

STATE OF INDIANA
IN THE BARTHOLOMEW COUNTY CIRCUIT/SUPERIOR COURT

CAUSE NO. _____

STATE OF INDIANA,
Plaintiff,

v.

BUDGET DIRECT MAIL
PROMOTIONS LLC,

and

HERITAGE AUTOMOTIVE SALES
LLC,

Defendant.

**COMPLAINT
FOR INJUNCTION,
RESTITUTION, CIVIL
PENALTIES, AND COSTS**

I. INTRODUCTION

1. The State of Indiana, by Attorney General Curtis T. Hill, Jr. and Deputy Attorney General Mark M. Snodgrass, commences this civil action under the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Promotional Gifts and Contests Act, Ind. Code § 24-8-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.
2. The Defendants, Budget Direct Mail Promotions LLC (“BDM”) and Heritage Automotive Sales LLC (“Heritage Automotive”) designed and ran a promotion for Heritage Automotive’s motor vehicle sales event. As part of the promotion, BDM, on behalf of Heritage Automotive, sent mailings to 40,000 Indiana recipients. The mailings included a game piece representing each recipient was the winner of one of six specified prizes: \$10,000, \$5,000, \$1,000 or \$500

cash, a 55” Flat Screen TV, or a Yamaha ATV. When a recipient took their mailing to Heritage Automotive’s sales event to claim their prize, each recipient was subjected to a sales pitch soliciting the purchase of a motor vehicle. The recipients were then informed they had not won any of the six prizes prominently represented on the mailing. Each recipient instead received a \$5.00 gift card to either Kroger or Walmart. The mailings also failed to include various notices required by Indiana law. BDM and Heritage Automotive’s misrepresentations and actions are unfair, abusive, and deceptive, and constitute violations of Indiana’s Deceptive Consumer Sales Act and Promotional Gifts and Contests Act.

II. PARTIES

3. The plaintiff, the State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief under Ind. Code § 24-5-0.5-4(c).
4. The defendant, BDM, is an Indiana limited liability company engaged in the business of conducting automotive sales promotions, with a principal place of business in Bartholomew County, located at 1970 Saint James Place, Columbus, Indiana, 47201.
5. The defendant, Heritage Automotive, is an Indiana limited liability company engaged in the business of selling motor vehicles to Indiana consumers, with a principal place of business in Bartholomew County, located at 5150 N. Indianapolis Road, Columbus, Indiana, 47203.
6. Loren White owns and manages both BDM and Heritage Automotive.

III. FACTS

7. Heritage Automotive contracted with BDM to advertise the “Giving Back Sales Event” (“the Sales Event”) at Heritage Automotive, which ran from March 8, 2019 through March 16, 2019.
8. BDM, in collaboration and with the approval of Heritage Automotive, designed and sent a promotional prize mailing (“the Prize Mailing”) to 40,000 Indiana recipients to advertise the Sales Event. A true and accurate copy of the Prize Mailing is attached and marked as Exhibit 1.
9. The Prize Mailing does not contain the name and address of the promoter of the sales event, BDM.
10. The Prize Mailing does not contain a statement of the odds of winning each prize in the immediate proximity to each listing of the prize in each place it appears on the Prize Mailing, in the same size type and boldness of the name of the prize.
11. The Prize Mailing does not contain a statement of the verifiable retail value of each prize in the immediate proximity to each listing of the prize in each place it appears on the Prize Mailing, in the same size type and boldness of the name of the prize.
12. The Prize Mailing does not contain a disclosure that recipients may be required or invited to hear a sales presentation to claim their prize.
13. The purpose of the Prize Mailing was to lure recipients to Heritage Automotive under the guise that each recipient won a significant prize.

