

CAUSE NO. _____

STATE OF TEXAS,

Plaintiff,

v.

**STARLIGHT CAMERA & VIDEO, INC
d/b/a The Digital Nerds and Techon
Digital**

Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ **JUDICIAL DISTRICT**

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this date, came for hearing the above-entitled and numbered cause in which the STATE OF TEXAS (hereinafter "Plaintiff" or "State"), acting by and through Attorney General of Texas, GREG ABBOTT, is Plaintiff, and STARLIGHT CAMERA & VIDEO, INC. (hereinafter "Defendant" or "Starlight"), is the Defendant. Plaintiff and Defendant agree to entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

I. INTRODUCTION

1.1 Plaintiff sued Defendant in the public interest under the Deceptive Trade Practices Act ("DTPA")¹. The lawsuit alleges that Defendant has misrepresented the characteristics, qualities, and supply of its goods and has advertised its goods with the intent not to sell them as advertised.

¹ Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2008).

1.2 The Plaintiff and Defendant have consented to (a) settlement of the State's lawsuit without trial or adjudication of any issue of fact or law and without Defendant admitting liability for any of the matters alleged in the Petition and (b) entry of this judgment by this Court. This Agreed Final Judgment ("Judgment") settles only the State's claims against Defendant, and shall not act as a bar to any claim by the State nor preclude the State from seeking remedy against other persons, corporations, or entities, including persons who may be subject to portions of this Judgment as persons acting in active concert or participation with Defendant.

NOW, THEREFORE, the Plaintiff and Defendant having requested the Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

II. STIPULATIONS

The parties agree to the entry of this Judgment and, at their request, the court **FINDS** that:

- 2.1 It has jurisdiction over the subject matter of this action;
- 2.2 It has jurisdiction over the Defendant;
- 2.3 Venue is proper in Travis County, Texas;
- 2.4 The activities of Defendant constitute trade and/or commerce;
- 2.5 Entry of this judgment is in the public interest;
- 2.6 This judgment is non-appealable;
- 2.7 Defendant acknowledges notice of this permanent injunction and acceptance of the same; therefore no writ need be issued;
- 2.8 The court shall have continuing jurisdiction to enforce this judgment.
- 2.9 The signatory below is an authorized corporate representative of Starlight Camera & Video, Inc.; and

2.10 The Defendant will dissolve as a corporation and will not enter into any new business transactions with Texas Consumers from the Effective Date onward. Provided, however, should Defendant, its officers, agents, servants, employees, and any other persons in active concert or participation with Defendant conduct business in Texas in the future, whether as Starlight Camera & Video, Inc. or any other entity or business, the terms of this injunction shall apply. Should Defendant, its officers, agents, servants, employees, and any other persons in active concert or participation with Defendant attempt to circumvent the terms of this stipulation or fail to dissolve the corporation, the State shall have the right to reopen and modify the monetary portion of this Judgment. The injunctive terms, however, shall continue to remain in effect.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

III. DEFINITIONS

For purposes of this Judgment and Permanent Injunction, the following definitions shall apply:

3.1 “**Advertising**” or “**Advertisement(s)**” means any message created, published and/or distributed under the direction or control of the Defendant to the general public or any segment thereof, including but not limited to communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), and communications made in print, which includes but is not limited to letters, pamphlets, flyers, newspapers, magazines, periodicals, and books.

3.2 “**Assisting others**” means knowingly formulating or providing, or arranging for the formulation or provision of the following goods or services to any person or entity: (a) performing

customer service functions, including but not limited to receiving or responding to Consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other written marketing material, including, but not limited to the text of any Internet website, email or other electronic communication; (c) providing names of, or assisting in the generation of list(s) of, potential customers; and (d) performing marketing services or materials of any kind.

3.3 **“Clear and Conspicuous” or “Clearly and Conspicuously”** means that a statement, representation, claim or term is:

- A. of sufficient prominence in terms of size, placement, color, contrast, duration of appearance, sound, and speed as to be readily noticeable and reasonably understandable by a person to whom it is directed;
- B. presented to the person(s) to whom it is directed in a coherent and meaningful sequence with respect to other representations, statements, claims, or terms conveyed;
- C. not contradictory to any representations, statements, claims, or terms it purports to clarify, modify, or explain, or otherwise contradictory or confusing in relation to any other representation, statement, claim, or term being conveyed;
- D. commonly understood by Consumers;
- E. free of technical or legal jargon; and
- F. presented in such a way as to be free of distractions, including but not limited to sound, graphics, or text that compete for the attention of the Consumer.

