperson, Assembly Committee on Consumer Affairs
P.O. Box 8952
Madison, WI 53708

Dear Representative Jeskewitz:

As a Wisconsin consumer turned reluctant consumer advocate, I respectfully request that the Assembly Committee on Consumer Affairs take a close look at Assembly Clearinghouse Rule 98-117, an order to repeal and re-create Wis. Admin. Code chapter ATCP 127 (Home Solicitation Selling). The order was submitted by the Department of Agriculture, Trade and Consumer Protection. There are significant questions regarding both substance and procedure. Included with this letter is a brief outline of the substantive issues.

Procedural concerns focus on how the proposed rule was presented to the public. In March of 1998, the Department announced "tough new rules which would apply to telephone, mail and electronic e-mail solicitations." What the Department failed to mention was that they were, in fact, repealing and re-creating chapter 127. I learned of the Department's intentions only because I was involved in litigation based on chapter 127. For your information, the Department press release and a newspaper article announcing the proposed changes are enclosed.

The Consumer Affairs Committee is scheduled to meet at 10:00 A.M. on May 6, in room 225 Northwest of the Capitol. Assembly Clearinghouse Rule 98-117 is on the agenda. As a consumer, I would like an opportunity to address the Committee regarding the proposed rule. Comments will focus on the substantive issues as outlined. The proposed rule is a significant step backward for consumer protection in Wisconsin. I am willing to drive from Milwaukee to Madison if only for the chance to make a five minute presentation. Please let me know what is possible.

Thank you

John C. Buellesbach
3026 S. Moorland Road
New Berlin, WI 53151
(414) 938-9270

enclosures: outline
press release dated 03/10/98
Milwaukee Journal Sentinel, 03/11/98

Wisconsin Assembly Committee on Consumer Affairs. Representatives Jeskewitz, *chairperson*, Skindrud, *vice chairperson*, Musser, Urban, Ott, Pocan, Hasenohrl, Miller.

Assembly Clearinghouse Rule 98-117. Order to repeal and re-create Wis. Admin. Code chapter ATCP 127 ("chapter 127"), Home Solicitation Selling. Submitted by the Department of Agriculture, Trade and Consumer Protection.

Chapter 127, the Home Solicitation Selling rule, works in conjunction with the right to cancel to protect the public from unscrupulous sellers who take advantage of customers by illegal or sharp practices. The Home Solicitation Selling rule, which became effective on February 1, 1973, remains a powerful tool in the ongoing battle against deceit and deception in the marketplace.

- I. Repealing and re-creating an administrative rule is a drastic measure. The Department has failed to show that such action is necessary. **Why the drastic change?**
 - A. The current rule has worked well for 26 years and continues to be effective.
 1. *Reusch v. Roob* (*Milwaukee Journal Sentinel*, 09/19/98)
 2. *eBay* (*Milwaukee Journal Sentinel*, 03/03/99)
 3. *Subscriptions Plus* (*Milwaukee Journal Sentinel*, 04/28/99)
 - B. The current rule has not unfairly burdened business nor has it resulted in a flood of litigation.
 - C. Any rewrite must maintain at least the same level of protection afforded by the current rule.

- II. Compared with the current rule, the proposed rule significantly limits the coverage of chapter 127. It looks at only half the transaction (solicitation) and includes additional unjustifiable exclusions (*e.g.* public market, casual seller, newspaper, internet home page). Added protections offered consumers under the proposed rule are illusory. They are unenforceable, possibly invalid (commerce clause), redundant, and lack meaningful penalty provisions. **Overall, the proposed rule is a bad deal for Wisconsin consumers.**

- III. The proposed rule is unacceptable. There is no reason to repeal and re-create chapter 127. Any revision must:
 - A. like the current rule, apply to any transaction either solicited or consummated away from seller's regular place of business;
 - B. be short and simple (easy to understand and apply);
 - C. include few exceptions (general advertising, catalog sales);
 - D. focus on message (full disclosure, no misrepresentation) – not method (telephone, mail, face-to-face);
 - E. be consistent with the enabling statute (Wis. Stats. § 100.20) and the Wisconsin Consumer Act (Wis. Stats. chs. 421 to 427).

- IV. Unless this Committee acts, consumers will lose much needed protection. For all consumers in Wisconsin, please vigorously oppose the Department's efforts to repeal and re-create chapter 127.

For Release: 3/10/98

Contact: Bill Oemichen 608/224-4920

MADISON--Local stores generally treat consumers fairly because they have reputations to uphold. Problems are more likely to occur with out-of-state telemarketers, internet marketers, and door-to-door salespeople who may disappear after getting the customer's credit card number.

The Department of Agriculture, Trade and Consumer Protection is proposing tough new rules which would apply to telephone, mail and electronic e-mail solicitations. The new rules would adopt the Federal Trade Commissioner's telemarketing rules and would prohibit telephone solicitors from:

- Making harassing telephone calls;
- Calling before 8 a.m. or after 9 p.m. without prior consent;
- Calling a consumer who has previously asked not to be called.

The new rules would require the seller to clearly disclose the seller's correct name and to identify the goods or services being offered. The seller would also have to disclose the costs of the goods or services, all terms of the sale, and the cancellation and refund policy.

To regulate sweepstakes and other prize promotions, the proposed rules say solicitors can't require consumers to make a purchase or payment as a condition of entry. Solicitors are required to verify the retail value of prizes and to disclose the odds of winning.

The rules would also make it harder for con artists to charge consumers for something they didn't order.

Currently, the Department is getting complaints from consumers who are being electronically billed every month for goods or services they didn't request. Often the solicitor claims the bills are honest errors and refunds the money. However, the solicitor may then rip-off someone else who doesn't complain.

The proposed new rules won't let solicitors off the hook when they claim "honest" errors. The rules require telephone and mail solicitors to verify the consumer's authorization for billing. If the solicitors can't verify authorization, the Department may file civil or criminal charges.

"These rules will meet the demands of the new telecommunications and electronic marketplace," says Bill Oemichen, administrator of the Division of Trade and Consumer Protection, "and will provide more effective prevention and more effective redress for consumers. Consumers who are ripped off may also sue the violator directly and recover double damages, costs, and reasonable attorney fees."

The Department plans to review the proposed rules with consumer and business groups. For more information or help with a consumer problem, call 1-800-422-7128.

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State gets tough on sales tactics

Agency's proposed rules include clear disclosure requirement, late-call ban

By **AMY RINARD**
of the Journal Sentinel staff

Madison — In what would be the first major overhaul of Wisconsin's consumer protection laws in 26 years, state officials Tuesday proposed tough new rules on telemarketing and other sales pitches made to consumers through e-mail, direct mail and door-to-door solicitation.

The proposed rules meet the demands of the new telecommunications and electronic marketplace," said Bill Oemichen, administrator of the Consumer Protection Division of the state Department of Agriculture, Trade and Consumer Protection.

Oemichen said when state rules governing home solicitations were written in 1972, telemarketing and e-mail were not even contemplated as sales methods, and even direct mail was not used much by solicitors.

Under the rule changes, it would be illegal for Wisconsin telemarketers placing calls to consumers in the state to make harassing phone calls, call anyone who has asked not

to be called, or place calls before 8 a.m. or after 9 p.m.

Those rules already are in place for telemarketers calling across state lines under Federal Trade Commission rules that went into effect Dec. 31, 1995. But the proposed state rule would extend those consumer protections to intrastate calls and also would authorize the state to enforce the federal rules against out-of-state telemarketers, said Oemichen.

"We get a lot of complaints from people concerned about (solicitation) phone calls after 9 p.m. and even faxes after 9 p.m.," he said. "We also get complaints all the time from

consumers about calls made from telemarketers in Wisconsin, so we felt this was a gap in the law that needed to be closed."

The state will conduct hearings on the proposed rules and could revise them before putting them into place. The department can implement the rules without legislative approval.

The proposed rules also would require all sellers to clearly disclose their correct names and clearly identify the goods or services being offered. Sellers also would have to disclose the cost of what is being sold, all terms of the sale and the cancellation and

refund policy.

In addition, the rules would regulate sweepstakes and other prize promotions by prohibiting solicitors from requiring a purchase as a condition of entry and by requiring solicitors to verify the retail value of prizes and disclose the odds of winning.

Not covered under the proposed rules are charity raffles, catalog sales, business-to-business sales, transactions initiated by consumers, real estate sales and transactions involving banks, savings and loan associations, insurance companies, public utilities

Please see **CONSUMER** page 4

Consumer/Overhaul of rules proposed

From page 1

and telecommunications carriers.

Oemichen said the proposed rules also would make it more difficult for con artists to charge consumers for something they did not order.

He said his office receives complaints from consumers who are being billed electronically every month for things they did not buy. Often in these complaints, solicitors claim the billing is an honest mistake and the money is refunded to consumers, he said. But consumers who don't complain to the state may still be getting ripped off, he said.

The new rules won't let solicitors off the hook so easily, said Oemichen.

Solicitors would have to obtain express, verifiable authorization from the consumer for billing. If that is not done, the state could file civil or criminal charges against the solicitors.

Consumers who get ripped off also could sue sellers directly and be eligible to recover damages, costs and reasonable attorney fees, under the proposed rules.

The rules also would prohibit so-called "credit card laundering" related to home solicitations. In this scheme, unscrupulous sellers gain access to the credit card system — from which they might otherwise be excluded — by processing credit card transactions under the name of another merchant.

The sales techniques of sellers would be strictly regulated un-

der the proposed rules and would prohibit a number of practices many consumers find especially irritating.

For telephone sales, a seller would be prohibited from repeatedly or continuously ringing a consumer's phone or continuously engaging any consumer in a telephone conversation with the intent to annoy, abuse or harass.

In general the rules would prohibit:

- Threatening, intimidating or harassing a consumer.
- Failing to leave a consumer's premises upon request.
- Requesting or receiving

payment for so-called "credit repair" services until the seller provides all of those services and provides independent verification of their success.

■ Requesting or receiving payment for helping a consumer recover money lost in a prior home solicitation transaction until at least seven days after that consumer recovers the money. This is aimed at so-called "recovery room" schemes, which prey on previously victimized consumers.

■ Requesting or receiving payment for loan finder services until the consumer actually receives the promised loan.

May 10, 1999

Representative Suzanne Jeskewitz
Chairperson, Assembly Committee on Consumer Affairs
P.O. Box 8952
Madison, WI 53708-8952

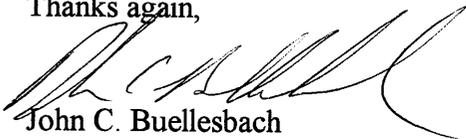
Dear Representative Jeskewitz:

Thank you for the opportunity to appear before the Committee on Consumer Affairs concerning efforts by the Department of Agriculture, Trade and Consumer Protection to repeal and re-create chapter ATCP 127. The Department's testimony was interesting given that, until the decision in *Reusch v. Roob*, the Department steadfastly maintained that chapter 127 did not apply to Mr. Roob. In response to publicity, the Department secured a special order with respect to the practices of Mr. Roob. Unfortunately, that does nothing for the many other victims who are still looking for justice.

One year before our complaint, at the request of Senator Peggy A. Rosenzweig, the Department investigated Mr. Roob and concluded "there was no violation of state law that we can determine." When I complained to the Department, I was told that Mr. Roob was an aggressive salesperson who did nothing wrong. According to one Department investigator, some wedding photographers rip off their customers because they can get away with it. "Maybe just the buyers aren't tough enough. Maybe they're all starry-eyed, and they're not hard enough in negotiating their weddings." *Milwaukee Journal Sentinel*, June 20, 1998, at 2D. Maybe if the Department had just done its job in 1996, there would not have been a problem. So please excuse me if I do not find the Department's testimony convincing.

The court of appeals is now considering the *Reusch* case. When affirmed, the decision will clearly establish that chapter 127 is not (nor should it be) limited to transactions initiated by a seller as the Department claims. Laura and Duane Reusch, and their families, have endured over two and one-half years of aggravation to win a small victory for all consumers. Please do not let the Department jeopardize their efforts.

Thanks again,



John C. Buellesbach
3026 S. Moorland Road
New Berlin, WI 53151
(414) 938-9270

enclosures: letter to Senator Gary R. George dated May 10, 1999
letter to Senator Peggy A. Rosenzweig dated October 19, 1998

May 10, 1999

Senator Gary R. George
Chairperson, Committee on Judiciary and Consumer Affairs
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator George:

As a Wisconsin consumer turned reluctant consumer advocate, I respectfully request the opportunity to present an analysis, from a consumer's perspective, of the proposal to repeal and re-create chapter ATCP 127. Testimony by the Department of Agriculture, Trade and Consumer Protection before the Assembly Committee on Consumer Affairs raised three significant issues.

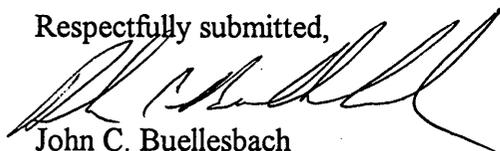
First, the Department claimed there were problems with the current rule. In some transactions, the seller could not provide written disclosures before a sale was consummated. This is not true. The current rule does not specify how disclosures must be made. It is curious that the Department did not discuss this problem in its analysis of the proposed rule. Rest assured, the bagel seller at the Capitol has not been violating state law for the past 26 years.

Second, the Department testified that chapter 127 should only apply to transactions initiated by a seller (position of Direct Marketing Association). If that is true, then the decision in *Reusch v. Roob* was clearly incorrect because the customer made the initial contact. And yet, the Department claims the proposed rule covers the fact situation in *Reusch*? This inconsistency makes it difficult to interpret the rule. The shortcomings of a standard based on who initiated the transaction are precisely why the current standard was adopted.

Third, the Department claimed a need to specifically address telemarketing because they were getting complaints from consumers. Imagine how consumers will feel when they realize the telemarketing rules are unenforceable. A recent newspaper article (copy enclosed) illustrates the point. As the Rhutasels found out, it is impossible to prove who made the calls because consumers lack access to usage detail showing incoming calls. In addition, the rules lack meaningful penalty provisions for consumers.

After the Assembly Committee hearing, more than ever, it appears that "delicate compromises" were reached with little regard for consumer interests. The Direct Marketing Association and Department of Commerce are probably very happy with the proposed rule, and justifiably so. Consumers, meanwhile, are being deceived when told they are getting "tough new rules which would apply to telephone, mail and electronic e-mail solicitations."

Respectfully submitted,



John C. Buellesbach
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enclosure

cc: ~~Representative Jeskowitz~~

Couple settle suit against telemarketers

They say no attorney would take their case, which alleged that AT&T and credit card company made excessive calls

By DAVID COLE
Special to the Journal-Sentinel

Kenosha — The Kenosha couple who made headlines in January when they filed a lawsuit against AT&T over the company's telemarketing practices, have settled out of court after they couldn't find an attorney to take their case.

Neal and Sonya Rhutasel claimed that AT&T telemarketers violated federal law by making repeated calls to them after they had asked not to be bothered. They were seeking \$10,500

in damages in Kenosha County small claims court. State officials said the suit was the first of its kind in Wisconsin.

But after contacting 10 attorneys over the last three months, the couple couldn't find anyone to represent them and decided to settle for an undisclosed amount.

"Nobody would take the case," Sonya Rhutasel said Thursday. "I wish we could've followed it through."

Still, Rhutasel said, she and her husband believe they made their point, and haven't been

unduly bothered by phone salesmen since they filed the suit.

An AT&T spokesman had said that some of the calls were made by representatives of AT&T Universal, an unaffiliated credit card company.

Because of the "David and Goliath" aspect of the case and because the amount of damages sought was so small, no attorney would take the case, she said.

They settled out of court two weeks ago with AT&T and AT&T Universal, which eventually was brought into the case, rather than spend more time and money researching the case in preparation for trial on their own. "It got to be very frustrating," she said.

The terms of the settlement prohibit the couple from disclosing it, she said.

The Rhutasels said they began receiving calls in August, after the couple compared long-distance services, dropped AT&T and signed up with another company. They claim that an AT&T telemarketer called the next day, and Sonya Rhutasel asked the company to stop calling.

In response to their request to be placed on the company's no-call list, the couple were told the process could take up to 90 days.

