CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
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Attorneys for Steve Poizner,
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matters of PRESTIGE ADMINISTRATION, INC., doing business as AUTOLIFE Rx, LAURIE COSENTINO, individually, and as co-owner, officer and director of PRESTIGE ADMINISTRATION, INC., and ROBERT KONZEN, individually, and as co-owner, officer and director of PRESTIGE ADMINISTRATION, INC., Respondents.	ORDER TO CEASE AND DESIST (Sections 12921.8 (a)(1 & 2))[1] ORDER TO SHOW CAUSE (Section 12921.8(a)(3)) NOTICE OF RIGHT TO HEARING File No: OSC 2010-00002

I. ORDER TO CEASE AND DESIST (Section 12921.8(a))

TO:

PRESTIGE ADMINISTRATION, INC, doing business as AUTOLIFE Rx;

LAURIE COSENTINO – individually and as owner, controlling shareholder, officer and director of PRESTIGE ADMINISTRATION, INC;

[1] All statutory references are to the California Insurance Code unless otherwise indicated.

ROBERT KONZEN – individually and as owner, controlling shareholder, officer and director of PRESTIGE ADMINISTRATION, INC.

YOU ARE HEREBY ORDERED, PURSUANT TO CALIFORNIA INSURANCE CODE SECTION 12921.8(a), IMMEDIATELY TO CEASE AND DESIST:

• SELLING, OFFERING FOR SALE, ISSUING, OR EMPLOYING, SOLICITING OR ENABLING OTHERS TO SELL OR ISSUE IN CALIFORNIA ANY AUTOMOBILE INSURANCE POLICY AS DEFINED IN CALIFORNIA INSURANCE CODE SECTION 116

• SELLING, OFFERING FOR SALE, ISSUING OR EMPLOYING, SOLICITING OR ENABLING OTHERS TO SELL OR ISSUE IN CALIFORNIA ANY VEHICLE SERVICE CONTRACT AS DEFINED IN CALIFORNIA INSURANCE CODE SECTION 12800

• ISSUING ANY EXPRESS WARRANTY WARRANTING A MOTOR VEHICLE LUBRICANT, TREATMENT, FLUID, OR ADDITIVE (HEREAFTER, COLLECTIVELY REFERRED TO AS "ADDITIVE") THAT COVERS OR PURPORTS TO COVER DAMAGE RESULTING FROM A FAILURE OR PURPORTED FAILURE OF THE LUBRICANT, TREATMENT, FLUID, OR ADDITIVE, TO ANY PERSON IN CALIFORNIA UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

1. The additive was manufactured by PRESTIGE ADMINISTRATION, INC;

2. The additive was manufactured by LAURIE COSENTINO, her agents, employees, or any entity in which LAURIE COSENTINO or an agent or employee of

LAURIE COSENTINO is a controlling person as defined in California Insurance Code Section 1668.5(b);

3. The additive was manufactured by ROBERT KONZEN, his agents, employees, or any entity in which ROBERT KONZEN or an agent or employee of ROBERT KONZEN is a controlling person as defined in California Insurance Code Section 1668.5(b);

4. The warranty names PRESTIGE ADMINISTRATION, INC., as the manufacturer, warrantor, obligor or administrator;

5. The warranty names as the warrantor, obligor or administrator LAURIE COSENTINO, her agent, or her employee, or an entity in which LAURIE COSENTINO or an agent or employee of LAURIE COSENTINO is a controlling person as defined in California Insurance Code Section 1668.5(b);

6. The warranty names as the warrantor, obligor or administrator ROBERT KONZEN, his agent, or his employee, or an entity in which ROBERT KONZEN or an agent or employee of ROBERT KONZEN is a controlling person as defined in California Insurance Code Section 1668.5(b);

II. SUMMARY OF VIOLATIONS

One or more of the respondents has committed the following violations, as described in further detail below.

- Acting as an insurance company without a certificate of authority
- Acting as a vehicle service contract provider without a license
- Marketing vehicle service contract forms that have not been filed with the Commissioner

- Failing to obtain back-up insurance for its vehicle service contracts
- Failing to disclose on vehicle service contracts the name of a back-up insurer and the right to file a claim with that insurer
- Failing to disclose on vehicle service contracts the California Department of Insurance toll-free phone number for assistance
- Failing to disclose on vehicle service contracts a vehicle service contract provider license number
- Failing to comply with Civil Code 1794.4 and 1794.41
- Misrepresenting so-called warranties as "not insurance" which in fact are insurance, in violation of Section 790.03(b)
- Engaging in untrue, deceptive and misleading sales practices, in violation of Section 790.03(b)

III. STATEMENT OF FACTS

1. Respondent LAURIE COSENTINO ("COSENTINO"), based on information and belief, is the founder, principal shareholder, and president of respondent PRESTIGE ADMINISTRATION INC. ("PRESTIGE").

