

VT SUPERIOR COURT  
WASHINGTON UNIT  
**STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT**

2014 NOV 21 P 4: 14

IN RE: ACTIVE NETWORK, INC.

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CIVIL DIVISION

Docket No. 702-11-14wncv

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell (“the Attorney General”) and Active Network, LLC, as successor in interest to The ACTIVE Network, Inc. (“Respondent”) hereby agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

**REGULATORY FRAMEWORK**

1. Vermont’s Consumer Protection Act prohibits “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453.

**BACKGROUND**

2. Respondent is a Delaware limited liability company, with its principal place of business located at 717 N. Harwood St, Dallas, TX 75201. Respondent runs an online platform for individuals to search and register online for races, team sports, and recreational activities. Respondent runs a membership program, ActiveAdvantage, that allows participants to access savings and discounts on sports gear, airfare, lodging, transportation, and online event registration fees.

3. One way that individuals became members of ActiveAdvantage was through a free-trial offer presented during an online registration/reservation. After an individual submitted payment for certain online registrations/reservations through Respondent’s registration platform, but before the individual received the confirmation/receipt for the registration/reservation in certain instances, an offer for a free 30-day trial membership appeared. The offer included a section for “Membership billing” information which was

- populated with the individual's name, address, credit card number, and email address. The individual accepted the trial offer by verifying the email address and clicking "Accept."
4. After accepting or declining the trial offer, the individual was provided with the order receipt for the registration/reservation. In certain circumstances, this page did not reference an ActiveAdvantage membership.
  5. Once the 30-day trial period expired, the individual's credit card was charged either \$59.95 or \$64.95 (depending on the time of sign-up), unless the consumer canceled.
  6. Once an individual was enrolled in the ActiveAdvantage program, the credit card information provided at the time of registration/reservation was charged annually for the recurring membership fees, unless the consumer canceled.
  7. Between January 1, 2011, and October 10, 2013, 2,662 Vermont consumers were charged an amount totaling \$220,124.30 for 3,614 annual ActiveAdvantage memberships.
  8. During this same time, Respondent issued refunds totaling \$56,703.29 to 898 of these Vermont consumers.
  9. During this time, of the 2,662 Vermont consumers who were members of ActiveAdvantage, 172, or 6.5%, of the Vermont consumers are known to have utilized the benefits associated with the ActiveAdvantage membership.
  10. In a survey, conducted by the Attorney General, of individuals who were charged for ActiveAdvantage memberships, a majority of individuals who responded did not recall signing up for an ActiveAdvantage membership.
  11. The Attorney General alleges that the process by which Respondent registered individuals for ActiveAdvantage, as described above, constitutes an unfair and deceptive act and practice under 9 V.S.A. § 2453.

12. Respondent admits the truth of all facts set forth in paragraphs 2 through 9.
13. Respondent does not admit to violating the law of Vermont or any other jurisdiction.

#### **INJUNCTIVE RELIEF**

14. Respondent will use registration methods for discount membership programs that clearly distinguish such programs from the registration for events or the purchase of other goods or services. Further, in connection with discount membership program offers, Respondent shall provide clear and conspicuous disclosure of all material terms and conditions of such offers, and shall obtain express affirmative consent from consumers for enrollment in the discount membership program before enrolling them in such program.

#### **RESTITUTION**

15. Respondent shall establish a mechanism by which Vermont consumers can request a refund of certain amounts (the "Settlement Claims Process"). For purposes of this section, the following definitions shall apply:

- a. "Vermont Consumer" shall mean any individual charged by Respondent for an ActiveAdvantage membership while residing in Vermont prior to the date of this AOD.
- b. "Eligible Consumer" shall mean any Vermont Consumer unless such consumer has (a) been fully refunded all amounts charged by Respondent for any ActiveAdvantage memberships; or (b) utilized the benefits of his or her ActiveAdvantage membership.
- c. "Eligible Refund" shall mean any amounts paid by an Eligible Consumer to Respondent for an ActiveAdvantage membership and not previously refunded by Respondent.