And from Aug. 9 to Oct. 12, they allege, they received seven more calls from representatives of AT&T marketing entities.

State consumer protection of-

ficials say they are receiving a growing number of telemarketing complaints.

Telemarketing ranked eighth on the list of complaints received by the state Department of Agriculture, Trade and Consumer Protection in 1998, said Bill Oemichen, administrator of the department. That marked the first time telemarketing made the top 10 list, he said.

In response, the department formulated new rules that require a number of up-front disclosures from telemarketers, including the identity of their employer, what services or products they're selling and, if a sale is made, a phone number the customer can call in the event of a problem.

October 19, 1998

Senator Peggy A. Rosenzweig
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Rosenzweig:

Two years ago one of your constituents, Constance Stieber, wrote to you concerning a problem with photographer Mark Roob. You forwarded her complaint to the Department of Agriculture, Trade and Consumer Protection. Merry Fran Tryon, Director of the Bureau of Consumer Protection, and her staff "carefully reviewed" the complaint and concluded that there was no violation of state law.

My wife and I encountered similar problems with Mr. Roob. As a result, we are complainants in a criminal prosecution: *State v. Roob*, 98CM01573 (Wauk. County filed June 4, 1998). Increasing the contract price after receiving a deposit is one count of the criminal complaint. Another couple recently prevailed in a civil case against Mr. Roob: *Reusch v. Roob*, 97SC002949 (Mil. County 1998). Because Mr. Roob's residence was not a regular place of business, the right to cancel (§ 423.202, Stats.) and the home solicitation selling rule (ATCP ch. 127, Wis. Adm. Code) applied. **The fact is, the Stieber complaint presented obvious violations of both state law and the Department's own rules.** We can only wish that the Bureau of Consumer Protection had done more than simply send out form letters when they investigated the Stieber complaint.

On December 4, 1996, you wrote Mrs. Stieber: "Again, I am very sorry there isn't more that I can do for you at this time." Of immediate concern is an attempt by the Department of Agriculture, Trade and Consumer Protection to rewrite Chapter 127, Wis. Adm. Code. The Department has taken the position that Chapter 127 was never intended to cover individuals like Mr. Roob who sell from their residence, nor was it intended to cover transactions initiated by a consumer. There is no published authority supporting the Department's position. This interpretation ignores the plain language of the rule, conflicts with case law and is inconsistent with other legislation. For example, the right to cancel (§ 423.202, Stats.) does not exempt sales made at a seller's residence or transactions initiated by a consumer. In addition, according to section 421.102(1) of the Wisconsin Statutes, consumer protection laws are to be liberally construed and applied to protect Wisconsin consumers.

The proposed rule is a significant step backward for consumer protection in Wisconsin and we are asking for your help to see that it is rejected. Any revision of Chapter 127 must maintain at least the same level of protection for consumers that is provided under the current rule. At this time, the Department is seeking public comment. The hearing record will remain open until November 6. Then, committees of both the Senate and Assembly will likely be given 30 days to review the proposed rule. Approval by the Legislature is not required to adopt the rule. If you could intervene on behalf of all consumers in Wisconsin it would be greatly appreciated. **It is disturbing that the very agency responsible for protecting consumer rights in Wisconsin is actively seeking to limit those rights.**

Long term, the Legislature should consider transferring all investigative and enforcement authority in consumer protection matters to the Department of Justice. Where the Department of Agriculture, Trade and Consumer Protection saw nothing wrong, a Milwaukee County Circuit Court judge termed Mr. Roob's conduct "unconscionable" and in violation of a general order issued by the Department. Regardless of party affiliation, "[a]n attorney general has more legal expertise and greater access to hiring able legal staffs, and he would be more likely to implement reasonably vigorous prosecution under the legislation. A state

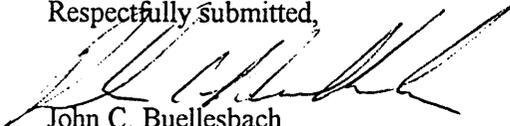
attorney general will normally emphasize his record in consumer protection enforcement as a major factor with the electorate since his main function is law enforcement and few other responsibilities distract him." Jeffries, *Protection for Consumers Against Unfair and Deceptive Business*, 57 Marq.L.Rev. 559, 563 n.30 (1974).

The Department's handling of the Stieber complaint provides an interesting perspective to a recent evaluation of consumer protection programs in Wisconsin. The report, prepared by the Legislative Audit Bureau, was submitted to the Joint Legislative Audit Committee in December of 1997. The Department of Agriculture, Trade and Consumer Protection wants to mediate instead of litigate consumer disputes. It is no surprise their efforts are failing. History teaches that "mediation does not solve the essential problems of stopping the deceptive practices and deterring violators from future deceptive conduct." Comment, *Consumer Protection in Michigan: Current Methods and Some Proposals for Reform*, 68 Mich.L.Rev. 926, 952 n.166 (1970). Even worse, mediation based on ignorance only serves to legitimize and perpetuate fraud.

Consumers in this state deserve a strong advocate who will actively seek to enforce and protect consumer rights. As the *Reusch* case clearly demonstrated, we have good consumer protection laws in Wisconsin (for the time being at least). Those laws simply need to be enforced.

Mrs. Steiber is very grateful for the time you spent on her complaint. I too thank you for your time and am very interested in any comments or suggestions you may have. My wife and I reside in the 33rd Senate District and we have contacted Senator Farrow. For whatever it was worth, I attended a public hearing and voiced my concerns about the proposed rule. If you want additional information or supporting documentation, please contact me.

Respectfully submitted,



John C. Buellesbach
3026 S. Moorland Road
New Berlin, WI 53151
(414) 938-9270

enclosures: letter from Rosenzweig to Tryon dated October 30, 1996
letter from Prenzlów to Rosenzweig dated November 6, 1996
letter from Rosenzweig to Stieber dated November 8, 1996
letter from Rosenzweig to Stieber dated December 4, 1996
synopsis of *Reusch v. Roob*, 97SC002949 (Mil. County 1998)
list of cases and complaints involving Roob
summary of comments on proposed rule by Buellesbach
3 articles from Milwaukee Journal Sentinel: 06/09/98; 06/10/98; 09/19/98.

cc: Senator Margaret A. Farrow
Senator Brian B. Burke
Attorney General James E. Doyle
Constance Stieber

Department gets more than \$500,000 in restitution and civil penalties from Wisconsin Dells time-share resort

It's a tempting offer. The letter says you get a free Jeep Cherokee or a free vacation by attending a 90-minute presentation by the sales staff of Peppertree time-share resort in Wisconsin Dells.

But consumers complained, alleging they were misled and pressured to sign contracts for thousands of dollars.

Now after an undercover investigation by the Division of Trade and Consumer Protection, Peppertree will pay up to \$200,000 in restitution and \$236,000 in civil penalties. And Peppertree has agreed to cancel over \$100,000 worth of contracts.

"We allege Peppertree salespeople violated a number of state laws regulating the time-share industry, prize offers, and direct marketing," says Bill Oemichen, administrator of Trade and Consumer Protection. Oemichen says that among 75 alleged violations, Peppertree:

- Represented a time-share as a financial investment and misrepresented its value.
- Used high pressure tactics such as offering discounts **only available the day of the sales presentation.**
- As an inducement to visit, offered free vacations that actually ended up costing consumers money.
- Misrepresented the reasonable estimated length of the sales presentation. Investigators were told 90 minutes but were kept two and a half hours.
- Failed to provide prospective customers copies of contractual documents for review prior to signing.

Although Peppertree denies it has violated any laws, it has cooperated with the state's efforts to get restitution to consumers and will work with its salespeople to ensure future compliance.

Consumers who feel they have been misled by Peppertree may get a complaint form by calling the toll free Consumer Protection hotline: 1-800-422-7128. Complaint forms must be filed by December 6, 1999. The department also offers a free fact sheet on time-share memberships.###

**WISCONSIN
DEPARTMENT OF
AGRICULTURE,
TRADE AND
CONSUMER
PROTECTION**

Web site:
[http://badger.state.wi.us/
agencies/datcp](http://badger.state.wi.us/agencies/datcp)

REGIONAL OFFICES

Southeast
10930 W. Potter Rd., Suite C
Milwaukee, WI 53226-3450
414-266-1231

Northeast
Suite 146-A
200 N. Jefferson St.
Green Bay, WI 54301-5198
920-448-5110

Northwest
3610 Oakwood Hills Parkway
Eau Claire, WI 54701-7754
715-839-3848

Southwest
2811 Agriculture Dr.
Madison, WI 53708-8911
608-224-4960

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.

Case Code: 30703

Unclassified

PEPPERTREE RESORT VILLAS, INC.

A foreign corporation, and

PEPPERTREE RESORTS, LTD.,

A foreign corporation d/b/a

Peppertree at Tamarack,

Defendants.

STIPULATION FOR CONSENT ORDER

It is stipulated and agreed by the parties that:

1. Defendant Peppertree Resorts Villas, Inc., is a foreign corporation with its principal place of business located at P.O. Box 6319, Asheville, North Carolina, and is engaged in the business of offering for sale and selling interests in real property located in Sauk County, Wisconsin, known as Peppertree at Tamarack.

2. Defendant Peppertree Resorts, Ltd., is a foreign corporation with its principal place of business located at P.O. Box 6319, Asheville, North Carolina, and is engaged in the business of operating and managing Peppertree at Tamarack in affiliation with Defendant Peppertree Resorts Villas, Inc.

3. Defendant Peppertree Resorts Villas, Inc., and defendant Peppertree Resorts, Ltd., (hereafter referred to as "Peppertree") make a general appearance and consent to the jurisdiction of this court over Peppertree and consent to this

court's entry of the Consent Order (which is attached to and incorporated in this Stipulation) solely for the purpose of consenting to the payment of the amount of civil forfeiture required by the Consent Order and for no other purpose.

4. Neither party accedes or admits to the claims of the other, except as to the general jurisdictional statement set forth in paragraph no. 3 herein. Peppertree does not admit, and expressly denies, that it has violated any laws of the State of Wisconsin, any prior court orders, injunctions or judgments or that it has otherwise engaged in any wrongful conduct or wrongdoing. Nothing herein constitutes evidence or an admission by any party for any purpose other than interpretation or enforcement of this Stipulation and the attached Consent Order.

5. The parties consent to the entry of the attached Consent Order without the service or filing of a summons and complaint, and without further notice, appearance or consent of the parties.

6. No costs shall be awarded upon the entry of the attached Consent Order except that Peppertree shall have paid all filing fees for this action.

Consented to by the Plaintiff,
STATE OF WISCONSIN

By: William L. Oemichen
William L. Oemichen, Administrator
Division of Trade and Consumer
Protection

Date: October 5, 1999

Department of Agriculture, Trade
and Consumer Protection

By: D. J. Ghilardi

David J. Ghilardi
Assistant Legal Counsel
State Bar No. 1003273
Department of Agriculture, Trade
and Consumer Protection

Date: 10/05/99

Consented to by the Defendant,
PEPPERTREE RESORT VILLAS, INC.

By: John McFarland

John McFarland
Senior Executive Vice-President and
Chief Operating Officer

Date: 9/30/99

Consented to by the Defendant,
PEPPERTREE RESORT, LTD.

By: John McFarland

John McFarland
Senior Executive Vice-President and
Chief Operating Officer

Date: 9/30/99

Approved as to form and content:

By: Thomas M. Pyper

Thomas M. Pyper
Attorney for PEPPERTREE
State Bar No. 1019380

STATE OF WISCONSIN,

PLAINTIFF,

CASE NO.

vs.

PEPPERTREE RESORT VILLAS, INC.,

CASE CODE: 30703

A foreign corporation, and

Unclassified

PEPPERTREE RESORTS, LTD.,

A foreign corporation d/b/a Peppertree at Tamarack,

DEFENDANTS.

PETITION FOR CONSENT ORDER

David J. Ghilardi, Assistant Legal Counsel for the Wisconsin Department of Agriculture, Trade and Consumer Protection, petitions the court in the name of the State of Wisconsin pursuant to ss. 93.22, 100.26(6), 100.20(6) and 100.18(11)(a), Wis. Stats., as follows:

1. Defendant Peppertree Resorts Villas, Inc., is a foreign corporation with its principal place of business located at P.O. Box 6319, Ashville, North Carolina, and is engaged in the business of offering for sale and selling interests in real property located in Sauk County, Wisconsin, known as Peppertree at Tamarack.

2. Defendant Peppertree Resorts, Ltd., is a foreign corporation with its principal place of business located at P.O. Box 6319, Ashville, North Carolina, and is engaged in the business of operating and managing Peppertree at Tamarack in affiliation with Defendant Peppertree Resorts Villas, Inc.

3. Pursuant to the attached Stipulation for Consent Order:

(a) Defendants Peppertree Resorts Villas, Inc., and Peppertree Resorts, Ltd., consent to the jurisdiction of this court over them, and to entry of the Consent Order, which is attached to and

incorporated in the Stipulation being filed herewith.

(b) The parties consent to the entry of the Consent Order attached to the Stipulation without the service or filing of a summons and complaint, and without further notice, appearance or consent of the parties.

WHEREFORE, pursuant to the Stipulation being filed herewith, the State of Wisconsin requests that the court sign the Consent Order attached to the Stipulation and being separately provided herewith for rendition and entry by the Court.

By:

D. J. Ghilardi

Date:

10/05/99

David J. Ghilardi, Assistant Legal Counsel
Bar No. 1003273

Wisconsin Department of Agriculture, Trade and Consumer Protection

STATE OF WISCONSIN,

PLAINTIFF,

CASE NO.

vs.

PEPPERTREE RESORT VILLAS, INC.,

CASE CODE: 30703

A foreign corporation, and

Unclassified

PEPPERTREE RESORTS, LTD.,

A foreign corporation d/b/a Peppertree at Tamarack,

DEFENDANTS.

CONSENT ORDER

Upon the attached stipulation of the parties, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The stipulation of the parties is approved and made a part of the record herein.
2. This court has jurisdiction over the defendants and over the subject matter of this action pursuant to Wis. Stats. ss. 93.22, 100.171(7)(a), 100.171(8), 100.18(11)(a), 100.20(6), 100.26(6), 707.57(2)(a) and 707.57(3).

CIVIL FORFEITURE

3. Pursuant to Wis. Stats. ss. 100.171(7)(a), 100.26(6), and 707.57(3), the plaintiff State of Wisconsin shall have and recover from the defendants Peppertree Resorts Villas, Inc., and Peppertree Resorts, Ltd., (hereafter referred to as "Peppertree") a civil forfeiture for Seventy Five (75) counts of violations of Wis. Stats. s. 100.171, Wis. Stats. ch. 707, ch. ATCP 127, Wis. Adm. Code, and in the amount of One Hundred Ninety Thousand Two Hundred and Sixty One Dollars (\$190,261), together with assessments under Wis. Stats. s. 814.63(1)(b) in the amount of Twenty Five Dollars (\$25); Wis. Stats. s. 814.634(1)(a) in the amount of Forty Dollars (\$40); Wis. Stats. s. 165.87(2)(a) in the amount of Forty Three Thousand Seven Hundred and Sixty Dollars (\$43,760);

Wis. Stats. s. 302.46(1) in the amount of One Thousand Nine Hundred and Three Dollars (\$1,903); Wis. Stats. s. 814.635(1) in the amount of Seven Dollars (\$7); and Wis. Stats. s. 165.7555(1)(a) in the amount of Four Dollars (\$4); for a total payment of Two Hundred Thirty Six Thousand Dollars (\$236,000) payable to the State of Wisconsin in 8 equal quarterly installments of Twenty Nine Thousand Five Hundred Dollars (\$29,500) to begin no later than 90 days after the Court Order is signed authorizing the civil forfeiture.

4. The Court Order may be amended upon motion of the Wisconsin Department of Agriculture, Trade and Consumer Protection ("Department") on behalf of the State of Wisconsin to include an additional civil forfeiture in an amount to be in accordance with the terms of the restitution fund provisions stated below. The Amended Court Order shall be identical to the Court Order except that this paragraph 4 shall be replaced with an order to pay the additional civil forfeiture. The Department may submit the Amended Court Order to the court after all restitution funds have been paid out and the Department has been reimbursed. This amount may be paid by Peppertree in 8 equal quarterly installments beginning on the same date as the next quarterly installment due under paragraph 3 above, and the replacement paragraph 4 in the Amended Order shall so provide.