14. The Prize Mailing instructs recipients to scratch-off a number on the Prize Mailing and bring the Prize Mailing to the Sales Event to claim their prize.
15. The Prize Mailing represents “Everyone’s a Winner!”
16. The Prize Mailing identifies six available prizes: \$10,000, \$5,000, \$1,000 or \$500 cash, a 55” Flat Screen TV, or a Yamaha ATV.
17. Despite representing on the Prize Mailings that every recipient was a winner of one of the six specified prizes, and instructing recipients to come in and claim their prize, BDM and Heritage Automotive failed to award any of the six referenced prizes to a recipient of the Prize Mailing.
18. 142 recipients of the Prize Mailing attended the Sales Event to claim their prize.
19. Once at the Sales Event, Prize Mailing recipients were subjected to a sales pitch from representatives of BDM and Heritage Automotive attempting to sell them a motor vehicle.
20. BDM and Heritage Automotive collected the Prize Mailings from recipients at the Sales Event and did not return them to the recipients.
21. Prize Mailing recipients who attended the Sales Event were eventually informed they had not won one of the six prizes represented on the Prize Mailing and instead were handed a \$5 Kroger or Walmart gift card.
22. BDM and Heritage Automotive knowingly committed the actions described in this Complaint.

IV. CAUSES OF ACTION

COUNT I:
VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT

23. The State realleges Paragraphs 1 through 22 of this Complaint.
24. The Prize Mailing referenced in this Complaint was sent by mail to persons located in Indiana.
25. BDM and Heritage Automotive violated Ind. Code § 24-8-3-2, by failing to include the name and address of the promotor, BDM, in the Prize Mailing sent to consumers.
26. BDM and Heritage Automotive violated Ind. Code § 24-8-3-5 by failing to include a statement of the odds of winning each prize in immediate proximity to each listing of a prize in each place it appears on the Prize Mailing, listed in the same size type and boldness of the prize.
27. BDM and Heritage Automotive violated Ind. Code § 24-8-3-5 by failing to include a statement of the verifiable retail value of each prize in immediate proximity to each listing of a prize in each place it appears on the Prize Mailing, listed in the same size type and boldness of the prize.
28. BDM and Heritage Automotive violated Ind. Code § 24-8-3-6 by failing to include a disclosure that recipients of the Prize Mailing may be required or invited to hear a sales presentation in order to claim their prize.
29. BDM and Heritage Automotive violated Ind. Code § 24-8-4-3 by failing to return the Prize Mailings to recipients at the time the “prizes” were awarded.

COUNT II:
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT-
MISREPRESENTING RECIPIENTS WON SPECIFIC PRIZES

30. The State realleges Paragraphs 1 through 29 of this Complaint.
31. BDM and Heritage Automotive regularly engage in “consumer transactions” under Ind. Code § 24-5-0.5-2(a)(1).
32. BDM and Heritage Automotive are “suppliers” under Ind. Code § 24-5-0.5-2(a)(3).
33. BDM and Heritage Automotive committed unfair, abusive, and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by representing or implying every recipient of the Prize Mailing won one of six specific prizes listed on the Prize Mailing when recipients did not win such prizes.
34. BDM and Heritage Automotive committed deceptive acts violating Ind. Code § 24-5-0.5-3(b)(1) by representing every recipient of the Prize Mailing won one of six specific prizes listed on the Prize Mailing when recipients did not win such prizes.

COUNT III:
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT-
MISREPRESENTING THE PRIZES BEING AWARDED

35. The State realleges Paragraphs 1 through 34 of this Complaint.
36. BDM and Heritage Automotive committed unfair, abusive, and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by failing to

prominently reference the items actually being awarded, such as a \$5.00 Kroger or Walmart gift card, and instead representing or implying recipients had won one of the more valuable prizes prominently displayed on the Prize Mailing.

COUNT IV:

VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT-
MISREPRESENTING EVERY RECIPIENT WAS A WINNER

37. The State realleges Paragraphs 1 through 36 of this Complaint.
38. BDM and Heritage Automotive committed unfair, abusive, and deceptive acts, omissions, and practices violating Ind. Code § 24-5-0.5-3(a) by representing or implying every recipient of the Prize Mailing was a “winner” when each recipient who attended the Sales Event received an identical, nominal item and thus was not a “winner” of one of the prizes prominently referenced on the Prize Mailing.
39. BDM and Heritage Automotive committed deceptive acts violating Ind. Code § 24-5-0.5-3(b)(1) by representing every recipient of the Prize Mailing was a “winner” when each recipient who attended the Sales Event received an identical, nominal item and thus was not a “winner” of one of the prizes prominently referenced on the Prize Mailing.