3.4 “**Close Proximity**” shall mean proximate to the triggering representation and shall not include disclosures accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.

3.5 “**Consumer**” as used herein means a consumer who is a resident of the State of Texas.

3.6 “**Effective Date**” means the date upon which this Agreed Final Judgment and Temporary Injunction is filed with the Court.

3.7 “**Grey Market**” means any goods, products, merchandise, equipment, accessories, or items not originally intended to be sold, offered, or distributed in the United States.

3.8 “**Payment Information**” means information requested from Consumers to complete a sales transaction, including, but not limited to, credit card, debit card, or bank account numbers.

3.9 “**Price Comparison Web site**” means any Internet Web site that displays price listings from more than one retailer for specific goods, allowing Consumers to purchase the good from the desired retailer.

3.10 “**Subsequent Order**” means any additional purchases made or goods or services added to an order at any time before the goods pertaining to the original order have been shipped.

IV. PERMANENT INJUNCTION

Prohibitions Against False and Misleading Representations Regarding Goods

4.1 **IT IS FURTHER ORDERED THAT** Defendant, its officers, agents, servants, employees, and all other persons in active concert or participation with the Defendant who receive actual notice of this injunction shall be permanently enjoined, restrained, or prohibited from:

- A. representing or Assisting Others in representing that a good or service sold or distributed by the Defendant has characteristics, benefits, or quantities which

it does not have, including, but not limited to:

- i. representing that a good is new or original if it is not;
- ii. representing that a good is in-stock or available if the Defendant knows or should know that it is not; and
- iii. representing that a good is a United States model when it is not;

B. representing or Assisting Others in representing that a good or service sold or distributed by the Defendant is of a particular standard, quality or grade if it is another, including, but not limited to:

- i. misrepresenting the duration that a battery may maintain its charge;
- ii. misrepresenting the memory storage space that is included with any good;
- iii. misrepresenting that additional batteries or memory cards are necessary to ensure the ordinary operation of the good;

C. representing or Assisting Others in representing the duration that a battery may maintain its charge or the memory storage space or capacity that is included with any good, unless, at the time the representation is made, the Defendant possesses documents substantiating such representation; and

D. misrepresenting or Assisting Others in misrepresenting the nature of a telephone call, including, but not limited to, misrepresenting that a Consumer must call the Defendant to confirm his or her order when, during such a telephone call, the Defendant also attempts to sell goods or services as part of a Subsequent Order.

Restriction Regarding Use of Price Comparison Web Sites to Advertise

4.2 IT IS FURTHER ORDERED THAT Defendant, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with the Defendant who receive actual notice of this injunction shall be permanently enjoined, restrained, or prohibited from advertising or obtaining any sales leads through any online Comparison Web site in which the Defendant or any of Defendant's officers, directors, or owners have a financial interest, directly or indirectly, unless the Defendant Clearly and Conspicuously discloses such interest on each of the Defendant's Web pages that directly links from the Comparison Web site, and in the Defendant's terms and conditions or similar document.

Requirements for Clear and Conspicuous Disclosures

4.3 IT IS FURTHER ORDERED THAT Defendant, its officers, agents, servants, employees, and all other persons in active concert or participation with the Defendant who receive actual notice of this injunction shall:

- A. in Close Proximity to any good the Defendant offers for sale on the Internet, or prior to obtaining payment information from Consumers for telephone sales, Clearly and Conspicuously disclose:
 - i. the cost of the good;
 - ii. the fact, if true, that the good is a foreign or imported model;
 - iii. the model number of the good;
 - iv. the name of the manufacturer;
 - v. all differences between the United States and foreign model if the good is a foreign or imported model;

- vi. the fact, if known to be true, that such good is out-of-stock or unavailable;
- vii. the fact, if true, that the good is used or refurbished;
- viii. the fact, if true, that a warranty accompanies the good;
- ix. a description of any accessories that are included with the product, including but not limited to batteries or battery packs, cases, A/C adapters, lenses, screen protectors, and stands or tri-pods; and
- x. the fact, if true, that other charges may be applied to the cost of the good, including but not limited to tax, insurance, and shipping charges;