RESTITUTION

5. Pursuant to Wis. Stats. ss. 100.171(8), 100.18(11)(a), 100.20(6), and 707.57(2)(a), Peppertree shall pay up to \$200,000 into a restitution fund to be administered by the Department. This money shall be paid out to persons who allege they incurred economic harm as a result of their contacts with Peppertree, and who the Department determines to be eligible. The Department shall determine the amounts to be paid from the fund to each person, except that no person shall be eligible for restitution who either purchased a time share from Peppertree, or visited Peppertree to receive a prize or sales promotion, at anytime before January 1, 1998,

unless the person is listed on the attached Exhibit A, which is incorporated in this Stipulation. Also, no person shall be eligible for restitution who notifies the Department that it has been harmed by Peppertree more than 60 days after the date the Stipulation is executed.

6. Peppertree shall pay an additional \$10,000 into the restitution fund to be used to reimburse the Department for actual costs incurred by the Department for administering the rescission and restitution programs.

7. Peppertree shall pay money into the fund as follows:

(a) Peppertree shall pay \$110,000 into the fund within 90 days after execution of the Stipulation.

(b) Peppertree shall pay any additional amounts required by the Department to complete the restitution program, not to exceed \$100,000, within 10 days after receiving notice from the Department of the required amount, or within 120 days after execution of the Stipulation, whichever is later.

8. The Department shall provide Peppertree with an opportunity to provide the Department with factual information in its possession concerning individual complainants before the Department pays out money from the fund.

9. The Department shall make the final determination concerning the amounts to be paid out of the fund to eligible complainants.

10. Any amounts remaining in the fund shall be disbursed as follows:

(a) If the total amount paid out of the fund is less than \$100,000, the remaining amount of the original \$200,000, less \$50,000, shall be the total amount of civil forfeiture paid out by Peppertree from the restitution fund. For example, if \$85,000 is paid out of the fund, the total amount of the civil forfeiture from the restitution fund will be \$65,000 (\$115,000 less \$50,000).

(b) If the total amount paid out of the fund is more than \$100,000, ½ of the remaining

amount of the original \$200,000 shall be the total amount of the civil forfeiture paid out of the restitution fund by Peppertree. For example, if \$110,000 is paid out of the fund, the total amount of civil forfeiture from the restitution fund will be \$45,000 (1/2 times \$90,000).

(c) If the total amount paid out to reimburse the Department for administrative expenses is less than \$10,000, the total difference shall be added to the total amount of civil forfeiture paid out of the restitution fund. For example, if the Department is reimbursed \$8,000, \$2,000 shall be added to the civil forfeiture from the restitution fund.

RECISSION

11. Pursuant to Wis. Stats. ss. 100.171(8), 100.18(11)(a), 100.20(6), and 707.57(2)(a), Peppertree shall rescind the time share purchase agreement of any person who has complained to the Department concerning a time share purchase and is listed on the attached Exhibit B, which is incorporated in this Stipulation.

12. In addition to canceling the time share purchase agreement, Peppertree shall make whole all eligible persons who elect to receive rescission of their time share purchase agreements by returning all money paid to Peppertree pursuant to the canceled agreement less the value of any benefits the person may have enjoyed under the contract, in accordance with the following schedule:

(a) Within 30 days after the stipulation is executed, Peppertree shall provide the Department with all factual information in its possession concerning whether the persons listed on Exhibit B are eligible for rescission as time share purchasers, and the amount of money to be paid each person to make him or her whole.

(b) Within 60 days after the Stipulation is executed, the Department shall notify Peppertree which persons are eligible for rescission and the amounts due to make the persons whole.

(c) Within 30 days after receiving the notice under subparagraph (b) from the Department, and within 90 days after the Stipulation is executed, Peppertree shall cancel the time share purchase agreements and pay out all moneys in accordance with the Department's notification, and each person who elects rescission shall transfer his or her interest in the time share to Peppertree.

MISCELLANEOUS

13. Before any person may receive money from the restitution fund, or have a time share purchase agreement rescinded, the person must sign a release form identical to the attached Exhibit C, which is incorporated in this Stipulation.

14. By entering into the Stipulation, Peppertree makes no admissions of guilt. Peppertree does not admit, and expressly denies, that it has violated any laws of the State of Wisconsin, any prior court orders, injunctions or judgments or that it has otherwise engaged in any wrongful conduct or wrongdoing. Nothing in this Consent Order constitutes a factual or legal finding by the Court of wrongdoing or unlawful conduct by Peppertree, or may be used as evidence or an admission by any party for any purpose other than interpretation or enforcement of the Stipulation and this Consent Order.

15. Jurisdiction is retained herein for the purpose of enabling any party to the Stipulation to apply to the court at any time for the sole purpose of requesting such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, or for enforcing compliance with it.

Dated this _____ day of _____, 1999.

BY THE COURT:

Circuit Court Judge

EXHIBIT A

BUYER COMPLAINANTS

ADOLPH AND BELINDA BANNISTER

Transaction date: April 11, 1998

MONIQUE LATRELLE BENNETT

Transaction date: November 6, 1997

JOSEPH & JANE KUEHN

Transaction date: January 23, 1994

DUANE & JACKIE PLIER

Transaction date: November 14, 1998

RANDY AND WENDY LLOYD

Transaction date: November 16, 1997

ARLEN S. AND CAROL A. CLAY

Transaction date: August 8, 1997

RICHARD A. AND JUDY L. OTT

Transaction date: May 29, 1994

LINDA M. WADE & LARRY R. MOORE

Transaction date: SEPTEMBER 21, 1997

HAROLD ZIELSDORF AND BETTY ZIELSDORF

Transaction date: March 8, 1997

KYLE R. INDRA

Transaction date: March 7, 1999

ANGELA FRIEDRICK

Transaction date: October 11, 1998

STEVEN L. HARRIS

Transaction date: December 19, 1998

EXHIBIT B

PRIZE WINNER COMPLAINANTS

JIM R. AND LINDA ECKHART

Transaction date: May 9, 1998

JERI ALLEN

Date of Solicitation: June 13, 1998

DAVID S. BARRY

Date of Visit to Peppertree: February 3, 1997

JERRY AND SANDY BRODIE

Date of Visit to Peppertree: May 31, 1998

CARLA FRIEDRICH

Date of Visit to Peppertree: November 14, 1998

RANDALL S GIESE

Date of Visit to Peppertree: January 25, 1999

ERIC HAAS

Date of Visit to Peppertree: October 18, 1998

DEAN W. NELSON

Date of Appointment at Peppertree: January 10, 1998

AUGUST W NEVERMAN

Date of phone solicitation: April, 1998

DAVID & TRACY RICHMAN

Date of sales presentation at Peppertree: January 30, 1999

RICHARD D. TUEBO

Date of visit at Peppertree: July 6, 1998

JOHN SANDERSON

Dates: June 23 and 25, 1999

EXHIBIT C

RELEASE

THIS RELEASE AGREEMENT is entered into by and between Peppertree Resort Villas, Inc. and Peppertree Resorts, Ltd., whose address is One Vance Gap Road, Asheville, NC 28805, and _____ (hereinafter "Releasor[s]"), whose address is _____.

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, _____ (collectively referred to herein as "Releasor[s]"), hereby forever and fully release and discharge Peppertree Resort Villas, Inc., Peppertree Resorts, Ltd., and their respective affiliates, subsidiaries, agencies, agents, employees, servants, officers, successors, attorneys, assigns, and personal representatives (hereinafter "Releasees") from any and all claims, demands, damages, suits, rights, and causes of action of whatever kind or nature, whether arising out of tort or contract, law or equity, statutory law or common law, or any other basis or claim which the Releasor has ever had, or may now have, whether now known or unknown, foreseen or unforeseen, arising from or by reason of or in connection with: (i) any advertising materials from any of Releasees received by Releasor; (ii) any telephone calls received from any of Releasees by Releasor; (iii) any prize, award or gift of any kind which Releasor may have been eligible to receive or which any of Releasees represented that Releasor was entitled to receive; (iv) any expense directly or indirectly related to traveling to Peppertree at Tamarack, including but not limited to lost wages, gasoline, depreciation, cost of time, tolls, hotels, meals and other related expenses; (v) all claims which were asserted or which could have been asserted in any administrative or legal proceeding; (vi) any claim for compensatory, liquidated or punitive damages or any other damages or costs or attorneys' fees incurred by the Releasor; (vii) any and all other acts or omissions between the Releasor and Releasees in any capacity or relationship whatsoever.

Releasees mutually release any such claim which any of them may have against Releasors.

If Releasor entered into a Purchase Agreement with Releasees whereby Releasors acquired an interest in a timeshare interval in the resort known as Peppertree at Tamarack, or Tamarack II, Releasor, for itself, its heirs, successors and assigns, does hereby release all its interest, estates and rights in the Purchase Agreement and timeshare interval referenced above and, upon execution of this Release Agreement, said Purchase Agreement, including, without limitation, all rights, interests, and obligations of whatever kind or nature, whether financial, contractual, or otherwise, arising out of and in connection therewith, will terminate, and Releasor[s] will transfer all interest in the timeshare interval to Peppertree Resort Villas, Inc., or

its successor or assignee. Releasor, for itself, its heirs, successors, and assigns hereby forever releases and discharge Releasees, their successors, assigns, parent, affiliates, subsidiaries, agents, contractors, employees, and legal representatives, from any and all claims and demands, whether known or unknown, which Releasor has or may have, arising out of or in any way relating to the Purchase Agreement and/or the purchase of the timeshare interval referenced above. Releasees hereby release and forever discharge Releasor, its heirs and assigns, from any and all claims and demands, whether known or unknown, which Peppertree has or may have, arising out of or in any way relating to the Purchase Agreement and/or the purchase of the timeshare interval referenced above.

Releasor hereby accepts this settlement as a compromise and complete disposition of all claims as set forth above and as asserted in any pending proceedings between the undersigned and Releasees, and the undersigned acknowledges that this is a total accord and satisfaction of all claims now held or hereafter arising or accruing to the undersigned.

It is agreed that the giving of consideration of this Release does not constitute an admission of liability by Releasees, liability being expressly denied, but is given in full and complete settlement and compromise of disputed claims, matured and unmatured, known and unknown.

This Release may be pleaded as a full and complete defense to any action, suit, complaint or other proceedings which may be instituted, prosecuted or attempted by the undersigned, in breach of this Release.

The Releasor represents that he/she is the owner of all claims and rights herein released, that he/she has not assigned, hypothecated or otherwise alienated the same, and the he/she is entitled to give this Release in good quitance of all claims hereinabove released.

IN WITNESS WHEREOF, the undersigned have executed this Release at _____, Wisconsin, this _____ day of _____, _____.

Peppertree Resort Villas, Inc.

Releasor:

By: _____
 Name:
 Title:
 Date:

By: _____
 Name:
 Title:

Date:

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

THIS IS TO CERTIFY that on the _____ day of _____, _____, at _____, Wisconsin, before me personally appeared _____ [and _____], whom I know; that [he/she/they] acknowledged to me that [he/she/they] executed the foregoing Release; that [he/she/they] [has/have] completely read and fully understand[s] the content thereof and that the same is [his/her/their] free and voluntary act.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Notary Public, State of Wisconsin
My Commission expires: _____

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Personal warranty

State consumer-rights official Oemichen faces down fraud

By Steven Walters
of the Journal Sentinel staff

Last Updated: Sept. 30, 1999

"Wisconsin is known as a 'victim' state, because we tend to trust people more than consumers in other states." -- Bill Oemichen

Madison - Wherever he goes, he hears the confessions of Wisconsin's cheated, naive and trusting.

"My son lost \$700 to a get-rich-quick, pyramid scheme."

"A bill for luggage showed up on my telephone bill. I didn't order it, but, if I don't pay it, can they cut off my telephone?"

"My roommates and I moved out of this apartment and then got a bill - out of nowhere - for \$800. What can we do?"

"Can my landlord enter our apartment at any time?"

Bill Oemichen, state government's acolyte of consumer protection, listens politely, takes sides and gives out advice or the toll-free help number ("Call our hotline, 1-800-422-7128"). He's heard most of the stories, but he knows the wounded questioner needs somebody who cares.

In 39 months on the job, Oemichen (OHM-e-ken) has walked away from few fights. He has raised the profile of consumer-protection programs dramatically, although one critic says he's packaged by a slick "public relations machine" that has him on a first-name basis with reporters for all Madison and Milwaukee TV stations.

Oemichen, 39, administrator of the trade and consumer protection division of the state Department of Agriculture, Trade and Consumer Protection, is a hands-on guy.

He personally pickets get-rich-quick seminars he and his investigators say invite fraud. He warns people standing in win-a-Jeep sweepstakes lines that all personal information they provide will be sold to telemarketers. He's scheduled to be on the ABC-TV network's "20/20" show for investigating whether retailer sales are, indeed, sales. He sends undercover investigators to see whether auto mechanics recommend unneeded repairs. He insists that price scanners be accurate 98% of the



Photo/Joe Koshollek
Bill Oemichen appears on a TV monitor in Madison.

time.

"I really believe in being proactive and preventive," the lawyer and ex-Minnesota state official explained in a series of interviews. "I think, if there's a violation of the law, we've got to follow up on it right away and not hang around."

And, there was the holly bushes Oemichen wanted to buy for his Waunakee home that cost Kmart about \$100,000.

When the scanner at a Madison-area Kmart didn't ring up the sale price on Oemichen's bushes, and a store manager refused to give Oemichen the \$3 per-item bonus for scanner errors specified in an earlier order he and executives of the retail chain had signed, state investigators launched a follow-up investigation that revealed Kmart was not living up to the first order.

The second investigation cost Kmart \$100,000 more, forced them to hang more checkout-area signs advising customers of their rights when scanners overcharge, and required the retailer to keep track of how often they pay the \$3 per-item bonus for scanner errors.

Oemichen said he can't stop getting personally involved and taking risks. "I want to know the answer myself; I don't always want to rely on others. If I have one failing, I probably don't delegate as much as I could."

Oemichen is the freshest face in the state bureaucracy, which has looked the same throughout the 1990s. But he also stood out in Minnesota state government, since he lived across the Mississippi River in Wisconsin and also served as a St. Croix County supervisor. Despite his home address in Wisconsin, he served as deputy Minnesota commissioner of agriculture.

Oemichen left a high-pressure, high-pay private law firm to join Minnesota state government in 1993. Since Oemichen came to Madison in 1996, Republican Gov. Tommy G. Thompson has used him as an expert on federal milk-pricing rules that hurt Wisconsin dairy farmers. Now, Oemichen supervises 375 employees, although only 54 work on consumer-protection issues, in a division with a \$12.5 million annual budget.

After the election of colorful Minnesota Gov. Jesse Ventura, Oemichen was indirectly invited - twice - to interview to become Ventura's agriculture commissioner. But, out of loyalty to his former boss, the current Minnesota ag commissioner, Oemichen turned down both feelers.

A student of the political system that has kept him employed since 1993, Oemichen was not surprised by Ventura's election.

"I'm from Minnesota, originally," he said. "I am partly Scandinavian, and the Minnesota creed is: If you get too excited about anything, you're doing the devil's work . . ."



Photo/Joe Kosholek
Bill Oemichen and Judy Cardin, his regional manager based in Green Bay, talk with Bill Wenzel (right), chief of staff for Sen. Alice Clausing (D-Menomonie).

"But there's this other side to Minnesota - kind of this repressed side - that says, 'We want to have some fun. We want our civic life to be interesting.' I think there's that side of it. Minnesotans, at various times have kind of rebelled against the average-type politician.

"Minnesota went through that period in the 1980s and '90s when they didn't really have anyone of national prominence, and I think that kind of startled a lot of people.

"So, there was kind of this mass (pro-Ventura) rebellion that said, 'We're going to elect this governor who is not going to be a typical

governor, but he is going to get attention and it's going to be interesting and we're going to enjoy it.' f"

Family Concerns

Personally, the autism of his 6-year-old daughter, Amy, challenges Oemichen and his wife, Mary Anne, in new and difficult ways every day. They also have a son, Will, 1. A Milwaukee native, Mary Anne Oemichen interrupted her career as a lawyer to be a stay-at-home mom.