COUNT V:

VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT-
VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT

40. The State realleges Paragraphs 1 through 39 of this Complaint.

41. BDM and Heritage Automotive's violations of the Promotional Gifts and Contests Act constitute deceptive acts under Ind. Code § 24-8-6-3.

COUNT VI:
KNOWING VIOLATIONS OF THE DECEPTIVE CONSUMER SALES
ACT

42. The State realleges Paragraphs 1 through 41 of this Complaint.
43. BDM and Heritage Automotive committed the deceptive acts asserted in this Complaint with knowledge of their deceptive acts.

COUNT VII:
INCURABLE DECEPTIVE ACTS

44. The State realleges Paragraphs 1 through 43 of this Complaint.
45. The deceptive acts asserted in this Complaint are incurable deceptive acts and were committed by BDM and Heritage Automotive as part of a scheme, artifice, or device with intent to defraud or mislead.

V. RELIEF

46. The State requests the Court enter judgment against the Defendants, BDM and Heritage Automotive, for the relief described in Paragraphs 47 through 52 of this Complaint.
47. The State seeks a permanent injunction, under Ind. Code § 24-5-0.5-4(c)(1), enjoining BDM and Heritage Automotive, their agents, representatives, employees, successors, and assigns, from:

- 47.1. Failing to include the following in any notice mailed to Indiana recipients representing to award a prize, or the chance at a prize, to the recipient:
- 47.1.1 the name and address of the promoter;
 - 47.1.2 a statement of the odds of winning each prize in immediate proximity to each listing of a prize in each place it appears on a notice, listed in the same size type and boldness of the prize;
 - 47.1.3 a statement of the verifiable retail value of each prize in immediate proximity to each listing of a prize in each place it appears on a notice, listed in the same size type and boldness of the prize;
 - 47.1.4 a disclosure that recipients of notices may be required or invited to hear a sales presentation in order to claim their prize;
- 47.2. representing the verifiable retail value of a prize as anything more than 1.5 times the amount paid by BDM or Heritage Automotive for each item, unless BDM or Heritage Automotive has documented evidence that a substantial number of the prizes have been sold at retail by a person or entity other than Heritage Automotive for a higher price;
- 47.3. representing on prize mailings that a recipient has won a specific prize when the recipient has not;

- 47.4. representing, including in mailings, by telephone, by recording, or on websites, a recipient is a “winner,” or has “won,” unless the recipient has won a prize the majority of other recipients of the same prize mailing did not win;
- 47.5. awarding a prize that is not explicitly and prominently referenced on the front of a prize mailing;
- 47.6. committing any unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction, in violation of Ind. Code § 24-5-0.5-3(a); and
- 47.7. representing that the subject of a consumer transaction has characteristics, uses, or benefits that it does not have, which BDM or Heritage Automotive knows or reasonably should know it does not have, in violation of Ind. Code § 24-5-0.5-3(b)(1).
48. The State seeks consumer restitution, under Ind. Code § 24-8-6-2(2), for all persons who were mailed the Prize Mailing and attended the corresponding Sales Event, in the amount of five hundred dollars (\$500.00) per person, payable to the Office of the Attorney General, for the benefit of those persons.
49. The State seeks costs, under Ind. Code § 24-5-0.5-4(c)(4), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action.

50. The State seeks civil penalties, under Ind. Code § 24-5-0.5-4(g), on Count VI of this Complaint for BDM and Heritage Automotive's knowing violations of Ind. Code § 24-5-0.5-3(a) and Ind. Code § 24-5-0.5-3(b)(1), payable to the State of Indiana in an amount to be determined at trial.
51. The State seeks civil penalties, under Ind. Code § 24-5-0.5-8, on Count VII of this Complaint for BDM and Heritage Automotive's incurable deceptive acts, payable to the State of Indiana in an amount to be determined at trial.
52. The State seeks all other just and proper relief.

Respectfully submitted,

CURTIS T. HILL, JR.
INDIANA ATTORNEY GENERAL
Attorney Number 13999-20

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