B. in Close Proximity to the location on any of the Defendant's Web pages where Consumers provide payment information, including but not limited to credit card, debit card, or bank account numbers, and in any telephone sale prior to a Consumer providing payment information, Clearly and Conspicuously disclose:

- i. the total cost of the good, including any additional fees such as tax, insurance, and shipping charges that the Consumer will be charged for the selected good;
- ii. all terms and conditions relating to the cancellation or return of the Consumer's order, including any return or restocking fees that may be assessed;
- iii. a complete description of the good(s) being purchased, including the

- disclosures in paragraph 4.3A (ii)-(ix); and
- iv. the fact, if true, that the Consumer will be required to call the Defendant to confirm his or her order(s);
- C. immediately after a Consumer has placed an order with the Defendant through any of the Defendant's Web sites, send an electronic mail message to the Consumer that Clearly and Conspicuously discloses the items in paragraph 4.3 B(i)-(iv);
- D. After a Consumer has already placed an order, if a Consumer purchases any goods, services, warranties, or insurance in a Subsequent Order,
- i. Clearly and Conspicuously disclose the fact, if true, that goods or services in the Subsequent Order are optional and not required as part of the original order;
 - ii. immediately cease any efforts to sell goods or services as part of a Subsequent Order to the Consumer if the Consumer clearly expresses the desire not to purchase any such additional goods or services, and
 - iii. immediately following such purchase, send a second electronic mail message to the Consumer that Clearly and Conspicuously discloses and reconfirms the items in paragraph 4.3 B(i)-(iv), including the additional purchase(s); and
- E. If a Consumer alleges that any of the terms or disclosures in any electronic mail message sent pursuant to 4.3C or 4.3D(iii) differs from the sale, the Consumer shall have seven days after receipt of such electronic mail message

to cancel the order for a full refund without incurring any charges, including any shipping and handling fees necessary to return the item.

Policies and Procedures

4.4 IT IS FURTHER ORDERED THAT Defendant shall, prior to conducting business in Texas, establish, implement, and maintain policies and procedures to ensure compliance with this Judgment and the Texas Deceptive Trade Practices Act. Such policies and procedures shall include but not be limited to:

- A. developing, implementing, and maintaining a procedure to timely review, investigate, and respond to all Consumer complaints, including a process to generate reports that reflect the receipt of such complaints and Defendant's response to each complaint;
- B. developing, implementing, and enforcing a disciplinary policy and procedure reasonably sufficient to ensure compliance with this Judgment;
- C. developing, implementing, and maintaining a method for recording and preserving all conversations between Defendant's employees and Consumers for a minimum of two years following the Effective Date of this Judgment; and
- D. developing, implementing, and maintaining a method for Defendant's employees to listen in on sales calls in real-time without the sales person's knowledge.

4.5 IT IS FURTHER ORDERED THAT, prior to conducting any business in Texas, Defendant, its officers, agents, servants, employees, and all other persons in active concert or

participation with the Defendant who receive actual notice of this injunction shall establish a training program designed to instruct its employees who engage in any type of communication with Consumers in the requirements of the law and in the terms of this Judgment. Attendance at the training program shall be mandatory for all employees who engage in such communication, and any manager who directly or indirectly supervises such employees. The program shall be in place, and all current employees who are required to take such training shall have completed the training prior to conducting business in Texas. All future employees who are required to take such training shall complete the training within 14 days of the date such employee begins their employment with the Defendant. New hires shall not be permitted to communicate with Consumers until such training is completed. The training program shall include

- A. detailed instructions in the requirements and prohibitions contained in this Judgment;
- B. detailed instructions in the purpose of, prohibitions contained in, and potential liability for any violation of Texas' laws regarding the misrepresentation of Defendants' goods, including but not limited to misrepresentations regarding availability, cost, type, model, and quality of such goods;
- C. a certification program by which each person attending the training program shall receive a certification form stating that he or she attended the program and understands all policies and procedures, including the terms of this Judgment; and

- D. notice of the terms of this Judgment to all of Defendants' employees that participate in this training. Defendants shall post the terms of this Judgment where it shall be easily noticeable to employees responsible for responding to Consumer complaints, approving Web site disclosures, and engaging in any communication with Consumers.