Asked what he will be doing in 10 years, Bill Oemichen said that will depend on what progress he and his wife can help Amy make. He has painfully noticed how a few neighbors, and even some relatives, are unsure how to act around his daughter and have kept their distance.

"I'm hoping we've made a lot of progress for (Amy), and there's a prospect that she'll be able to live independently," Oemichen said. "My greatest fear in life is that, when I die, what's going to happen to her?"

Since he was 7, Oemichen has recorded in a personal journal that day's weather. He once hoped to work as an on-air TV meteorologist. Now, he said he hopes to serve on the Federal Trade Commission at one point in his career or, maybe, serve as a judge.

Once, Oemichen thought he would run for something bigger than the St. Croix County Board. But he said the odds of that happening get smaller every day.

"I don't drink. I don't smoke. I don't swear. I don't think I've got any real big skeletons in my closet, but the scrutiny that people running for office go through - you have to be basically an angel to get elected, or many expect you to be an angel. That's really hard to go through."

Running for office also would be a burden on his family, especially Amy.

"I'm kind of torn on that: On one hand, I think people need to know more about autism, so they understand these children, because there are more and more of them out there - more and more of them in the mainstream," he said.

"On the other hand, you want to protect your child and keep (her) in a protective cocoon."

There's no guarantee he'll be able to maintain that cocoon in Madison. He could be

out of work early in 2001, if Republican Gov. George W. Bush of Texas is elected president next year and gives Thompson a cabinet job.

Oemichen said he can't worry about things he can't control. "I don't know if I'm as politically calculating as a lot of other people," he said.

Political Cross-fire

Oemichen, who is paid \$80,000 a year, parachuted into Wisconsin state government as an unknown in mid-1996.

When he moved to Madison, Oemichen was blindsided by politics.

Months earlier, Thompson got the Legislature to rip the consumer protection division from his political rival, Democratic Attorney General James Doyle, and move it to the state agriculture department. The governor alone appoints the state agriculture secretary, now ex-legislator Ben Brancel.

Democratic legislators and senior Doyle aides have never forgotten that political power play by the governor and Republicans, who then ran the Legislature. As a result, to those Democrats, Oemichen may be unable to do anything right.

Doyle spokesman Jim Haney said he won't discuss Oemichen personally, but the transfer of consumer protection programs from the attorney general means "consumers are being ripped off more than ever before."

Under Oemichen's leadership, Haney added, "There aren't many cases that get filed" and the consumer protection division's volume of work "doesn't pass the smell test."

Consumer protection enforcement should be done by trained law officers, Haney added, instead of by an agriculture department "with a large public relations machine." Oemichen seeks and receives advice on working the media from an aggressive ex-TV reporter, Glen Loyd, who is a top aide.

Oemichen dismisses Haney's criticism as "politics," and offers these statistics to suggest that the consumer-protection division is doing more for Wisconsin consumers in 1999 than in 1996, when he took the job:

- The amount of money recovered in consumer-protection complaints rose from \$1.8 million in 1996 to \$4.2 million in '98, and is running significantly ahead of last year so far this year.
- The number of consumer-protection cases referred to Doyle's Justice Department, which must prosecute non-criminal cases, jumped from three in 1996 to 28 in '98. The number of referrals to local district attorneys, who file criminal charges in consumer protection cases, increased from 28 in 1997 to 38 in '98. Also, for the first time, state officials referred five cases to federal prosecutors.
- Per-complaint recovery has increased from \$303 in 1997 to \$345 in '98 and, so far this year, to \$352.

"I think we measure up very well," Oemichen added.

Chris Tackett, president of the Wisconsin Merchants Federation, has negotiated with Oemichen on some tough issues - the accuracy of price scanners and retail sales practices, for example.

Tackett called Oemichen's 98% rule for scanner accuracy "impossible" but praised the state regulator overall.

"We would rank Bill very, very high," Tackett said. "We have found him to be open and easy to deal with on some very contentious issues."

Glenn Ruppel, the "20/20" producer who interviewed Oemichen on fraudulent retail sales practices, said he came from New York City to find the state official because "not very many people are doing these cases nationally."

Former Democratic Gov. Tony Earl, now a lobbyist for retailer American TV and other industries, said Oemichen is a more aggressive regulator of some practices, including enforcement of comparison pricing laws, than his predecessors.

Before Oemichen, Earl said, state consumer-protection officials "wouldn't go after anyone until they got a sufficient number of customer complaints. I thought that was wrong-headed."

Representing American TV, Earl said he has found Oemichen to be "pro-consumer and pro-legitimate merchant."

Oemichen said he continually scrambles to keep up with fraud artists who use technology, telemarketing and the trusting nature of Cheeseheads to separate them from their cash.

Based on his contacts with national colleagues, he says, "Wisconsin is known as a 'victim' state, because we tend to trust people more than consumers in other states. So, a lot of con artists will prey on Wisconsinites - particularly senior citizens."

Research shows that between 5% and 10% of Wisconsin consumers "do not read, or do not read well," Oemichen said. That makes his job harder.

"That requires us to really provide consumer protection methods in different ways - TV, do a lot of speaking. I try to speak to consumer groups two times per day, (especially) senior citizen groups."

He admitted he brings a "hard message": Don't assume the other person is a crook, but do more research. Learn more about them before you decide to buy a product from them or participate in some business venture with them. And, above all, don't ever - ever! - give out your credit-card number to anyone who calls you.

Sometimes, Oemichen will preach that gospel up to six times a day, including the "20/20" interview, speaking to a University of Wisconsin-Madison class, a Wisconsin Public Radio call-in show and hosting a news conference.

"I have to be doing this," he explained. "A very important part of consumer protection is getting that message out to consumers - educate them and prevent them from consumer fraud."

Oemichen said it is ironic that, by getting consumers to be more wary, he may be rewiring Wisconsin's basic civility.

"I say this with some sadness, but I think Wisconsin consumers are beginning to be less trusting of people they don't know. That's good from a consumer protection standpoint, but I'm concerned about what that means for society as a whole."

As a consumer, Oemichen buys nothing over the Internet. Instead, he browses over

the Internet, then signs off and calls the toll-free number to buy the item and give someone his credit card number.

Why?

"When you're on the Internet, it's a party-line call," he explained.

"Anybody who knows the right technology can track exactly where you're going and really listen into your conversation, whoever you are talking to. It's a very unsecured environment, and people don't realize that."

Oemichen is asked about his personal no-smoke/no-drink/no-swear code. Is it an unreal standard, as someone who sees the best and worst of people on his job, as someone whose office gets 200,000 citizens complaints a year, as a member of four Waunakee village boards, and as an ex-elected county official?

The Presbyterian son of Minnesota ponders the question.

"This is how I'm holding myself, but I can't expect this - in many cases - of others," he answers quietly. "If I do, I'm probably going to go crazy."

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THE WALL STREET

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MONDAY, OCTOBER 11, 1999

Here's the Pitch

How Kirby Persuades Uncertain Consumers To Buy \$1,500 Vacuum

The Door-to-Door Hard Sell Brings Profits, Criticism, To Berkshire Hathaway

'Pushiest People I Ever Saw'

By JOSEPH B. CAHILL

Staff Reporter of THE WALL STREET JOURNAL
In the world of home appliances, Kirby Co. likes to consider its product the Porsche of vacuum cleaners.

The sweeper features a die-cast aluminum base and handle and wooden brush-rollers, rather than the plastic parts found in competitors' models. Its motor is so powerful that it can suck up a bucket of dirt dumped on a thick shag rug, leaving barely a speck behind. Assorted attachments convert it into a leaf blower and even a spray painter.

With a price tag of around \$1,500, it also costs more than four times what other top-of-the-line vacuum cleaners do. "Why does a Porsche cost more than a Chevy?" asks Ralph Schey, chief executive officer of Kirby parent Scott Fetzer Co., a unit of Berkshire Hathaway Inc., which is controlled by billionaire Warren Buffett.

It's worth noting that luxury-car dealers don't make house calls in trailer parks. But Kirby dealers do. After 64 years, the Kirby (there is only one model, updated periodically) continues to be marketed exclusively door-to-door — often to people who can ill afford a \$1,500 gadget but succumb to the sales pitch nonetheless. That has led consumer-protection agencies to question the company's tactics.

A Knock at the Door

In March of last year, 68-year-old Henrietta Taylor and her husband, Dennis, 79, answered a knock on the door of their mobile home in Fort Meade, Fla., to find two Kirby salesmen standing on the stoop.

The Taylors didn't need a vacuum cleaner; their old Electrolux was working fine. But the salesmen persisted with an hour-and-a-half demonstration that included dumping dirt on the carpet to show off the Kirby's cleaning power. "They were the pushiest people I ever saw," Mrs. Taylor says.

The Taylors agreed to buy the machine for \$1,749. That far exceeded the value of their only carpet, a 12-foot by 18-foot living-room rug. It also exceeded their monthly income of \$1,100 in Social Security. To finance the purchase, the salesmen arranged for a loan — with a 21.19% annual interest rate — that brought the total in payments to \$2,553.06.

The next day, Mrs. Taylor called the Kirby distributor to cancel the deal, but was told the sale was final. Only after enlisting an attorney from the local legal-aid service was she able to get the distributor to

What's News—

* * *

Business and Finance

BELLSOUTH MADE A BID to acquire Sprint in an effort to halt a possible merger with MCI WorldCom, according to people familiar with the matter. Each bid is valued at over \$100 billion. BellSouth's offer is believed to be valued at about \$72 a share for Sprint's main phone business; MCI WorldCom's bid is believed to be valued at about \$63 a share in stock.

(Article on Page A3)

* * *

Paul Allen is investing \$1.65 billion in RCN, part of a group of upstart telecommunications firms trying to grab a share of the local phone business. RCN hopes to use the money to expand its high-speed fiber-optic network.

(Article on Page A3)

* * *

Boeing is overhauling its customer-financing arm, a move that puts the company in closer competition with leasing firms that buy its planes.

(Article on Page A3)

* * *

H-P warned that earnings may be hurt by lower-than-expected U.S. sales of computer servers and supply problems resulting from Taiwan's earthquake. Fears of a chip shortage are starting to worry the PC industry.

(Articles on Pages A4 and B11)

* * *

Some economic forecasters raised their third-quarter growth estimates, following reports of a surge in spending, high consumer confidence and robust manufacturing. A survey of economists estimated GDP growth of 3.9%, up from an earlier estimate of 2.7%.

(Article on Page A2)

* * *

Auto makers posted higher sales last month, helped by generous discounts on cars and trucks. GM's sales grew 9%, DaimlerChrysler's sales gained 7.4% and Toyota recorded its best September ever as sales surged 10.4%. Ford reports sales today.

(Article on Page A2)

* * *

Ford and the UAW meet this week over the auto maker's plans to shed its Visteon parts-making business. Meanwhile, union leaders presented local officials with details of the new pacts agreed last week at GM and Delphi.

(Article on Page A6)

* * *

Republic New York took on investment adviser Martin Armstrong, recently indicted for fraud, as a client even though red flags prompted Prudential to cease business with him.

(Article on Page C1)

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Revlon's Perelman took the cosmetics company off the auction block, ending his search for a buyer. Shares jumped 34% Friday on the news and

* * *

World-Wide

CONGRESS WEIGHED across-the-board cuts as budget options dwindled.

Republicans have turned to consideration of the politically dangerous approach out of an inability to agree on alternative savings that could keep them from dipping into Social Security funds. With time ticking down, the budget process is whirling out of control. The latest casualty was a House plan to delay tax credits for the poor. Even Bush opposed that. (Article on Page A32)

The White House scrambled to save the nuclear test-ban treaty as the Senate set a ratification vote for Oct. 12. The GOP appears confident it can defeat it.

* * *

HINDU NATIONALISTS ARE SET to return to power in India, exit polls say.

Prime Minister Vajpayee's Bharatiya Janata Party and its allies appear to have secured a majority, but it isn't certain whether their margin will be comfortable enough to ensure the political stability India has lacked recently. State-owned TV forecast the BJP and its allies will win 287 seats, up 34 from the 1998 vote; 272 are needed to control parliament. (Article on Page A26)

The Congress party, led by Sonia Gandhi, and its allies are projected to win 174 seats, up 13 from 1998. The official count is to begin Wednesday.

* * *

A national missile defense took a step toward reality with the successful test of a Boeing-Raytheon interceptor 140 miles over the Pacific. The Pentagon is planning to spend \$10.5 billion over six years on the system, a scaled-down version of Reagan's "Star Wars" plan. (Article on Page A4)

* * *

Indonesia's next president is to be picked Oct. 20 by a special assembly, which elected reform figure Amien Rais as speaker. President Habibie has been hurt by the Bank Bali scandal and the East Timor pullout. The U.N. said Jakarta will let refugees return from West Timor. (Article on Page A26)

* * *

The Japanese nuclear accident is likely to force Tokyo to re-evaluate plans for new atomic power plants and increase the nation's reliance on imported oil. The operator of the processing plant admitted improper uranium handling set off last week's runaway chain reaction. (Article on Page A25)

* * *

Russian troops in Chechnya fought to carve out a buffer zone to protect southern Russia from raids by Islamic militants. Moscow promises the operation's goals are limited. Premier Putin appeared Friday to rescind Moscow's 1997 recognition of Chechnya's president. (Article on Page A30)

* * *

The ranks of the uninsured grew last year, with 44.3 million Americans lacking health coverage, a census report shows. That is an increase of one million people from 1997, though the percentage of the population without insurance rose only a bit, to 16.3% from 16.1%. (Article on Page B11)

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A top Democratic fund-raiser is expected to follow Gore's campaign manager and step down as a shakeup continued. Tony Coelho, campaign chairman, may be under a cloud. Gore attacked Bradley, calling him a fair-

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Jack Kypfer

Here's the Pitch

How Kirby Persuades Uncertain Consumers To Buy \$1,500 Vacuum

The Door-to-Door Hard Sell Brings Profits, Criticism, To Berkshire Hathaway 'Pushiest People I Ever Saw'

By JOSEPH B. CAHILL

Staff Reporter of THE WALL STREET JOURNAL
In the world of home appliances, Kirby Co. likes to consider its product the Porsche of vacuum cleaners.

The sweeper features a die-cast aluminum base and handle and wooden brush-rollers, rather than the plastic parts found in competitors' models. Its motor is so powerful that it can suck up a bucket of dirt dumped on a thick shag rug, leaving barely a speck behind. Assorted attachments convert it into a leaf blower and even a spray painter.

With a price tag of around \$1,500, it also costs more than four times what other top-of-the-line vacuum cleaners do. "Why does a Porsche cost more than a Chevy?" asks Ralph Schey, chief executive officer of Kirby parent Scott Fetzer Co., a unit of Berkshire Hathaway Inc., which is controlled by billionaire Warren Buffett.

It's worth noting that luxury-car dealers don't make house calls in trailer parks. But Kirby dealers do. After 64 years, the Kirby (there is only one model, updated periodically) continues to be marketed exclusively door-to-door — often to people who can ill afford a \$1,500 gadget but succumb to the sales pitch nonetheless. That has led consumer-protection agencies to question the company's tactics.

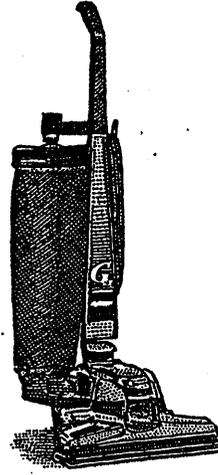
A Knock at the Door

In March of last year, 68-year-old Henrietta Taylor and her husband, Dennis, 79, answered a knock on the door of their mobile home in Fort Meade, Fla., to find two Kirby salesmen standing on the stoop.

The Taylors didn't need a vacuum cleaner; their old Electrolux was working fine. But the salesmen persisted with an hour-and-a-half demonstration that included dumping dirt on the carpet to show off the Kirby's cleaning power. "They were the pushiest people I ever saw," Mrs. Taylor says.