16. Respondent shall appoint an employee to administer the Settlement Claims Process.
17. Within 10 days of filing this AOD, Respondent shall deliver to the Office of the Attorney General (“Attorney General”) a list of all Vermont Consumers, including, if available, the Vermont Consumer’s name, last-known address and telephone number, if collected by Respondent during the enrollment process, e-mail address, dates and amounts of all payments, dates and amounts of any refunds, available information regarding post-enrollment usage of the ActiveAdvantage membership, and Eligible Refund amount.
18. Respondent shall provide any additional available information concerning a Vermont Consumer upon written request by the Attorney General within 10 business days provided that information requested is reasonably related to the implementation of this AOD.
19. Within 30 days of filing this AOD, Respondent shall contact every Eligible Consumer by e-mail (using an e-mail format provided by the Attorney General) to provide notice of this AOD and the Eligible Consumer’s rights (“Notice of Settlement”). The Notice of Settlement shall be in the form attached hereto as “Exhibit A.”
20. Respondent shall accept and process all claims of Eligible Consumers, taking appropriate measures to minimize fraud and promote accuracy, and provide a refund to the credit card on file in the amount of the Eligible Refund, and if the refund is unable to be applied to the credit card on file, provide a check to the Eligible Consumer upon acceptance of an Eligible Consumer’s claim as set forth below.
21. For each Eligible Consumer that has not submitted a claim within 30 days following the notice specified in paragraph 19, Respondent shall again contact such Eligible Consumer by email with a copy of the Notice of Settlement to notify the Eligible Consumer of his or her right to a refund under the AOD.

22. An Eligible Consumer's claim to Respondent shall be deemed timely submitted if it is received by Respondent by e-mail no more than 90 days after the date the Notice of Settlement was e-mailed to Eligible Consumers.

23. Within 30 days of receiving a claim from an Eligible Consumer deemed valid by Respondent, Respondent shall refund the amount of the Eligible Refund to the credit card on file for the Eligible Consumer, provided however, if Respondent's efforts to refund the Eligible Refund to the credit card on file are not successful, Respondent shall mail a check to the Eligible Consumer for the Eligible Refund.

24. The Attorney General and the applicable Eligible Consumer shall be notified by e-mail of any claim deemed invalid by Respondent. Notwithstanding the time limitations set forth in paragraph 22, either the Attorney General or the applicable Eligible Consumer has 30 days from the date the notice invalidity is e-mailed to dispute the determination of invalidity.

25. All funds distributed by Respondent in connection with the Settlement Claims Process shall be by refund to the Eligible Consumers' credit card on file, provided however, if Respondent's efforts to refund the Eligible Refund to the credit card on file are not successful, such payment shall be by check that is identified on its face as valid for 90 days. Respondent shall advise, by email, each Eligible Consumer to whom such a check was issued but has remained un-cashed for more than 90 days. The Eligible Consumer may, if he/she contacts Respondent within 30 days thereafter, have such un-cashed checks re-issued, and such re-issued checks will be valid for 30 days from their issue date.

26. For Eligible Refunds made by check because the credit card on file was unable to receive the Eligible Refund, Respondent shall make all reasonable efforts to locate each

Eligible Consumer who submitted a claim but whose Eligible Refund payment was returned. Such reasonable efforts shall include, but not be limited to, the use of commercially-available databases and public records. If contact information for the Eligible Consumer is identified, Respondent shall re-issue the check to the Eligible Consumer.

27. Forty-five days after the issuance of the first Notice of Settlement, and again 90 days after the issuance of the first Notice of Settlement, Respondent shall provide to the Attorney General a report that provides the following information: (a) number of claims received; (b) number of claims paid; (c) the name of each claimant paid; (d) total amount paid; (e) number of invalid claims received; and (f) for each claim deemed invalid, the name of the claimant and the basis for this decision.

28. Respondent shall pay any and all costs associated with creating, maintaining, and administering the Settlement Claims Process, including without limitation, the administrative expenses incurred in connection with providing notice and processing submitted claims. In no event shall the Attorney General or the State of Vermont be liable for any costs associated with the creating, maintain, and administering the Settlement Fund.