Compliance Reporting by Defendant

4.6 **IT IS FURTHER ORDERED THAT**, in order that compliance with the provisions of this Judgment may be monitored, should Defendant, its officers, agents, servants, employees, and any other persons in active concert or participation with Defendant conduct business in Texas within 10 years following the Effective Date:

- A. Defendant shall, no later than 30 days prior to conducting such business in Texas, provide notice to the Attorney General's Consumer Protection and Public Health Division-Austin, directed to the undersigned Assistant Attorney General, informing the Attorney General of the intent to conduct business in Texas and the nature of the business to be conducted.
- B. for a period of three years after conducting such business, Defendants shall provide quarterly reports to the Attorney General's Consumer Protection and Public Health Division-Austin, directed to the undersigned Assistant Attorney General, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Judgment. This report shall include:

- i. Documentation of all policy changes required by paragraphs 4.4 and 4.5;
 - ii. A list of all currently active Web sites Defendants use to promote, advertise, offer for sale, sell, or distribute any goods or services;
 - iii. A list of all names that Defendants are using to advertise, offer for sale, sell, or distribute any goods or services;
 - iv. A list of all Price Comparison Web sites that Defendants are using or with which Defendants have an agreement;
 - v. Copies of all consumer complaints not submitted in a previous report. Defendants shall include a summary of each complaint, the name, address, and phone number of each complainant, and a copy of all sales recordings Defendants made as part of the requirement in paragraph 4.4C;
 - vi. To the extent not already provided in a previous report, a list identifying each employee who was terminated or disciplined since the Effective Date of the Judgment for any reason related to the subject matter of this Judgment. Such list shall include the name of the person, the discipline they received, and the reason for such discipline; and
- C. for a period of three years after conducting such business, the Texas Attorney General's Consumer Protection and Public Health Division shall have access

upon request to any of the documents and materials related to paragraph 4.6 B (i)-(v).

V. RESTITUTION

5.1 Defendant shall provide restitution to any Consumer who filed a written complaint prior to or within 90 days after the Effective Date, with the Texas Attorney General or with the Defendant alleging that the customer was misled as to the nature, origin, type, availability, quality, or characteristics of goods or services Defendant offered for sale and who accepts the restitution process outlined below. Upon receipt of any such complaint, Defendant shall have 90 days to resolve the complaint in full directly with the Consumer, refer the complaint to a neutral, third-party mediator (hereinafter, "Mediator"), or provide documentation to satisfy the Texas Attorney General that the complaint has been fully resolved to the satisfaction of the Consumer; however, if Defendant attempts to resolve the complaint directly with the Consumer, Defendant shall also inform the Consumer of his or her right to have the complaint forwarded to a Mediator. For purposes of this provision, any Consumer complaint originally filed with the Better Business Bureau that was forwarded to the Defendant is considered a complaint filed with the Defendant.

5.2 In the event that a complaint cannot be resolved between the Defendant and Consumer or if the Defendant or Consumer chooses, the parties shall agree upon a Mediator to resolve the complaint. Defendant agrees to pay all costs associated with and assessed by the Mediator. The Mediator shall conduct a paper review of the complaint, Defendant's response, if any, and any other documents requested by the Mediator, and shall make a recommended resolution for each complaint. Defendant shall provide the Mediator with any requested documents in a timely manner. Defendant shall not engage in ex parte communications with the Mediator regarding any

specific complaint. Defendant shall be bound by the Mediator's recommended resolution of such complaint, including appropriate restitution; however, Consumers shall not be bound to the Mediator's recommended resolution.

5.3 Any cash restitution shall be made by certified check, mailed directly to each Consumer within 15 days of a Consumer's acceptance of either Defendant's restitution offer or the restitution as determined by the Mediator. If a Consumer has already received a refund from the Defendant as part of an agreement between the Consumer and the Defendant or between the Defendant and any regulatory agency, including from any other settlements, the amount the Consumer obtains in restitution pursuant to this Judgment shall be reduced by the amount the Consumer has previously received.

5.4 Within 30 days after providing restitution under this section to Consumers, the Defendant shall provide to the Office of the Texas Attorney General a written list of all Consumers to whom it made refunds, the amount of the refund to each Consumer, and a list of all Consumers who already had their complaints resolved through Defendant's settlement with the New York Attorney General's Office or through any other settlement.