The Taylors agreed to buy the machine for \$1,749. That far exceeded the value of their only carpet, a 12-foot by 18-foot living-room rug. It also exceeded their monthly income of \$1,100 in Social Security. To finance the purchase, the salesmen arranged for a loan — with a 21.19% annual interest rate — that brought the total in payments to \$2,553.06.

The next day, Mrs. Taylor called the Kirby distributor to cancel the deal, but was told the sale was final. Only after enlisting an attorney from the local legal-aid service was she able to get the distributor to rescind the transaction. The distributor, Tim Walsh of Sunshine Distributing in Lady Lake, Fla., refuses to comment beyond confirming that the salesman who ultimately closed the Taylor sale was later dismissed because of customer complaints.



Kirby G6 Vacuum

The Taylors are hardly alone in their experience with the Kirby sales force. One class-action suit has been filed against Kirby over the sales practices of some of its distributors. And of 22 state consumer-protection agencies queried, 15 have received a total of more than 600 complaints in recent years about Kirby distributors and their sales techniques. Most handle the complaints on an individual basis.

The Wisconsin Department of Agriculture, Trade and Consumer Protection, which has received 50 complaints against Kirby dealers since 1996, conducted an investigation and concluded that the company, through its distributors, engaged in a "statewide pattern of trade practices" that violate consumer-protection laws. The agency wants Kirby to compensate consumers and exercise more control over its sales force. Kirby says it is in compliance with the law. The two sides are to meet this week to try to hammer out some sort of remedial action, without a formal enforcement action by the state.

"We hold Kirby responsible for these violations, as well as the dealers," says William Oemichen, the Wisconsin Consumer Protection Administrator.

Ethical complaints aren't common among companies run by Berkshire Hathaway's Mr. Buffett, who declined to comment for this story. But in general, Kirby says it isn't responsible for the behavior of its independent sales force. They are self-employed distributors, and Kirby prides itself on giving them the opportunity to build their own businesses. "This is the most entrepreneurial business I've ever been involved with," says Mr. Schey, the Scott Fetzer CEO.

Kirby does lay down some rules. Its "Distributor Code of Ethics" sets out 12 principles, including "observe the highest standards of character, honesty and integrity in dealings with my customers, fellow Distributors and other members of the Kirby profession." The company also

Please Turn to Page A10, Column 1

How Kirby Sells Uncertain Buyers a \$1,500 Vacuum

Continued From First Page

schooled distributors in direct-sales laws. Distributors must try to resolve all customer complaints within 24 hours, and those who get too many complaints can be terminated, says Ken Semelsberger, president of Scott Fetzer. He says there have been some terminations, but won't specify how many. He adds, however, that complaints represent only a tiny fraction of total sales.

Of course, many Kirby customers say they couldn't be happier with their purchases. "I've noticed a difference in my carpet," says Melinda Nielsen, 31, of Fremont, Neb. "The carpet feels softer and fluffier." She also has praise for the Kirby salesmen who recently sold her the machine for \$1,440, saying they "were very relaxed and didn't push me at all."

Berkshire doesn't provide Kirby sales numbers, but Gene Windfeldt, who was CEO of Kirby from 1988 to 1997 and is now a private businessman, estimates that Kirby distributors sell about \$1.1 billion of vacuum cleaners each year. Mr. Windfeldt says Kirby sells the machines to distributors for about one-third of the ultimate price to consumers. After buying the machines from Kirby, distributors are free set their own retail prices.

While declining to break out Kirby results, Berkshire said in its 1997 annual report that its home-cleaning-systems business segment, which includes Kirby and two smaller businesses, had sales of \$253.5 million. Operating profits for the business were a healthy \$66.5 million.

The Kirby complaints often involve older customers who lack the will to stand up to grueling sales pitches. One evening in May 1996, Stephen and Wilma Tucker were sitting down to dinner when three Kirby salesmen showed up at their Springfield, Vt., home and spent five hours, despite protests from the 60-year-old Mr. Tucker that he was disabled, unemployed and incapable of buying so expensive a vacuum cleaner. One salesman even helped himself to some fried chicken, the Tuckers say.

Finally, "more or less just to get them out of there, we agreed to it," Mr. Tucker says.

The Kirby distributor later agreed to cancel the sale, after receiving an inquiry from Vermont consumer-protection authorities on behalf of the Tuckers. Jamie Hood, owner of the distributorship, says he didn't own it at the time the Tuckers were sold their machine, and doesn't know the whereabouts of the man who did.

'Golden-Ager Policy'

Mr. Windfeldt says Kirby a decade ago adopted a "Golden-Ager policy," requiring distributors to agree to cancel sales to customers over the age of 65, up to a year after the transaction, with no questions asked.

But the Golden-Ager policy didn't help Thorhild Christopher. Ms. Christopher, who died in December 1996 at age 76, lived alone in a mobile home in Hernando, Fla., scraping by on about \$1,000 a month in Social Security payments and money from her late husband's U.S. Coast Guard pension. When she died, she owned two Kirby vacuum cleaners, the last one sold to her in September 1995 by a Kirby distributor in Spring Hill, Fla.

Ms. Christopher's niece, Gail Bosworth, says her aunt was suffering from Alzheimer's disease by the time she paid \$1,747.94 for the second Kirby. After discovering the two machines in the spring of 1996, Ms. Bosworth contacted both the distributor and Kirby and asked to have the sale canceled. Kirby referred the complaint back to the distributor, who refused to cancel the sale, even though less than a year had elapsed since the transaction. Gerald Yoerg, the Spring Hill distributor,

says he was unaware of the Golden-Ager policy in 1996. Kirby says it lets distributors resolve disputes as they see fit. Ms. Bosworth never got the money back.

High Financing

About 70% of Kirbys are financed through distributors, with 20%-plus interest rates driving the total cost well above \$2,000. In the Southeast, some distributors for a while were financing sales on credit cards issued expressly to fund the Kirby, a practice that prompted a class-action lawsuit charging a violation of truth-in-lending laws. Typically, equipment purchases are financed through installment loans that require more disclosure than open-ended credit-card financing. The suit, filed in state court in Perry County, Ala., is still pending. Kirby declines to discuss it.

In a Vermont case, a pair of salesmen last year concocted a creative trade-in in lieu of a loan. After Jean Taran, 49, a disabled woman, said she didn't have \$1,495, the salesmen pocketed the \$800 she had in the house from her recently cashed income-tax refund check, grabbed her old vacuum cleaner and a new recliner she had just won in a contest, and drove off in their pickup, she says. It took the help of the state consumer-protection agency for her to cancel the deal and reclaim her money and goods. The distributor in that case didn't return repeated phone calls seeking comment.

Door-to-door has been the company's sales method ever since James Kirby invented the "Vacuette" around 1920. At that time, Kirby salesmen stood among many others at the American door. Retail stores were few, and in-home demonstrations proved an effective means of introducing consumers to an array of new household appliances. But as retail outlets proliferated and consumers became familiar with devices such as vacuum cleaners, most appliance manufacturers disbanded direct-sales forces and started selling in stores.

Bad Reputation

By that time, in-home sales had gotten a bad reputation. Many states adopted special laws giving consumers the right to cancel an in-home sale within three days and get a full refund. In 1974, the Federal Trade Commission followed suit. The problem, says Stephen Brobeck, executive director of the Consumer Federation of America, is that "a skillful salesperson will make the consumer believe they will have to make a purchase in order for the salesperson to leave the home."

Long after rivals such as Maytag

Corp.'s Hoover unit abandoned direct sales, Kirby has stayed with the strategy. That is because in-home demonstrations are the only way to show people just how superior the Kirby really is, says Scott Fetzer's Mr. Schey. "People wouldn't recognize the value just looking at it on a department-store floor," he says.

To Kirby's advantage, in-home sales pitches don't allow the consumer much room for comparison shopping. In appliance stores, customers can weigh the price of Eureka's against Bissells, or try out the \$350 Hoover that Consumer Reports last year ranked first in quality, ahead of No. 2-ranked Kirby. But in their own living rooms, people submitting to Kirby sales pitches face pressure to make a decision on the spot.

To see Kirby distributors in action, just follow Duane Linder on a sales call. Mr. Linder, 41, has been selling Kirbys for 22 years, ever since he left the Minnesota farm where he grew up poor. With 50 employees, he guesses he is in the top 25% of Kirby's more than 1,000 world-wide distributors.

'Is Your Carpet Home?'

"I've got an appointment to shampoo your carpet," Mr. Linder announces jovially as he arrives at the small suburban Cleveland home of Kurt and Katie Horvath, a middle-aged couple who have accepted a telemarketer's offer of a free carpet shampoo. "Is your carpet home?"

Both the Horvaths suffered brain injuries in accidents years ago, so their responses are a bit slow. But it is soon clear to Mr. Horvath that Mr. Linder isn't here merely to shampoo the carpet. "This isn't

so much a service," Mr. Horvath asks, as a sales call in which "you can buy one?"

Three hours later, Mr. Linder isn't finished. He has vacuumed and shampooed the living-room carpet, pausing frequently to pull out attachments for cleaning upholstery and removing dirt from crevices. Mr. Linder extols the Kirby's aluminum base, its powerful motor, even its high- and low-beam headlight. He displays for the Horvaths mounds of dirt the Kirby sucked from their carpet, to drive home the inadequacy of their current cleaner.

Sweating in his dress shirt and tie, Mr. Linder periodically asks the Horvaths if they would like to own a Kirby. He acknowledges that the sticker price of \$1,570 is steep. But he offers a financing plan requiring no down payment and monthly payments of "\$30 or \$40" a month. He tells them the Kirby is "the best you can buy . . . designed to last you the rest of your life."

But the Horvaths, unemployed and weighed down by credit-card debt, can't afford the Porsche of vacuum cleaners.

Still smiling, Mr. Linder packs up the Kirby and leaves, but not before securing the names and phone numbers of three of the Horvaths' friends for future sales calls.

Since Berkshire Hathaway bought Kirby parent Scott Fetzer for \$315 million in 1986, Berkshire's Mr. Buffett—who is known for preaching the importance of managing with integrity—has said little about the company, outside of the occasional praise for its earnings growth.

Scott Fetzer's Mr. Schey says Mr. Buffett's only instruction to him was: "I just want you to run an honest business."

to Jack Krupar

SPECIAL ORDERS

Date Order Signed	Respondent	Violation	Penalty	Other Info
11-25-97	Benson's	Price Cf'n Adv'g violations	Special Order – must disclose basis for price cf'n in ads; must keep records	
1-13-98	Shelf & Dining Furn.	Price Cf'n Adv'g violations	Special Order req'g disclosure of basis for price cf'n; keep records for dept revu	
7-16-98	HomeConcept	Price Cf'n Adv'g violations	Special Order req'g disclosure of basis for price cf'n; keep records for dept revu	
2-18-99	Texas Sew Wares	Price Cf'n Adv'g & Door-to-door sales violations	Special Order re: chgs to sales practices; keep adeq quantities of adv'd prods. on hand;	

CIVIL FORFEITURES

Date Order Signed	Respondent	Violation	Penalty	Where Filed	Other Info
2-11-99	P&B Sales (Benson's)	viol'n of Spec. Order on <u>price cf'ns</u>	Civ. Forf. + costs total = \$3,201	Dane Co. Circ. Court	based on Spec. Order signed 11/25/97
3-9-99	Michaels (Arts & Crafts Stores)	<u>scanning and price comparison viols.</u> 3 overcharges; 3 price cf'n viols.	Civil Forf. + costs Total = \$4,933 (\$3,000 for price cf'n viols. + \$900 for scanning viols. + \$1,033 costs)	Eau Claire Co. Circuit Court	
8-19-99	Shelf & Dining	violation of Special Order (<u>price cf'n</u>)	Civil Forf. + costs Total = \$1,316 (\$1,000 civ. forf. + \$230.00 costs)	Brown Co. Circuit Court	based on Spec. Order signed 1/13/98

How the Direct Marketing Rule helps you

"You've won a wonderful vacation!"

"We'll give you this product half price if you let us use your name as one of our satisfied customers!"

"I'm taking a survey."

"I'm in a contest and you can help me!"

"You need credit card protection!"

"I'm calling from your credit card company to confirm information."

Misleading come-ons like these are often used by direct marketers to persuade consumers to buy things. And the problem is getting worse. Telemarketing complaints are now in the top 10 list of complaints after being 43rd in 1996 and 29th in 1997.

Fortunately, Wisconsin has a direct marketing rule that took effect August 1, 1999, to protect consumers in telephone, e-mail, fax, mail, and door to door transactions (including sales made in motel and hotel rooms and other places away from the seller's place of business).

Before direct marketers say anything other than a short greeting, they must disclose who they are, who they are calling on behalf of, and what they are selling.

Prior to finalizing the sale, and before taking a credit card number or before taking any money, they must disclose the cost, quantity, conditions, refund policy and the name and address of the principal company.

A direct marketer can't bill your credit card without your verifiable authorization and the marketers

must keep records of transactions for at least two years.

This rule also prohibits:

- 1 • Threatening, intimidating or harassing consumers.
- 2 • Failing to leave a consumer's premises upon request.
- 3 • Calling consumers who previously said they do not wish to receive telephone solicitations from that seller.
- 4 • Calling consumers before 8 a.m. or after 9 p.m. without their prior consent.
- 5 • Requesting or receiving payment for loan finder services before the consumer

actually receives the promised loan. This is aimed at companies that promise loans, charge a fee, and disappear without producing the loan.

- Requesting payment for helping consumers recover money lost in a prior home solicitation transaction until at least seven days after the consumer recovers the money. This is aimed at so called "recovery room" schemes, which prey on previously victimized consumers.

In addition, the law prohibits solicitors from requiring a purchase as a condition of entry into a prize promotion and requires solicitors to verify the retail value of prizes and disclose the odds of winning.

Three-day cooling-off period

The new rule adds enforcement penalties to another Wisconsin law which provides a "cooling-off" period allowing you three business days to think about and cancel a direct marketing sale if you wish. **This applies to credit transactions and cash sales of \$25 or more that occur away from the seller's regular place of business.** The three-day cooling-off period doesn't cover real estate, auctions, items used for agricultural purposes or insurance—even if sold door to door. Your three-day right to cancel starts after the seller has provided you the proper written notice of your right to cancel.

Canceling the contract

In a direct marketing transaction, you must be notified of your three-day right to cancel. If you do choose to cancel, send your cancellation by certified mail, so you will have written proof that your cancellation notice was sent on time. Your money must be returned to you within 10 days. If the seller does not pick-up the product in 20 days, you may keep it.

Additional protection

The rule also provides protection when a telephone caller bills your credit card during the call. When you are billed this way, the telemarketer must tell you that you have seven days to cancel after delivery. And at delivery, the paperwork you receive must again notify you of your seven-day right to cancel.

Unauthorized payment

Under this rule, the direct marketer must obtain your authorization (either written or oral) before asking for or accepting payment, a credit card number or submitting a check.

Unordered goods

What about stuff you receive in the mail that you didn't order? Under another state law, unsolicited merchandise is considered a gift and may be kept without any obligation to the

sender. Don't be pressured to pay companies who make a practice of mailing unordered merchandise on a "trial basis," followed by phony invoices. **But remember, when you order items like books or records under what may be referred to as a "continuity plan" or a "negative option sales plan," the merchandise will be sent to you automatically under obligation to pay unless you notify the seller in advance you don't want it.**

If you have a problem

Direct marketers who violate the rule may receive a civil forfeiture of up to \$10,000, or a fine of up to \$5,000 and be imprisoned for up to a year.

In addition, Wisconsin law also provides you with a private remedy: If you sue and win, you get twice the amount of any money lost, plus courts costs and attorney's fee. Contact your personal attorney to discuss the application of this private remedy.

Should you have reason to believe a seller has violated the law, file a complaint with the Bureau of Consumer Protection:

(800) 422 7128

FAX: (608) 224-4939

TTY: (608) 224-5058

E-MAIL:

datcpHotline@wheel.datcp.state.wi.us

WEBSITE:

<http://datcp.state.wi.us/>

Chapter ATCP 127

DIRECT MARKETING

Subchapter I—Definitions

ATCP 127.01 Definitions.

