

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, T E X A S
	§	
CYCO.NET, INC.	§	
Defendant.	§	53 rd JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this date, came on for hearing the above-entitled and numbered cause in which the STATE OF TEXAS (hereinafter “State”), acting by and through Attorney General of Texas, GREG ABBOTT, is Plaintiff, and CYCO.NET, INC., acting by and through its attorney of record, is Defendant. Through their respective attorneys of record, Plaintiff and Defendant agree to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

I. STIPULATED FACTS

The parties, through their respective attorneys, make the following stipulations:

1. The State of Texas has filed its Plaintiff’s Original Petition pursuant the Texas Deceptive Trade Practices - Consumer Protection Act (“DTPA”), TEX. BUS. & COM. CODE § 17.41 *et seq.* (Vernon 1987 & Supp. 2004) charging Defendant with violations of § 17.46(a), § 17.46(b)(5) and § 17.46(b)(12) of the DTPA.
2. The parties have compromised and settled the State’s claim for civil penalties, investigative costs, attorneys’ fees, and court costs.
3. The Office of the Attorney General and Defendant agree to and do not contest the entry of this Agreed Final Judgment and Permanent Injunction;
4. Defendant does not contest jurisdiction or venue in this case;
5. Defendant has waived issuance of a writ of injunction and has waived the

requirements of Texas Rules of Civil Procedure 687-692;

6. The corporate signatory hereto is an officer of the Defendant; he or she is authorized to sign this Agreed Final Judgment and Permanent Injunction on behalf of Defendant; and, he or she has read the Agreed Final Judgment and Permanent Injunction and agrees to entry of same on behalf of Defendant;
7. This Agreed Final Judgment and Permanent Injunction in no way affects any individual's right of action;
8. Neither this judgment nor the payment of money by Defendant constitutes an admission by Defendant of any violation of the DTPA or of any other law or regulation or otherwise; and
9. This Judgment resolves all matters set forth in Plaintiff's Original Petition filed in this cause and those which could have been brought by the Texas Attorney General pursuant to his authority under the DTPA for matters which took place prior to the execution of this Agreed Judgment. Nothing herein shall affect other remedies available to any federal, state or local jurisdictions in connection with a past or future sale of tobacco products. Nothing in this Agreed Judgment relieves Defendant of its obligation to comply with applicable state and federal laws.

The Court has read the pleadings and stipulations of the parties, and it appears to the Court that all parties agree to the entry of this judgment and that they have approved its entry as indicated by the signatures of the parties and their attorneys below.

II. DEFINITIONS

As used herein, "delivery sale" means a sale of cigarettes to a consumer in this state in which

the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes are delivered by use of the mails or another delivery service. A sale of cigarettes is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

III. INJUNCTIVE RELIEF

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, and Defendant's officers, agents, servants, employees and any other persons or entities in active concert or participation with Defendant, shall be permanently enjoined from:

1. Making a delivery sale of cigarettes to a consumer in Texas or shipping cigarettes in connection with a delivery sale except in compliance with the requirements of Texas Health and Safety Code, Subchapter R, Section 161.451 et seq. (Vernon 2001 & Supp. 2004) which is attached here and incorporated for all purposes;

2. Advertising, offering to sell, selling or delivering any tobacco product to persons in the State of Texas until such time as Defendant has implemented a system to verify that purchasers of its tobacco products are at least 18 years of age. Such verification system shall comply with the requirements of the Texas Health and Safety Code, Subchapter R, Section 161.453 (Vernon 2001 & Supp. 2004); and

3. Representing directly or by implication, that this Court or the Office of the Texas Attorney General, has approved any good or service sold by Defendant, or has approved any of Defendant's business practices.

IT IS FURTHER ORDERED that Defendant is permanently enjoined from entering into, forming, organizing, or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purposes of avoiding compliance with the terms of this Agreed Final Judgment and Permanent Injunction. To the extent that the provisions of this judgment conflict with future amendments to those sections of the Texas Health and Safety Code cited herein, such new laws and not this Judgment shall apply.

IV. PENALTIES, FEES AND COSTS

1. Judgment is awarded against Cyconet.Inc. in favor of the State of Texas in the amount of Fifteen Hundred Dollars (\$ 1,500.00) as a civil penalty and in the amount of Fifteen Hundred Dollars (\$ 1,500.00) for attorneys' fees and investigative costs. Such penalties and fees shall be paid to the State of Texas on or before September 15, 2004 via a cashiers or certified check made payable to the State of Texas and delivered to the Texas Attorney General at the address of counsel for the State.

2. All costs of Court expended or incurred in this cause are adjudged against Defendant.

3. All relief not expressly granted herein is denied.

SIGNED AND ENTERED this _____ day of _____, 2004.

Presiding District Judge

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

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