2. Respondent ROBERT KONZEN ("KONZEN"), based on information and belief, is a co-founder, one of the principal shareholders, vice-president and chief executive officer of respondent PRESTIGE.

3. At all times mentioned throughout this order, AUTOLIFE Rx ("AUTOLIFE") was a fictitious business name of PRESTIGE.

4. PRESTIGE ADMINISTRATION, INC., is an Arizona corporation registered in Arizona as a domestic corporation with its principal place of business as Phoenix, AZ.

5. COSENTINO, KONZEN, and PRESTIGE are hereafter referred to collectively as "PRESTIGE ET AL." unless otherwise indicated.

6. Since January 1, 2007, Section 116.5 has read as follows:

An express warranty warranting a motor vehicle lubricant, treatment, fluid, or additive that covers incidental or consequential damage resulting from a failure of the lubricant, treatment, fluid, or additive, shall constitute automobile insurance, unless all of the following requirements are met:

(a) The obligor is the primary manufacturer of the product. For the purpose of this section, "manufacturer" means a person who can prove clearly and convincingly that the per unit cost of owned or leased capital goods, including the factory, used to produce the product, plus the per unit cost of nonsubcontracted labor used to produce the product, exceeds twice the per unit cost of raw materials used to produce the product. "Manufacturer" also means a person who has formulated or produced, and continuously offered in this state for more than nine years, a motor vehicle lubricant, treatment, fluid, or additive.

(b) The commissioner has issued a written determination that the obligor is a manufacturer as defined in subdivision (a). An obligor shall provide the commissioner with all information, documents, and affidavits reasonably necessary for this determination to be made. Approval by the commissioner shall be obtained prior to January 1, 2004, or prior to the issuance of a warranty subject to this section, whichever is later. If the commissioner determines that the obligor is not a manufacturer, the obligor may obtain a hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.)

(c) The agreement covers only damage incurred while the product was in the vehicle.

(d) The agreement is provided automatically with the product at no extra charge.

To paraphrase, Section 116.5 is an exemption from the definition of automobile insurance. It states that an "additive warranty" is not automobile insurance if the warrantor satisfies certain conditions.

7. On June 25, 2009, PRESTIGE submitted a written request to the Commissioner for a determination that it was a "manufacturer" pursuant to Section 116.5. On or about October 22, 2009, the Commissioner verbally advised PRESTIGE that it did not qualify as a "manufacturer" pursuant to Section 116.5. On June 10, 2010, the Commissioner wrote PRESTIGE and reiterated his position that Prestige did not qualify as a "manufacturer" pursuant to Section 116.5. At no time has the Commissioner issued a "manufacturer determination" letter pursuant to Section 116.5 to PRESTIGE or any of the individual respondents, nor indicated that PRESTIGE or the individual respondents could legally offer additive warranties pursuant to Section 116.5.

8. Because the PRESTIGE "warranties" fail to meet the conditions contained in Section 116.5 that they must meet in order not to be considered automobile insurance, they are, pursuant to Section 116.5 irrefutably deemed to be automobile insurance.

9. From at least January 1, 2008 until the present, PRESTIGE has illegally offered for sale and sold its additive warranties in California to California residents. From at least June 25, 2009, it has done so with the knowledge by PRESTIGE ET AL. that its "warranties" constituted illegal insurance policies, and that it was illegally acting as an unlicensed insurance company.. The "warranties" constitute insurance policies pursuant to sections 22, 116(a), (b), (c) and (d). PRESTIGE has not received a certificate of authority from the Department of Insurance to act as an insurance company, as required by section 700(a). Consequently, its transaction of

insurance as an insurance company has been in violation of section 700(b). The violation of section 700(a) is punishable as a felony pursuant to section 700(b).

10. In addition to being automobile insurance, the PRESTIGE "warranties" meet the Insurance Code definition of a vehicle service contract ("VSC"). The Insurance Code imposes specific regulatory requirements on VSC obligors, and recites special sanctions for violations of those requirements. Section 12800(c)(1) defines a VSC as follows:

> "Vehicle service contract" means a contract or agreement for a separately stated consideration and for a specific duration to repair, replace, or maintain a motor vehicle or watercraft, or to indemnify for the repair, replacement, or maintenance of a motor vehicle or watercraft, necessitated by an operational or structural failure due to a defect in materials or workmanship, or due to normal wear and tear.