Subchapter II—Telephone Solicitations

ATCP 127.02 Definitions.
 ATCP 127.04 Opening disclosures.
 ATCP 127.06 Disclosures prior to sale.
 ATCP 127.08 Prize promotions.
 ATCP 127.10 Unauthorized payment.
 ATCP 127.12 Credit card laundering.
 ATCP 127.14 Misrepresentations.
 ATCP 127.16 Prohibited practices.
 ATCP 127.18 Recordkeeping.
 ATCP 127.20 Assisting violations.

Subchapter III—Mail Solicitations

ATCP 127.30 Definitions.
 ATCP 127.32 Opening disclosures.
 ATCP 127.34 Disclosures prior to sale.
 ATCP 127.36 Prize promotions.

ATCP 127.38 Unauthorized payment.
 ATCP 127.40 Delivering ordered goods.
 ATCP 127.42 Credit card laundering.
 ATCP 127.44 Misrepresentations.
 ATCP 127.46 Prohibited practices.
 ATCP 127.48 Recordkeeping.
 ATCP 127.50 Assisting violations.

Subchapter IV—Face-to-face Solicitations

ATCP 127.60 Definitions.
 ATCP 127.62 Opening disclosures.
 ATCP 127.64 Disclosures prior to sale.
 ATCP 127.66 Prize promotions.
 ATCP 127.68 Unauthorized payment.
 ATCP 127.70 Credit card laundering.
 ATCP 127.72 Credit card laundering.
 ATCP 127.74 Prohibited practices.
 ATCP 127.76 Recordkeeping.
 ATCP 127.78 Assisting violations.

Note: Chapter Ag 18 was renumbered chapter ATCP 42 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 42 as it existed on September 30, 1997 was repealed and a new chapter ATCP 42 was created effective October 1, 1997.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6) and s. 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

Note: Chapter ATCP 127 as it existed on July 31, 1999 was repealed and a new chapter ATCP 127 was created effective August 1, 1999.

Subchapter I—Definitions

ATCP 127.01 Definitions. In this chapter:

- (1) "Acquirer" means a financial institution or other person who, under a license or authorization granted by a credit card system operator, authorizes merchants to honor credit cards and submit credit card sales drafts for payment through the credit card system.
- (2) "Consumer" means an individual to whom a seller advertises, offers to sell, sells or promotes the sale of consumer goods or services. "Consumer" does not include an individual who purchases consumer goods or services in a business capacity, or for resale to others.
- (3) "Consumer goods or services" means goods or services typically used for personal, family or household purposes. "Consumer goods or services" includes personal investment opportunities, personal business opportunities and personal training courses but does not include any of the following:
 - (a) Investment opportunities, business opportunities and training courses when offered to a business, rather than a consumer.
 - (b) Real estate, other than cemetery lots or timeshares as defined in s. 707.02 (24), Stats.
 - (c) Pay-per-call services sold in compliance with s. 196.208, Stats.
 - (d) A newspaper subscription that the consumer may cancel at any time without penalty.
- (4) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (5) "Credit card" means any card or other device which entitles an authorized holder to obtain goods, services or other things of value on credit.

(6) "Credit card sales draft" means any record or evidence of a credit card transaction.

(7) "Credit card system" means the system through which credit card transactions, using credit cards issued or licensed by the credit card system operator, are processed for payment.

(8) "Credit card system operator" means a person who operates a credit card system, or who licenses others to operate a credit card system.

(9) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(10) "Disclose" means to make a clear and conspicuous statement which is reasonably designed to be noticed and readily understood by the consumer.

(11) "Individual" means a natural person.

(12) "Investment opportunity" means anything, tangible or intangible, that is offered, sold or traded based wholly or in part on representations, either express or implied, about past, present or future income, profit or appreciation. "Investment opportunity" does not include a security sold in compliance with ch. 551, Stats., or a franchise investment sold in compliance with ch. 553, Stats.

(13) "Mass advertisement" means a solicitation which a seller publishes or makes accessible to an unrestricted mass audience. "Mass advertisement" includes a solicitation published in a newspaper, magazine, radio broadcast, television broadcast or internet home page. "Mass advertisement" does not include a solicitation which a seller addresses to an individual consumer, to a consumer's residence, or to a gathering of consumers invited by means of telephone, mail or face-to-face solicitations under this chapter.

(14) "Merchant" means a person who is authorized, under a written agreement with an acquirer, to honor credit cards and submit credit card sales drafts to the acquirer for payment and processing through the credit card system.

(15) "Person" means an individual, corporation, partnership, cooperative association, limited liability company, trust, or other organization or entity.

(16) "Prize promotion" means any of the following:

- (a) A sweepstakes or other game of chance.
- (b) A seller's express or implied representation that a consumer has won, has been selected to receive, may be eligible to receive, or may have a chance to receive a prize.

(c) Any communication from a seller to a consumer in which the seller is required to give the consumer a prize notice under s. 100.171, Stats.

(17) "Purchase" means to buy or lease consumer goods or services.

(18) "Purchase contract" means an agreement to purchase consumer goods or services, regardless of whether that agreement is subject to a later right of cancellation. "Purchase contract" does not include the following agreements, but does include a purchase commitment which arises under any of those agreements as a result of the consumer's subsequent action or omission:

(a) An agreement authorizing the trial delivery of consumer goods or services which the consumer has not yet agreed to purchase, provided that the agreement includes no minimum purchase requirement.

(b) A negative option plan that is covered by and complies with 16 CFR 425.

Note: Some direct marketers offer trial delivery plans in which the consumer agrees to receive trial deliveries of goods which the consumer has not yet agreed to purchase. Under these agreements, a consumer is typically free to reject or return any trial delivery without purchasing that delivery. But under the trial delivery agreement, the seller may bill the consumer for the delivered goods if the consumer fails to reject or return the delivery within a specified time. Although the consumer's initial agreement to receive trial deliveries is not itself a "purchase contract" (unless it includes a minimum purchase commitment), the consumer effectively enters into a "purchase contract" for a particular delivery when the consumer fails to return or reject that delivery according to the trial delivery agreement.

(19) "Sale" means the passing of an ownership or leasehold interest in consumer goods or services to a consumer for a price.

(20) "Sell" means to engage in the sale of consumer goods or services, or to accept payment pursuant to a purported sale of consumer goods or services.

(21) "Seller" means a person, other than a bank, savings bank, savings and loan association, credit union, insurance company, public utility or telecommunications carrier engaged in exempt activities under s. 93.01 (1m), Stats., who is engaged in the business of selling, offering to sell, or promoting the sale of consumer goods or services to consumers. "Seller" includes all of the following:

(a) A person who accepts payment for a purported sale of consumer goods or services to a consumer.

(b) An employee or agent of a seller.

(c) A person who makes home solicitations under arrangement with a seller.

Note: For example, a telemarketing firm that makes telephone solicitations on behalf of a "seller" is also a "seller" for purposes of this chapter. Individual employees of the telemarketing firm are also "sellers," for purposes of this chapter, when making telephone solicitations to consumers.

(22) "Solicitation" means a communication received by a consumer at a place other than the seller's regular place of business, in which a seller offers or promotes the sale of consumer goods or services to a consumer, or which is part of a seller's plan or scheme to sell consumer goods or services to a consumer. "Solicitation" does not include any of the following:

(a) A mass advertisement.

(b) A telephone, mail or electronic communication initiated by the consumer, unless prompted by the seller's prior solicitation to the consumer.

Note: Paragraph (b) does not except a face-to-face communication.

(c) A written communication that invites a consumer to the seller's regular place of business.

(d) A communication initiated by a consumer at an established public market, unless that communication was prompted by the seller's prior solicitation to the consumer.

Note: For example, a routine transaction at a farmers market is not a "solicitation" under this chapter, even though it occurs at a place other than the seller's "regular place of business."

(e) The delivery, to a consumer, of goods or services sold to the consumer in a transaction other than a telephone, mail or face-to-face transaction under this chapter.

Note: A "solicitation" under sub. (22) is covered by this rule even though it is not the first communication between the seller and the consumer.

(23) "Written" or "in writing," as applied to a seller's disclosure to a consumer, means legibly printed on paper or another tangible nonelectronic medium that is delivered to the consumer, or legibly printed in an electronic form that the consumer can electronically retrieve, store or print for future reference.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

Subchapter II—Telephone Solicitations

ATCP 127.02 Definitions. In this subchapter:

(1) "Telephone solicitation" means a solicitation, under s. ATCP 127.01 (22), that a seller makes to a consumer by telephone, videoconferencing, or other interactive electronic voice communications.

(2) "Telephone transaction" means any of the following:

(a) A telephone solicitation.

(b) Purchase contracts and other dealings that result from a telephone solicitation.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.04 Opening disclosures. (1) DISCLOSURES REQUIRED. A seller making a telephone solicitation shall disclose all of the following to the consumer before asking any questions or making any statements other than an initial greeting:

(a) The name of the principal seller.

Note: For example, a telemarketing firm making solicitations on behalf of another company must disclose the name of the company for which it is acting as agent. The telemarketing firm may also disclose its own identity, but is not required to do so.

(b) The name of the individual making the telephone solicitation.

Note: For example, if Mary Smith makes telephone solicitations for the ABC Company, Smith must disclose her individual name. Under sub. (3) (b), Smith may use a fictitious name which uniquely identifies her if the ABC Company keeps a record of that uniquely identifying fictitious name.

(c) That the seller is offering or promoting the sale of consumer goods or services.

(d) The nature of the goods or services which the seller is offering or promoting.

(2) FICTITIOUS NAMES. (a) A seller may not use any fictitious name under sub. (1) (a) or s. ATCP 127.06 (1) (d), except that a seller may use a trade name if all of the following apply:

1. The seller is widely known by and consistently does business under that name.

2. The name does not have the tendency or capacity to confuse or mislead the consumer as to the seller's true identity.

(b) An individual making a telephone solicitation as an employee or agent of a seller may disclose a fictitious individual name under sub. (1) (b) if all of the following apply:

1. No other individual making telephone solicitations for the same seller uses the same fictitious name.

2. The seller for whom the individual is making the telephone solicitation keeps records under s. ATCP 127.18 (1) (d) which correlate the fictitious name with the actual name and address of the individual seller.

Note: Subsection (2) (b) balances the needs of consumers against the privacy interests of individuals employed to make solicitations on behalf of a seller.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.06 Disclosures prior to sale. (1) DISCLOSURES REQUIRED. In a telephone transaction, a seller shall disclose all of the following to a consumer before the consumer enters into any purchase contract, and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

(a) The nature and quantity of consumer goods or services included in the sale.

(b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

Note: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

(d) The name of the principal seller.

Note: For example, a telemarketing firm making solicitations on behalf of another company must disclose the name of the company for which it is acting as agent.

(e) At least one of the following:

1. The principal seller's mailing address.
2. A local or toll-free telephone number, answered during normal business hours, at which the consumer may contact the principal seller and obtain the principal seller's address.

(f) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.
2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) FORM OF DISCLOSURE. A seller shall make the disclosures under sub. (1) in writing, except that a seller may make the disclosures orally if at least one of the following applies:

(a) The seller confirms the disclosures in writing at or before the time the seller first delivers the consumer goods or services to the consumer, and before the seller submits any credit card sales draft for payment or takes any other payment from the consumer.

(b) The seller does both of the following in writing at or before the time the seller first delivers consumer goods or services to the customer:

1. Confirms the oral disclosures.
2. Discloses, in substance, that the consumer may cancel the sale after the first delivery and obtain a full refund. The seller may specify a cancellation deadline, provided that the deadline is at least 7 days after the first delivery.

(3) LANGUAGE OTHER THAN ENGLISH. (a) If the primary language used in a telephone solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

(b) If the primary language used in a telephone transaction is not English, every written agreement signed by the consumer shall be in English and the language primarily used.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.08 Prize promotions. (1) **ILLEGAL LOTTERIES.** In a telephone transaction, no seller may use a prize promotion that violates s. 945.02 (3), Stats.

(2) **PRIZE NOTICE; REQUIREMENTS.** In a telephone transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) **PRIZE PROMOTIONS; MISREPRESENTATIONS.** No seller may misrepresent the material terms of a prize promotion used in a telephone transaction.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.10 Unauthorized payment. No seller in a telephone transaction may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization. The following authorizations are considered verifiable:

(1) An express written authorization. Express written authorization may include the consumer's signature on the check, draft or negotiable instrument.

(2) An express oral authorization if all of the following apply:

(a) The oral authorization is tape recorded and made available upon request to the consumer's bank.

(b) The oral authorization clearly authorizes payment for the goods and services offered to the consumer.

(c) The oral authorization clearly indicates that the consumer received information specifying all of the following:

1. The date and amount of the check, draft or instrument.
2. The payor's name.
3. The number of payments, if more than one.
4. A telephone number for consumer inquiries that is answered during normal business hours.
5. The date of the consumer's oral authorization.

(3) An authorization which the seller confirms in writing, provided that all of the following apply:

(a) The seller sends the written confirmation to the consumer before the seller submits the check, draft or other negotiable instrument for payment.

(b) The written confirmation includes all of the following information:

1. The date and amount of the check, draft or instrument.
2. The payor's name.
3. The number of payments, if more than one.
4. A telephone number for consumer inquiries that is answered during normal business hours.
5. The date of the consumer's authorization.
6. A procedure by which the consumer can obtain a refund from the seller if the written confirmation is inaccurate.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.12 Credit card laundering. (1) No merchant may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a telephone transaction that is not a sale by that merchant to the holder of that credit card.

(2) No person may employ, solicit or cause a merchant to violate sub. (1).

(3) No seller engaged in a telephone transaction may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed or authorized by the credit card system operator.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.14 Misrepresentations. No seller may do any of the following, directly or by implication, in a telephone transaction:

(1) Misrepresent a seller's identity, affiliation, location or characteristics.

(2) Misrepresent the nature, purpose or intended length of a solicitation.

(3) Misrepresent the nature or terms of a telephone transaction, or any document related to that transaction.

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

(5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.

(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

(9) Misrepresent that a seller is affiliated with, or endorsed by, any government or 3rd-party organization.

(10) Represent that the seller has specially selected the consumer unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the seller makes the representation. The seller may not misrepresent that basis.

(11) Represent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes, unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the representation is made. The seller may not misrepresent that basis.

(12) Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:

(a) The seller first makes all of the opening disclosures under s. ATCP 127.04.

(b) The seller concurrently discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.

(c) The seller concurrently discloses that the seller is attempting to sell goods or services, or to obtain information to identify sales prospects, if that is the case.

(13) Misrepresent any material aspect of a personal investment opportunity offered to the consumer, including any aspect such as risk, liquidity, earnings potential or profitability.

(14) Fail to disclose, in connection with every purported offer of free goods or services in a telephone transaction, any costs which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services. This does not prohibit a combination offer that is covered by, and complies with, s. 100.18 (2), Stats.

(15) Make any false, deceptive or misleading representation to a consumer.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.16 Prohibited practices. No seller may do any of the following in a telephone transaction:

(1) Threaten, intimidate or harass a consumer.

(2) Repeatedly or continuously cause a consumer's telephone to ring, or repeatedly or continuously engage a consumer in telephone conversation, if the seller knows or reasonably should know that those actions will have the effect of annoying, abusing or harassing the consumer.

(3) Initiate a telephone solicitation to a consumer before 8:00 AM or after 9:00 PM without the prior consent of the consumer. Time, for purposes of this section, is the local time at the place where the consumer resides.

(4) Initiate a telephone solicitation to a consumer who has previously stated that he or she does not wish to receive telephone solicitations from the seller for whom the solicitation is being made. A seller does not violate this subsection if all of the following apply:

(a) The seller has established and implemented clear written procedures that are reasonably designed to prevent violations.

(b) The seller has trained its personnel in the procedures under par. (a).

(c) The seller maintains a recorded list of persons who have stated that they do not wish to be called by the seller for whom solicitations are being made.

(d) The repeat call is the result of a good faith error, and is not the result of an intentional or systematic disregard of the prohibition under this subsection.

(5) Request or receive payment for seeking or arranging a loan or extension of credit until the consumer actually receives that loan or extension of credit, if the seller has represented that efforts to obtain a loan or extension of credit would likely be successful.