#### **PAYMENTS TO VERMONT**

29. Respondent shall pay the State of Vermont's costs of investigation, including, but not limited to, attorneys' fees, in the amount of twenty-five thousand dollars (\$25,000) within ten days of both Parties signing this AOD. Respondent shall make payment to the "State of Vermont" and send payment to: Naomi Sheffield, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

## OTHER TERMS

30. Respondent agrees that this Assurance of Discontinuance shall be binding on Respondent, and its successors and assigns.
31. The Attorney General hereby releases and discharges any and all claims arising under the Consumer Protection Act, 9 V.S.A. §§ 2451-2480, that it may have against Respondent in connection with the marketing and administration of ActiveAdvantage prior to the date of this AOD. The Attorney General similarly releases Respondent's subsidiaries, affiliates and licensees, past and present, and their past and present representatives, successors, administrators, employees, shareholders, managers, officers, directors, board of directors, attorneys, agents, servants and assignees.
32. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this AOD.
33. The parties acknowledge and agree that Respondent is entering into this AOD solely for the purpose of settlement and agree that it does not constitute an admission by Respondent of the violation of any law, rule, or regulation. No part of this AOD constitutes, shall constitute, or shall be used as evidence of any violation of any federal or state statute or regulation or the common law except in an action brought to enforce the terms of this AOD. Entry of this AOD by Respondent does not constitute a waiver of any claims or defenses Respondent may have in any proceeding that has been or may have been brought against it by any third party arising from or related to matters which are or may have been the subject of this AOD.

**SIGNATURE**

In lieu of instituting an action or proceeding against Respondent, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Dallas, TX, this 17 day of November, 2014.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

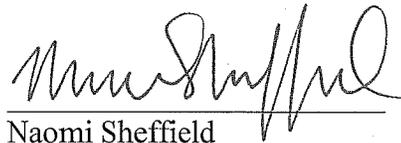
ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 20 day of November 2014.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:

A handwritten signature in black ink, appearing to read 'Naomi Sheffield', positioned above a solid horizontal line.

Naomi Sheffield  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, Vermont 05609  
nsheffield@atg.state.vt.us  
802-828-6906

From: ACTIVE Network, LLC

Subject: Active Advantage Membership Refund Eligibility – Vermont Attorney General Settlement

**If you reply to this email you will receive at least \$59.95 as a refund of the amount you paid for an Active Advantage membership.**

To receive a refund, reply to this email no later than [MONTH, DAY 2015] with the following information: First Name, Last Name, Mailing Address

You have been identified as a consumer who paid for an Active Advantage membership. We are writing to advise you that The ACTIVE Network, Inc. (“Active”) has reached a voluntary settlement with the Attorney General of the State of Vermont arising out of an investigation by the Attorney General into the registration of Vermont residents in the Active Advantage program. Active has agreed to refund certain Vermont consumers, including you, who enrolled in that program.

The amount of your refund is the total amount you paid for an Active Advantage membership that Active has not previously refunded.

To receive a refund, you will be required to release Active, as well as their principals, directors, officers, shareholders, managers, employees, predecessors, affiliates, successors or assignees, as well as any others who worked with or is or was associated with any of the foregoing, from any and all grievances, suits, causes of action, attorneys’ fees, costs, and any claims of any nature whatsoever relating to or arising out of the conduct that was the subject of the Attorney General’s investigation. This release is limited to all matters related to your Active Advantage membership.

IF YOU DO NOT REPLY TO THIS EMAIL BY [MONTH DAY, 2015], YOU WILL **NOT** RECEIVE A REFUND UNDER THIS SETTLEMENT.

If you have any questions:

Contact Active at:

**Active Network, LLC**  
**E-mail: [insert address]**  
**Tel.: XXX XXX XXXX**

Contact the Vermont Attorney General’s Office at:

**E-mail: [consumer@uvm.edu](mailto:consumer@uvm.edu)**  
**Tel.: (800) 649-2424 or (802) 656-3183**