

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of)
MAIN STREET POWER MAIL, Inc.) **Docket No. 4466-CO**
Respondent)
)

CONSENT AGREEMENT AND FINAL ORDER

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-103 and in accordance with K.S.A. 40-2,125, the Commissioner hereby orders Main Street Power Mail, Inc. (Respondent) to CEASE & DESIST for a period of not less than six months for violations of the applicable insurance statutes. This Consent Agreement shall become effective as a Final Order, without further notice, when signed by the Commissioner or her designee and filed of record with the Kansas Insurance Department (KID).

Findings of Facts

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-103.
2. Main Street Power Mail, Inc. is an Indiana Domestic Corporation located at 400 S. Main Street, Sheridan, IN 46069 and is operating as third party marketing corporation which solicits the business of insurance in the state of Kansas on behalf of insurance agents and/or insurance companies.
3. KID has received several complaints about advertising solicitations produced and mailed by Respondent that appear substantially similar to government issued documents. In addition, the solicitations do not contain the disclosure of an insurance company and do not clearly indicate that it is a life insurance product. Further, statements contained in the solicitation are misleading and deceptive.

4. Respondent, without adjudication of any issues of law or fact and without admitting or denying liability of any allegations or foregoing facts, stipulates to the foregoing facts.
5. Respondent consents to the cease and desist as ordered.
6. Respondent understands its right to have a hearing on the facts and disposition and to seek review of an adverse order in this matter and expressly waives hearing and judicial review.

Applicable Law

K.S.A. 40-103 states,

“The commissioner of insurance shall have general supervision, control and regulation of corporations, companies, associations, societies, exchanges, partnerships, or persons authorized to transact the business of insurance, indemnity or suretyship in this state and shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto.”

K.S.A. 40-2404 states,

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(2) *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

K.A.R. 40-9-118 states,

Section 4. Form and Content of Advertisements

1. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive.

Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

Section 5. Disclosure Requirements

4. An advertisement shall not use as the name or title of a life insurance policy any phrase that does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance. An advertisement shall not use as the name or title of an annuity contract any phrase that does not include the word "annuity" unless accompanied by other language clearly indicating it is an annuity. An annuity advertisement shall not refer to an annuity as a CD annuity, or deceptively compare an annuity to a certificate of deposit.
5. An advertisement shall prominently describe the type of policy advertised.

Section 6. Identity of Insurer

1. The name of the insurer shall be clearly identified in all advertisements, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. If an application is a part of the advertisement, the name of the insurer shall be shown on the application. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other devise or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identify of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.
2. No advertisement shall use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with a governmental program or agency.

K.S.A. 40-2,125 states, in pertinent part,

“(a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:
(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.”

Conclusions of Law

The Commissioner has jurisdiction over Respondent and the subject matter of this proceeding and based on Paragraphs #1 through #6 and the Applicable Law enumerated above.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE:

1. Respondent’s marketing solicitations sent to Kansas consumers is in violation of K.S.A. 40-2404 and K.A.R. 40-9-118.
2. Pursuant to K.S.A. 40-2,125(a), Respondent is hereby ordered to cease and desist from soliciting the business for any insurance agent or insurance company within the state of Kansas for not less than 6 months, beginning August 1, 2012 for the above-stated violations of K.S.A. 40-2404 and K.A.R. 40-9-118.
3. The cease and desist will end on January 31, 2013 if the KID is provided evidence that the KID finds satisfactory that Respondent has: (1) received education and training with regard to compliance with Advertising Rules applicable in the State of Kansas; and (2) has created review procedures to assure that advertising has been approved for use by a designated compliance person prior to mailing.
4. Pursuant to KSA 77-415(b)(2)(A), this order is designated by KID as precedent.

IT IS SO ORDERED THIS 5th DAY OF OCTOBER 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY:

/s/ Zachary J.C. Anshutz
Zachary J.C. Anshutz
General Counsel

Stipulation

The undersigned stipulates and agrees to the above findings fact and conclusions of law and waives its rights to administrative hearing and judicial review of the Commissioner's Order.

<u>/s/ Jeff Flint</u> _____	<u>10-5-12</u> _____
Jeff Flint	Date
Senior Vice President	

Prepared by:

/s/ Jennifer R. Sourk_____

Jennifer R. Sourk
Staff Attorney

NOTICE: In the event Respondent files a petition for judicial review, it must be filed within 30 days of service of this order, and pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

Zachary J.C. Anshutz, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order and Notice of Rights on this 5th day of October, 2012, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Jeff Flint
Main Street Power Mail
400 S. Main St.
Sheridan, IN 46069

C. J. Rathbun, FLMI, CCEP*, HIA, AIRC
Senior Consultant
First Consulting & Administration, Inc.
1020 Central, Suite 201
Kansas City, MO 64105-1670

_ /s/ Jennifer R. Sourk _____
Jennifer R. Sourk
Staff Attorney