(6) Fail to do either of the following if the transaction qualifies as a consumer approval transaction under s. 423.201, Stats., and is not subject to s. 423.202 (4), Stats.:

(a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

(b) Honor the consumer's right to cancel under s. 423.202, Stats.

Note: Under s. 423.202, Stats., a consumer may cancel a consumer approval transaction until midnight of the 3rd business day after the seller gives the consumer a required written notice of cancellation rights under s. 423.203, Stats. The consumer's cancellation rights under s. 423.202, Stats., are in addition to any other cancellation rights which the consumer may have under contract law.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.18 Recordkeeping. (1) RECORDS REQUIRED. A seller engaged in telephone transactions shall keep all of the following records related to those transactions:

(a) Copies of all telephone solicitation scripts, and all sales and promotional materials used in telephone transactions. This paragraph does not require a seller to keep duplicate copies of substantially identical documents.

(b) The following records related to each prize which the seller offers or awards to consumers if the seller represents to any consumer, directly or by implication, that the prize has a value of \$25 or more:

1. An identification of the prize.

2. The name and last known address of every consumer who received the prize.

(c) The name and last known address of every consumer who purchased goods or services in a telephone transaction with the seller, the date on which the consumer purchased those goods or services, the date on which the seller provided those goods or services to the consumer, and the amount which the consumer paid for those goods or services.

(d) The following information related to every individual who has made telephone solicitations as the seller's employee or agent:

1. The individual's name, last known address and telephone number.

2. Every fictitious name which the individual has used when making telephone solicitations. No seller may permit more than one employee or contract agent to use the same fictitious name.

3. The individual's job title or titles.

(e) All verifiable authorizations required under s. ATCP 127.10.

(2) KEEPING RECORDS. (a) A seller shall keep each record required under sub. (1) for at least 2 years after the seller creates that record.

Note: A seller may keep records required under sub. (1) in the form, manner, format and place in which the seller would normally keep those records in the ordinary course of business.

(b) The department, pursuant to an investigation of possible violations of this subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably relevant to that investigation. The seller shall provide the requested copies within a reasonable time specified by the department.

Note: See ss. 93.15 and 93.16, Stats.

(c) An agent engaged in telephone transactions on behalf of a principal seller need not keep duplicate copies of records which that principal seller keeps according to this section. A principal seller who contracts to have an agent keep records for the principal seller need not keep duplicate copies of records which that agent keeps according to that contract and this section. An employee need not keep duplicate copies of records that his or her employer keeps according to this section.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.20 Assisting violations. No person may knowingly assist any seller to engage in any activity or practice in violation of this subchapter.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

Subchapter III—Mail Solicitations

ATCP 127.30 Definitions. In this subchapter:

(1) "Catalog" means a multi-page written publication which a seller publishes at least annually, and which contains all of the following:

- (a) The seller's name and address.
- (b) Written or graphic descriptions of goods or services which the seller offers for sale.
- (c) The prices at which the goods or services under par. (b) are offered for sale.

(2) "Mail solicitation" means a written or graphic solicitation, under s. ATCP 127.01 (22), that a seller delivers by mail or other means to a consumer's residence or to a consumer who is individually identified in the solicitation. "Mail solicitation" includes a telefax or electronic mail solicitation. "Mail solicitation" does not include a catalog, a radio or television broadcast, an internet home page, a telephone solicitation under subch. II or a face-to-face solicitation under subch. IV.

(3) "Mail transaction" means any of the following:

- (a) A mail solicitation.
- (b) Purchase contracts and other dealings that result from a mail solicitation.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.32 Opening disclosures. (1) DISCLOSURES REQUIRED. A mail solicitation shall disclose all of the following in writing:

(a) The name of the principal seller.

Note: For example, a firm making mail solicitations on behalf of another company must disclose the name of the company for which it is acting as agent. The firm may also disclose its own identity, but is not required to do so.

(b) That the seller is offering or promoting the sale of consumer goods or services.

(c) The nature of the goods or services which the seller is offering or promoting.

(2) **FICTITIOUS NAMES.** A seller may not use any fictitious name under sub. (1) (a) or s. ATCP 127.34 (1) (d), except that a seller may use a trade name if all of the following apply:

(a) The seller is widely known by and consistently does business under that name.

(b) The name does not have the tendency or capacity to confuse or mislead the consumer as to the seller's true identity.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.34 Disclosures prior to sale. (1) DISCLOSURES REQUIRED. In a mail transaction, a seller shall disclose all of the following to a consumer, in writing, before the consumer enters into a purchase contract and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

(a) The nature and quantity of consumer goods or services included in the sale.

(b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

Note: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

(d) The name and mailing address of the principal seller.

(e) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.

2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) **LANGUAGE OTHER THAN ENGLISH.** If the primary language used in a mail solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.36 Prize promotions. (1) ILLEGAL LOTTERIES. In a mail transaction, no seller may use a prize promotion that violates s. 945.02 (3), Stats.

(2) **PRIZE NOTICE REQUIREMENTS.** In a mail transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) **PRIZE PROMOTIONS; MISREPRESENTATIONS.** No seller may misrepresent the material terms of a prize promotion used in a mail transaction.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.38 Unauthorized payment. No seller in a mail transaction may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization. The authorization shall comply with s. ATCP 127.10.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.40 Delivering ordered goods. A seller in a mail transaction shall comply with s. 100.174, Stats.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.42 Credit card laundering. (1) No merchant may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a mail transaction that is not a sale by that merchant to the holder of that credit card.

(2) No person may employ, solicit or cause a merchant to violate sub. (1).

(3) No seller engaged in a mail transaction may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed or authorized by the credit card system operator.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.44 Misrepresentations. No seller may do any of the following, directly or by implication, in a mail transaction:

(1) Misrepresent a seller's identity, affiliation, location or characteristics.

(2) Misrepresent the nature or purpose of a mail solicitation.

(3) Misrepresent the nature or terms of a mail transaction, or any document related to that transaction.

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

(5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.

(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

(9) Misrepresent that a seller is affiliated with, or endorsed by, any government or 3rd-party organization.

(10) Misrepresent that the seller has specially selected the consumer.

(11) Misrepresent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is

making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes.

(12) Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:

(a) The seller first makes all of the opening disclosures under s. ATCP 127.32.

(b) The seller concurrently discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.

(c) The seller concurrently discloses that the seller is attempting to sell goods or services, or to obtain information to identify sales prospects, if that is the case.

(13) Misrepresent any material aspect of a personal investment opportunity offered to the consumer, including any aspect such as risk, liquidity, earnings potential or profitability.

(14) Fail to disclose, in connection with every purported offer of free goods or services in a mail transaction, any costs which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services. This does not prohibit a combination offer that is covered by, and complies with, s. 100.18 (2), Stats.

(15) Make any false, deceptive or misleading representation to a consumer.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.46 Prohibited practices. No seller may do any of the following in a mail transaction:

(1) Threaten, intimidate or harass a consumer.

(2) Request or receive payment for seeking or arranging a loan or extension of credit until the consumer actually receives that loan or extension of credit, if the seller has represented that efforts to obtain a loan or extension of credit would likely be successful.

(3) Fail to do either of the following if the transaction qualifies as a consumer approval transaction under s. 423.201, Stats., and is not subject to s. 423.202 (4), Stats.:

(a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

(b) Honor the consumer's right to cancel under s. 423.202, Stats.

Note: Under s. 423.202, Stats., a consumer may cancel a consumer approval transaction until midnight of the 3rd business day after the seller gives the consumer a required written notice of cancellation rights under s. 423.203, Stats. The consumer's cancellation rights under s. 423.202, Stats., are in addition to any other cancellation rights which the consumer may have under contract law.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.48 Recordkeeping. (1) RECORDS REQUIRED. A seller engaged in mail transactions shall keep all of the following records related to those transactions:

(a) Copies of all mail solicitations and other documents provided to consumers in mail transactions. This paragraph does not require a seller to keep duplicate copies of substantially identical documents.

(b) The following records related to each prize which the seller offers or awards to consumers if the seller represents to any consumer, directly or by implication, that the prize has a value of \$25 or more:

1. An identification of the prize.

2. The name and last known address of every consumer who received the prize.

(c) The name and last known address of every consumer who purchased goods or services in a mail transaction with the seller, the date on which the consumer purchased those goods or services, the date on which the seller provided those goods or services to the consumer, and the amount which the consumer paid for those goods or services.

(d) Documentation that the seller has systems and procedures which assure compliance, in the ordinary course of business, with s. 100.174, Stats.

(2) **KEEPING RECORDS.** (a) A seller shall keep each record required under sub. (1) for at least 2 years after the seller creates that record.

Note: A seller may keep records required under sub. (1) in the form, manner, format and place in which the seller would normally keep those records in the ordinary course of business.

(b) The department, pursuant to an investigation of possible violations of this subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably relevant to that investigation. The seller shall provide the requested copies within a reasonable time specified by the department.

Note: See ss. 93.15 and 93.16, Stats.

(c) An agent engaged in mail transactions on behalf of a principal seller need not keep duplicate copies of records which that principal seller keeps according to this section. A principal seller who contracts to have an agent keep records for the principal seller need not keep duplicate copies of records which that agent keeps according to that contract and this section. An employee need not keep duplicate copies of records that his or her employer keeps according to this section.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.50 Assisting violations. No person may knowingly assist any seller to engage in any activity or practice in violation of this subchapter.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

Subchapter IV—Face-to-face Solicitations

ATCP 127.60 Definitions. In this subchapter:

(1) "Face-to-face solicitation" means a solicitation, under s. ATCP 127.01 (22), that a seller makes in a face-to-face encounter with a consumer.

Note: For example, a door-to-door seller is engaged in "face-to-face solicitations."

(2) "Face-to-face transaction" means any of the following:

(a) A face-to-face solicitation.

(b) Purchase contracts and other dealings that result from a face-to-face solicitation.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.62 Opening disclosures. (1) DISCLOSURES REQUIRED. In a face-to-face solicitation, a seller shall disclose all of the following to the consumer:

(a) The name of the principal seller.

Note: For example, if Mary Smith makes door-to-door solicitations as an employee or agent of the ABC Company, Smith must disclose the name of the ABC Company.

(b) The name of the individual making the face-to-face solicitation.

Note: For example, if Mary Smith makes door-to-door solicitations for the ABC Company, she must also disclose her individual name. Under sub. (3) (b), Smith may use a fictitious name which uniquely identifies her if the ABC Company keeps a record of that uniquely identifying fictitious name.

(c) That the seller is offering or promoting the sale of consumer goods or services.

(d) The nature of the goods or services which the seller is offering or promoting.

(2) **MAKING THE DISCLOSURES.** A seller shall make the disclosures under sub. (1) before asking any questions or making any statements to a consumer, other than an initial greeting. The seller shall make the disclosures orally and in writing.

(3) **FICTITIOUS NAMES.** (a) A seller may not use any fictitious name under sub. (1) (a) or s. ATCP 127.64 (1) (d), except that a seller may use a trade name if all of the following apply:

1. The seller is widely known by and consistently does business under that name.

2. The name does not have the tendency or capacity to confuse or mislead the consumer as to the seller's true identity.

(b) An individual making face-to-face solicitations as an employee or agent of another seller may disclose a fictitious individual name under sub. (1) (b) if all of the following apply:

1. No other individual making face-to-face solicitations for the same seller uses the same fictitious name.

2. The seller for whom the individual is making the face-to-face solicitation keeps records under s. ATCP 127.76 (1) (d) that correlate the fictitious name with the actual name and address of the individual seller.

Note: Subsection (3) (b) balances the needs of consumers against the privacy interests of individuals employed to make face-to-face solicitations on behalf of a seller.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.64 Disclosures prior to sale. (1) DISCLOSURES REQUIRED. In a face-to-face transaction, a seller shall disclose all of the following to a consumer, in writing, before the consumer enters into any purchase contract and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

(a) The nature and quantity of consumer goods or services included in the sale.

(b) The total cost to purchase and receive the consumer goods or services.

(c) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any.

Note: Consumer credit disclosures under par. (c) must comply with applicable requirements under ch. 422, Stats., and federal law.

(d) The name, mailing address and telephone number of the principal seller.

Note: For example, an individual making face-to-face solicitations on behalf of the ABC company must disclose the name, address and telephone number of that company.

(e) The seller's policy related to refunds, cancellations, exchanges or repurchases if any of the following apply:

1. The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.

2. The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

(2) **COPIES OF SALES AGREEMENTS.** Whenever a consumer signs any written agreement in a face-to-face transaction, the seller shall provide the consumer with a true copy of that agreement.

(3) **LANGUAGE OTHER THAN ENGLISH.** (a) If the primary language used in a face-to-face solicitation is not English, the seller shall make the disclosures under sub. (1) in the language primarily used.

(b) If the primary language used in a face-to-face transaction is not English, every written agreement signed by the consumer shall be in English and the language primarily used.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.66 Prize promotions. (1) ILLEGAL LOTTERIES. In a face-to-face transaction, no seller may use a prize promotion that violates s. 945.02 (3), Stats.

(2) **PRIZE NOTICE; REQUIREMENTS.** In a face-to-face transaction, no seller may use a prize promotion that violates s. 100.171, Stats.

(3) **PRIZE PROMOTIONS; MISREPRESENTATIONS.** No seller may misrepresent the material terms of a prize promotion used in a face-to-face transaction.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.68 Unauthorized payment. No seller in a face-to-face transaction may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's

account without that consumer's express, written authorization. Express written authorization may include the customer's signature on the check, draft or negotiable instrument.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.70 Credit card laundering. (1) No merchant may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a face-to-face transaction that is not a sale by that merchant to the holder of that credit card.

(2) No person may employ, solicit or cause a merchant to violate sub. (1).

(3) No seller engaged in a face-to-face transaction may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed or authorized by the credit card system operator.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.72 MISREPRESENTATIONS. No seller may do any of the following, directly or by implication, in a face-to-face transaction:

(1) Misrepresent a seller's identity, affiliation, location or characteristics.

(2) Misrepresent the nature, purpose or intended length of a face-to-face solicitation.

(3) Misrepresent the nature or terms of a face-to-face transaction, or any document related to that transaction.

(4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail to disclose material costs payable by the consumer.

(5) Misrepresent the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by a seller.

(6) Misrepresent or fail to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by a seller.

(7) Misrepresent the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.

(8) Misrepresent that a seller is offering consumer goods or services free of charge or at a reduced price.

(9) Misrepresent that a seller is affiliated with, or endorsed by, any government or 3rd-party organization.

(10) Represent that the seller has specially selected the consumer unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the seller makes the representation. The seller may not misrepresent that basis.

(11) Represent that the seller is conducting a special sales promotion, is making a special offer limited to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered goods or services in a limited number of homes, unless the representation is true and the seller concurrently discloses to the consumer the specific basis on which the representation is made. The seller may not misrepresent that basis.

(12) Represent that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:

(a) The seller first makes all of the opening disclosures under s. ATCP 127.62.

(b) The seller concurrently discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.

(c) The seller concurrently discloses that the seller is attempting to sell goods or services, or to obtain information to identify sales prospects, if that is the case.

(13) Misrepresent any material aspect of a personal investment opportunity offered to the consumer, including any aspect such as risk, liquidity, earnings potential or profitability.

(14) Fail to disclose, in connection with every purported offer of free goods or services in a face-to-face transaction, any costs which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services. This does not prohibit a combination offer that is covered by, and complies with, s. 100.18 (2), Stats.

(15) Make any false, deceptive or misleading representation to a consumer.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.74 Prohibited practices. No seller may do any of the following in a face-to-face transaction:

(1) Threaten, intimidate or harass a consumer.

(2) Fail to leave a consumer's premises upon request.

(3) Request or receive payment for seeking or arranging a loan or extension of credit until the consumer actually receives that loan or extension of credit, if the seller has represented that efforts to obtain a loan or extension of credit would likely be successful.

(4) Fail to do either of the following if the transaction qualifies as a consumer approval transaction under s. 423.201, Stats., and is not subject to s. 423.202 (4), Stats.:

(a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

(b) Honor the consumer's right to cancel under s. 423.202, Stats.