The PRESTIGE "warranties" are contracts or agreements for separately stated consideration and for a specific duration to repair or replace motor vehicles. Due to the breadth of its coverage language, and by not excluding repairs and replacement necessitated by operational or structural failure or due to a defect in materials or workmanship, the "warranties" cover repairs and replacement from those causes. Consequently, the "warranties" fall squarely within the definition of a vehicle service contract.

11. PRESTIGE has during all relevant times acted as an obligor on vehicle service contracts, in the course of which it has violated most of the California Insurance Code laws pertaining to VSC's, including, but not limited to, the following:

A. PRESTIGE has never been licensed as a vehicle service contract provider, as required by Section 12815(a).

B. PRESTIGE failed to file the VSC forms it sold to the public under the PRESTIGE ADMINISTRATION, INC. and AUTOLIFE Rx name with the Commissioner prior to providing those forms to purchasers, as required by Section 12820(a).

C. The PRESTIGE VSC forms contain benefits not permitted to be included in a VSC.

D. The PRESTIGE VSC forms violate the disclosure requirement recited in Section 12820(b)(1)(A). (Disclosure of back-up insurer and right to file a claim with that insurer)

E. The PRESTIGE VSC forms violate the disclosure requirement recited in Section 12820(b)(1)(B). (Disclosure of California Department of Insurance toll-free phone number for assistance)

F. The PRESTIGE VSC forms violate Section 12820(b)(3)(A). (Disclosure of vehicle service contract provider license number)

G. The PRESTIGE VSC forms violate Section 12820(b)(3)(B). (Disclosure of cancellation rights pursuant to Civil Code 1794.4 and 1794.41)

H. The PRESTIGE VSC forms lack "back-up" insurance as required by and in accordance with section 12830.

12. Because PRESTIGE has violated section 12800 et seq., its "warranties" do not qualify as legal vehicle service contracts, and instead constitute illegal insurance policies, pursuant to sections 22, 116(a), (b), (c) and (d), and 12805(a)(3). PRESTIGE has not received a certificate of authority from the Department of Insurance to act as an insurance company, as required by section 700(a). Consequently, its transaction of insurance as an insurance company has been in violation of section 700(b). The violations of sections 12815(a) and 12830 by PRESTIGE constitute felonies, pursuant to section 12845. The violation of section 700(a) is punishable as a felony pursuant to section 700(b).

13. The criminal violations by PRESTIGE were aided and abetted by Respondents COSENTINO and KONZEN. The aiding and abetting of PRESTIGE's felonious conduct by COSENTINO and KONZEN constitute felonies, pursuant to California Penal Code section 31.

14. The facts recited in paragraphs 1 through 13 establish cause for the issuance of the above cease and desist order, pursuant to sections 12921.8(a)(1) and (2).

IV. ORDER TO SHOW CAUSE (12921.8(a)(3))

15. Paragraphs 1 through 14 are re-alleged and incorporated as if fully set forth herein. PRESTIGE, COSENTINO and KONZEN are ordered to show cause why the facts recited in those paragraphs do not establish cause for the Commissioner to impose upon each of them a monetary penalty, pursuant to Section 12921.8(a)(3), the amount of which shall be not less than the greater of five times the amount of money received for "warranties" sold in violation of Sections 22, 116.5, 116, 700, and 12800 et seq., or five thousand dollars ($5,000) for each day they sold or aided or abetted the selling of the "warranties."[2]

NOTICE OF RIGHT TO HEARING

If you desire a hearing in this matter, your written request for a hearing must be received within 15 days after you are served with the order. The 15 days begin to run on the day after the day you are served, and if the 15th day falls on a weekend, the period in which your request must be filed is extended until Monday or the next business day if Monday is a holiday. Your written request for a hearing must be directed to Sara Urakawa, Staff Counsel, California Department of Insurance, 45 Fremont Street, 21st Floor, San Francisco, California 94105. You may use the enclosed Notice of Defense form. Each respondent wishing to request a hearing must sign a separate Notice of Defense form.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal this 14th day of JULY, 2010.

STEVE POIZNER
Insurance Commissioner

By
JOSE S. AGUILAR
Assistant Chief Counsel

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[2] Pursuant to section 12921.8((a)(3)(B), [i]n the absence of contrary evidence, it shall be presumed that a person continuously acted in a capacity for which a license...or certificate of authority was required on each day from the date of the earliest such act until the date those acts were discontinued, as proven by the person at hearing."