VI. CIVIL PENALTIES, AND ATTORNEY'S FEES

6.1 **Judgment is hereby ordered against Defendant.** It is ordered that Defendant shall pay Civil Penalties in the amount of Two Hundred Fifty-Five Thousand Dollars (\$255,000) to the State of Texas as a civil penalty in a matter actionable under Subchapter E, Chapter 17 of the TEXAS BUSINESS & COMMERCE CODE as that phrase is used in TEXAS GOVERNMENT CODE, Section 402.007(b) which requires such funds to be credited to the judicial fund for programs approved by the Texas Supreme Court that provide basic civil legal services to the indigent.

The first payment of Five Thousand Dollars (\$5,000) is due on or before the Effective Date of this Judgment. Plaintiff shall not abstract the Judgment, file the Judgment as a lien against Defendant's property or assets, or otherwise enforce the Judgment for the remaining amount of civil penalties unless:

- A. Defendant engages in any activity in violation of this Judgment;
- C. Defendant attempts to circumvent the terms of this Judgment;
- D. Defendant fails to promptly effectuate the dissolution of Starlight Camera & Video, Inc.; or
- E. Defendant fails to pay the first Five Thousand Dollar (\$5,000) payment in accordance with this paragraph and the fees in accordance with paragraph 6.2 below.

6.2 Judgment is hereby ordered against Defendant. It is ordered that upon execution of this agreement, Defendant shall pay Plaintiff the sum of Ten Thousand Dollars (\$10,000) for attorney's fees and costs of investigation.

6.3 The amounts of civil penalties and attorney's fees shall be tendered by the Defendant in the form of a certified check or money order made payable to the Office of the Attorney General of Texas, bearing the Attorney General case number 082489618 and shall be delivered to the Office of the Attorney General, Consumer Protection Division, 300 W. 15th St., 9th Floor, Austin, Texas 78701. The amounts for civil penalties and attorney's fees are due immediately upon the entering of this Judgment and Permanent Injunction.

VII. MISCELLANEOUS PROVISIONS

7.1 This Judgment, and the terms and conditions herein, apply only to Consumers who are located in the state of Texas, and to transactions, subscriptions, advertising, notices, disclosures, or calls which occur, in whole or in part, in the state of Texas.

7.2 Defendant shall not effect any change in its forms of doing business or their organizational identities as a method of avoiding the terms and conditions set forth in this Judgment.

7.3 With respect to Defendant's practices alleged herein, nothing in this Judgment shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Defendants, including any person who does not respond to Defendant's notice letters or who does not accept Defendant's offers of restitution.

7.4 No representations, warranties, or inducements have been made by the Attorneys General to Defendant and no representations, warranties, or inducements have been made by Defendant to the Attorneys General concerning this Judgment, other than those representations, warranties, and covenants contained in this Judgment.

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

7.6 Any failure by any party to the Judgment to insist on strict performance by any other party of any provision of this Judgment shall not be deemed a future waiver of any of the

provisions of this Judgment, and such party, notwithstanding such failure, shall have the right to insist upon the specific performance of any and all of the provisions of this Judgment.

7.7 Plaintiff is authorized to monitor compliance with this Judgment by all lawful means, including but not limited to, posing as a Consumer in any communication with Defendant, Defendant’s employees or agents, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice to Defendant or Defendant’s counsel.

7.8 To the extent that any provision of this Judgment conflicts with any local or federal law which now exists, or is later enacted or amended, such law and not this Judgment shall apply where such conflict exists. For the purposes of this Judgment, a conflict exists if conduct prohibited by this Judgment is required or expressly permitted by such law, or if conduct required by this Judgment is prohibited by such law.

7.9 All costs of court expended or incurred in this cause are adjudged against the Defendant.

7.10 After signing by the Court, this agreement constitutes final judgment.

7.11 All relief not expressly granted herein is denied.

SIGNED this _____ day of _____, 2010.

PRESIDING JUDGE

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

GREG ABBOTT

Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

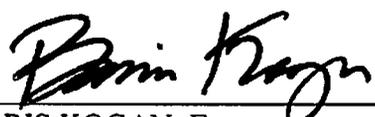
DAVID S. MORALES
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA
Chief, Consumer Protection & Public Health Division

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