Note: Under s. 423.202, Stats., a consumer may cancel a consumer approval transaction until midnight of the 3rd business day after the seller gives the consumer a required written notice of cancellation rights under s. 423.203, Stats. The consumer's cancellation rights under s. 423.202, Stats., are in addition to any other cancellation rights which the consumer may have under contract law.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.76 Recordkeeping. (1) RECORDS REQUIRED. A seller engaged in face-to-face transactions shall keep all of the following records related to those transactions:

(a) Copies of all advertising, brochures, sales scripts, seller training materials, sales and promotional materials, and documents provided to consumers in face-to-face transactions. This paragraph does not require a seller to keep duplicate copies of substantially identical documents.

(b) The following records related to each prize which the seller offers or awards to consumers if the seller represents to any consumer, directly or by implication, that the prize has a value of \$25 or more:

1. An identification of the prize.

2. The name and last known address of every consumer who received the prize.

(c) The name and last known address of every consumer who purchased goods or services in a face-to-face transaction with the seller, the date on which the consumer purchased those goods or services, the date on which the seller provided those goods or services to the consumer, and the amount which the consumer paid for those goods or services.

(d) The following information related to every individual who has made face-to-face solicitations as the seller's employee or agent:

1. The individual's name, last known address and telephone number.

2. Every fictitious name which the individual has used when making face-to-face solicitations. No seller may permit more than one employee or contract agent to use the same fictitious name.

3. The individual's job title or titles.

(e) All written authorizations required under s. ATCP 127.68.

(2) KEEPING RECORDS. (a) A seller shall keep each record required under sub. (1) for at least 2 years after the seller creates that record.

Note: A seller may keep records required under sub. (1) in the form, manner, format and place in which the seller would normally keep those records in the ordinary course of business.

(b) The department, pursuant to an investigation of possible violations of this subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably relevant to that investigation. The seller shall provide the requested copies within a reasonable time specified by the department.

Note: See ss. 93.15 and 93.16, Stats.

(c) An agent engaged in face-to-face transactions on behalf of a principal seller need not keep duplicate copies of records which that principal seller keeps according to this section. A principal seller who contracts to have an agent keep records for the principal seller need not keep duplicate copies of records which that agent keeps according to that contract and this section. An employee need not keep duplicate copies of records that his or her employer keeps according to this section.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

ATCP 127.78 Assisting violations. No person may knowingly assist any seller to engage in any activity or practice in violation of this subchapter.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

Teen charged with
killing ex-mentor,
man's mother

Page 2

TUESDAY, OCTOBER 12, 1999

WISCONSIN

Five in custody
in abductions of
Wisconsin girls

Page 6

MILWAUKEE JOURNAL SENTINEL — STATE EDITION

SECTION B



EUGENE KANE

Government budget figures are hard to figure

There are a lot of budget stories in the newspaper this time of year. This is what I think about budget stories: Don't understand them, don't trust them. The current budget hassles involving the City of Milwaukee and the State of Wisconsin are a good example. The city's budget is being held hostage by impending bills based on losses in a series of pension lawsuits that could result in

High-pressure tactics cost resort \$500,000

By Marc Jones
of the Journal Sentinel staff

Dells time-share drew 40 complaints since 1997, state says

A Wisconsin Dells time-share resort has agreed to pay more than \$500,000 in restitution and penalties for pressuring people into buying vacations and making them sit through lengthy sales pitches, state consumer protection officials said Monday.

An agreement is expected to be filed in Dane County Circuit Court today against Peppertree Resorts Ltd., which operates Peppertree at

Tamarack resort, following an investigation by state agents who posed as consumers and sat through the sales presentations.

The Wisconsin Department of Agriculture, Trade and Consumer Protection launched the investigation after getting complaints from people who said the time-share agreement they signed was a bad deal or that they were forced to sit through

long presentations from Peppertree representatives who told them they had to commit that day.

"We had 40 complaints since 1997, which is a sizable number for us against any one particular company," said Bill Oemichen, administrator of the Division of Trade and Consumer Protection.

Peppertree officials have agreed to pay \$210,000 in restitution and \$236,000 in civil

penalties. They also agreed to cancel more than \$100,000 in time-share contracts in addition to \$90,000 already canceled.

Among the allegations were that Peppertree officials:

- Represented time-shares as investments and misrepresented their value.

- Used high-pressure tactics such as offering discounts that were good only on the day of the presentation.

- Offered free vacations to induce people to visit — vacations that actually ended up costing money.

- Told people the estimated length of the sales presentation was 90 minutes, when it was often 2½ to 3 hours.

Oemichen said that time-share memberships are legal and that many people are happy with them. But in the case of Peppertree, some consumers were angry about the high-pressure sales pitches or

Please see PRESSURE page 6

One person killed in I-43 crash near Sheboygan

Pressure/Resort operator fined for tactics

From page 1

about what they claimed were hidden costs.

Randy Lloyd of Sun Prairie bought a membership in November 1997 and has paid \$9,500 so far but has only been able to spend one week at a resort in Arkansas, the only resort in the time-share company he could get into when his children were on summer vacation.

He took out a second mortgage on his house to pay \$7,000 to spend one week a year at a time-share resort for the rest of his life. But then he found out about the \$400 yearly maintenance fee and \$125 annual subscription to the program plus other costs.

"Every year, we kept on finding out more and more things that we were never told. Every year, it got more and more expensive," said Lloyd.

Stephanie Smith, communications director for Peppertree Resorts Ltd., said the company has reviewed its sales practices and made changes.

"We were unaware there was any kind of problem until we had contact with" consumer protection officials, said Smith.

"We've been in Wisconsin for more than a decade and have

spent millions and millions of dollars in development at that resort. We have over 5,500 owners. Yes, we do have some complaints and we're taking every effort to get those resolved be-

cause we want happy customers," Smith said.

Consumers who feel they may have been misled by Peppertree officials can get a complaint form by calling (800) 422-7128.

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Hwy. 100, just north of I-94

WED., Oct 13, 1999 • 2-4pm • 7-9pm
FOUR POINTS SHERATON (Formerly Grand Milwaukee Hotel)
4747 S. Howell Ave • Milwaukee
Howell & Layton Ave.

THURS., Oct 14, 1999 • 2-4pm • 7-9pm
COUNTRY INN - WAUKESHA
2810 Golf Rd. • Waukesha
I-94 Exit Hwy. T, 1st left on Golf Rd., about 1 mile down.

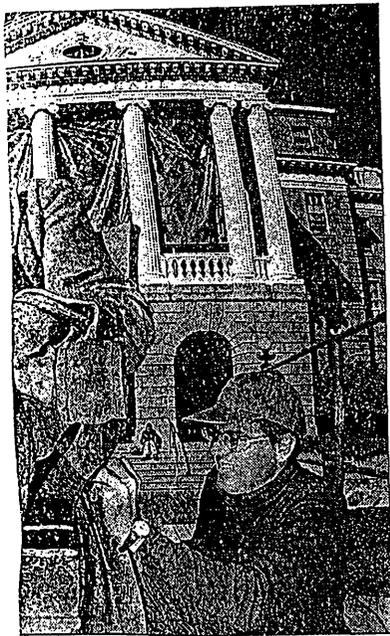
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JIM GEHRZ/STAFF PHOTOGRAPHER

...in front of Bascom Hall its first thorough cleaning by the University of Wisconsin-Madison.

Cleaning

Preparation for sesquicentennial

The cleaning began with a detergent scrub. The statue will then be hosed off, followed by chemical treatment to remove the green film that has built up over the years. The final step will be a wax job that will be repeated by the campus maintenance staff each year. The bronze statue was sculpted by Adolph Weinman and donated to the university by Thomas Brittingham in 1909. It is identical to another statue in Hodgenville, Ky., Lincoln's birthplace. "It really is part of our campus history," said Daniel Einstein, who is in charge of environmental management for the UW physical plant and is overseeing the project. "We've been watching over us for a long

Agency accuses firm of scamming students

State consumer officials say California company's practices may be illegal

9/23/99

By BRENNAN NARDI
Special to the Journal Sentinel

Madison — College-age students in Wisconsin are being lured into a get-rich-quick pyramid scheme by a California company that floods local newspapers with misleading help-wanted ads, state consumer protection officials charged Wednesday.

The company president said there was "no basis" to the allegations.

After a six-week undercover investigation into the practices of Trek Alliance, a health supplement and water filter company, officials are asking the attorney general's office to prosecute the company for violating four state consumer protection laws.

"We want to warn consumers of this type of scheme and try to prevent them from falling victim," said Bill Oemichen, administrator of the state's Trade and Consumer Protection Division.

Oemichen said college-age students are responding to what they thought were help-wanted ads placed in state newspapers. The ads implied that jobs paying up to \$1,000 per week were available, he said.

Instead of being interviewed for a job, those who respond to the ads are given a sales presentation and asked to purchase "starter kits" that cost \$400, Oemichen said. Those who sign up are encouraged to attend training seminars that could cost hundreds of dollars and to recruit their friends, Oemichen said.

"The moment there's heavy pressure to buy things right up front, and there's pressure to recruit others, these are warning signs that you are probably getting into something that's going to be against Wisconsin law and cost you a lot of money," he said.

But company officials strongly denied on Wednesday that they were doing anything illegal.

Michael Rogers, Trek's director of compliance, said the business is a legitimate network marketing group with 18,000 representatives around the country.

"We have not only attempted to follow the bounds of the law but also what we consider good business and proper ethics," Rogers said.

Trek Alliance, based in Truckee, Calif., opened a Madison office in July and plans to expand into Milwaukee and around the state, Rogers said.

Jim Coover, the company's president, said, "There is no basis that this is in any way a pyramid scheme or a get-rich-quick scheme."

Rogers and Coover said Trek does recruit people to sell its products and encourages them to recruit others. Those people are then paid commissions from the sales of the recruits they bring into the company.

But, they said, the company is committed to selling quality products in addition to recruiting representatives.

Nonetheless, several people who answered the ads say they were misled.

Pat Henderson, 25, thought he was going in for a job interview, but ended up at a sales presentation where he was asked to spend more than \$400 on starter kits and training seminars.

"Because (the ad) said 'Fitness' on it, I assumed that it was a new health club of some sort," Henderson said. "But that wasn't what it was."

The attorney general's office will review the case against Trek Alliance to see if it violated state consumer protection laws, said James Haney, the agency's spokesman.

If it finds that Trek Alliance's practices warrant state action, the company and its representatives could face civil penalties of up to \$10,000, or a maximum criminal fine of \$5,000 and one year in prison if convicted.

Parents sue against doctor at mauled girl

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said Wednesday. "What Ms. Bayard did was resolve the problem by removing the animals and the compound. From our standpoint, there was really nothing to take to court because the nuisance was removed."

Criminal charges are still pending from the attack. Arraignment is scheduled for Friday for Bayard on second-degree recklessly endangering safety.

Tatum suffered numerous puncture wounds to her face and neck. Her mother and other adults rescued the little girl as the three dogs attempted to drag her into the woods. The

Ex-detective appeals conviction-for murder

Associated Press

Green Bay — A former arson detective convicted of murdering his wife and trying to burn her body is appealing his case.

John Maloney's attorney, Bridget Boyle, filed a motion this week in Brown County Circuit Court. The motion gives Circuit Judge Peter Naze 60 days to schedule a hearing and then

Public Meeting

Milwaukee County

McKinley Marina
Phased Development Plan
Development Concepts

October 5, 1999 -

3:30-7:00pm

Open House Format
Staff available at all times

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Miller Room

910 East Michigan Ave.

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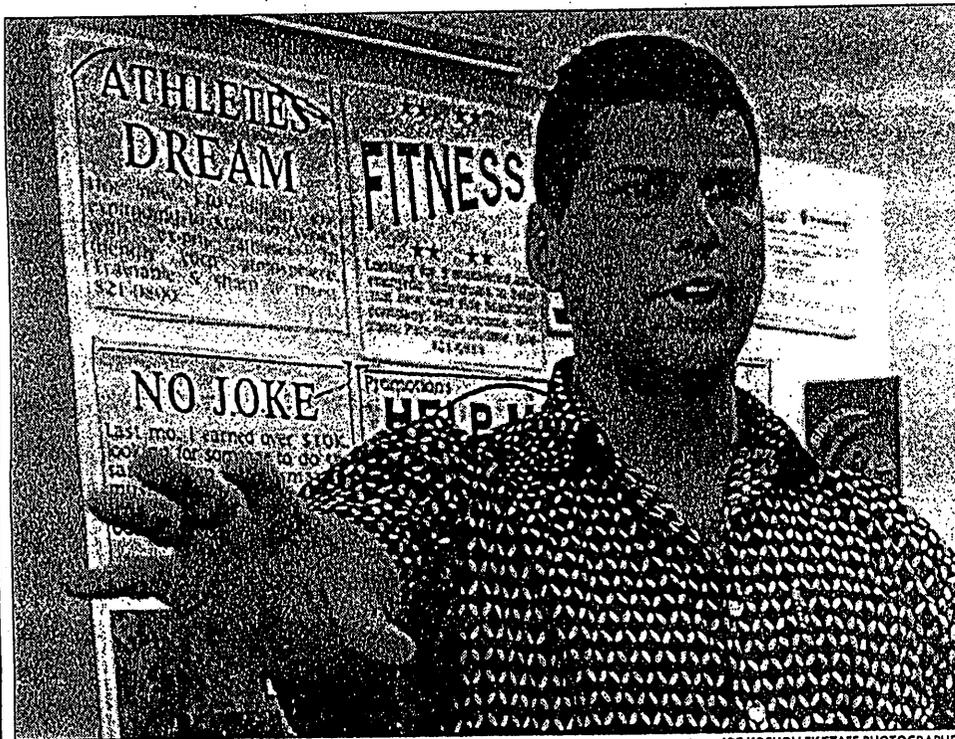
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JOE KOSHOLLEK/STAFF PHOTOGRAPHER

Joe Dellisle, an independent representative of Trek Alliance, interrupts a state consumer-protection news conference Thursday to defend the California-based company, which is under investigation.

Man interrupts state news conference

9/24/99
Posing as a reporter, he
questions critics of firm
under investigation

By STEVEN WALTERS
of the Journal Sentinel staff

Madison — Calling himself an independent representative of a firm being investigated by state consumer protection officials, a former college hockey player interrupted a news conference Thursday when he showed up to defend the company.

At the news conference, state officials announced they were seeking action against a California-based company, Trek Alliance, for allegedly luring college students into a get-rich-quick pyramid scheme.

Acting like a reporter, Joe Dellisle of Madison first asked several questions of state officials

and individuals complaining about the company.

Asked which news organization he represented, Dellisle first said the Badger Herald, a University of Wisconsin-Madison student newspaper. He later said he has never written for that newspaper.

Instead, Dellisle, 35, said he showed up to defend the company against the allegations leveled by state officials.

He waved a copy of a check made out to him for more than \$10,000 from Trek Alliance, claiming it was what he had been paid for selling the firm's products for one month.

"It's just pure capitalism," he said.

"America is built on capitalism — selling and using stuff," added Dellisle, who said he was a University of Minnesota-Duluth hockey player in the mid-1980s who also played pro hockey in Europe.

Bill Oemichen, administrator of the state's Division of Trade and Consumer Protection, said an investigation showed that Trek Alliance has run ads that appear to be help-wanted ads.

However, people who responded to the ads thinking they would be interviewed for jobs instead were pressured into purchasing \$35 "starter kits" and paying \$400 to attend training sessions, he said.

Questioned by reporters, Dellisle said he earned the \$10,000 check by selling products, including a water filtration system he used in his own home. Dellisle said he gets a commission that varies from 1% to 5% on products sold by other people he recruits for the company.

"You can leave (the sales sessions) at any time," he added.

Oemichen said the probe will continue. "I'd like to know more about where that \$10,000 came from," the state official said.

Man charged with driving into crowd

By CHRIS NELSON
Special to the Journal Sentinel

Oshkosh — A Chilton man has been charged with driving a car into a crowd of people Sept. 18 in Neenah, injuring five.

Wausau man charged in fight that left another man dead

By ROBERT LMRIB
Associated Press

Wausau — A man charged Thursday with felony battery for

someone by hitting them in the face.

Cronce's death initially was investigated as a homicide, police said. Marathon County Dis-