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Attorney for Plaintiffs

**FILED**

OCT 28 2009

**PATRICIA K. COSTELLO, AUC**

By: David M. Puteska  
Deputy Attorney General  
(973) 648-4742

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, ESSEX COUNTY  
Docket No. ESX - C - 148-09

ANNE MILGRAM, Attorney General of the State  
of New Jersey, and DAVID SZUCHMAN,  
Director of the New Jersey Division of Consumer  
Affairs,

Plaintiffs,

v.

ALMOST BACKSTAGE AND COMPANY,  
INC. d/b/a ALMOST BACKSTAGE, INC. and/or  
ABTICKETS.COM

Defendant.

Civil Action

**CONSENT JUDGMENT**

This matter having been opened by Anne Milgram, the Attorney General of New Jersey and David Szuchman, Director, New Jersey Division of Consumer Affairs, by the filing of a Complaint alleging violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA") and/or the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. ("Regulations") against Almost Backstage and Company, Inc. d/b/a Almost Backstage, Inc. and/or Abtickets.com ("Defendant"), and it appearing that the parties have reached an amicable agreement resolving the issues in controversy and concluding this matter without the need for further action, and Defendant having consented to

the entry of the within judgment without having admitted any violation of law or finding of fact, and for good cause shown,

**IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:**

**1 DEFINITIONS**

For purposes of this Consent Judgment, the following terms shall be defined as follows:

1.1 "Affinity group" - means an identifiable group of people who are members of the same organization or who are customers of the same person, except that customers of a Reseller shall not constitute an affinity group.

1.2 "Complaint" - means the complaint filed against Defendant in the above captioned action on May 29, 2009.

1.3 "Division" - means the New Jersey Division of Consumer Affairs.

1.4 "Entertainment Event" - means any event such as a performance, concert, exhibit or exhibition for which an entry fee is charged. For the purpose of this Consent Judgment, the term "Entertainment Event" shall specifically exclude sporting events.

1.5 "Initial Public Onsale" - means the date and time when the owner or operator of a Place of Entertainment or the Entertainment Event or an agent of any such person first makes Tickets available for purchase by the general public.

1.6 "Insider" - means an employee of a Place of Entertainment or its agent, a producer, promoter, performer and any other person associated with an event who lawfully controls any tickets prior to their release for sale to the general public.

1.7 "Place of Entertainment" - means any privately or publicly owned or operated entertainment facility such as a theater, stadium, museum, arena, racetrack or other place where

Entertainment Events are held and for which an entry fee is charged.

1.8 "Pre-sale" - means a sale of Tickets at or below the price printed on the Ticket by an owner or operator of a Place of Entertainment, or, with the permission of the owner or operator, by an insider, prior to the Initial Public Onsale, directly, or indirectly through a third party who is not a reseller, to members of an Affinity Group or target market.

1.9 "Primary Seller" - means the entity which is contracted by the Place of Entertainment, promoter, artist, manager or other authorized agent to sell a Ticket to the general public.

1.10 "Reseller" - means any person other than a Place of Entertainment or Primary Seller who resells a Ticket, including a season ticket holder or an insider.

1.11 "Ticket" - means any evidence of the right of entry to a Place of Entertainment.

## **2. JURISDICTION**

2.1 The parties admit jurisdiction of this Court over the subject matter and over the parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the parties to apply to this Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

## **3. VENUE**

3.1 Venue as to all matters between the parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Essex County.

## **4. EFFECTIVE DATE**

4.1 This Consent Judgment shall be effective on the date that it is entered with the Court

("Effective Date").

#### **5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES**

5.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State of New Jersey and shall comply with such state and/or federal laws, rules and regulations as now constituted or as may hereafter be amended, which are applicable to all future sale and/or re-sale of tickets in the State of New Jersey.

5.2 Defendant shall not offer for sale, sell or advertise any Ticket to any Place of Entertainment prior to the Initial Public Onsale. To the extent any Ticket is offered for sale by the Primary Seller as part of a Pre-Sale, Defendant may offer for sale the specific Pre-Sale Ticket, after the date and time of the Pre-Sale but prior to the Initial Public Onsale, provided that it has obtained ownership, custody and control of such Ticket prior to advertising, selling or offering to sell the Ticket.

5.3 Defendant shall not offer for sale, sell or advertise any Ticket to any Place of Entertainment prior to obtaining ownership, custody and control over such Ticket.

#### **6. PAYMENT TO THE STATE**

6.1 Defendant agrees that in settlement of this matter, it shall pay to the State of New Jersey the sum of \$5,000 for investigative fees, attorneys fees and other administrative costs and resolution of penalties, pursuant to N.J.S.A. 56:8-11, 56:8-13 and 56:8-19, upon execution of this Consent Judgment.

6.2 The payment referenced in paragraph 6.1 shall be made by certified check or money order made payable to the New Jersey Division of Consumer Affairs and forwarded to the following address:

David M. Puteska, Deputy Attorney General  
New Jersey Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101

#### **7. DEFAULT AND ENFORCEMENT**

7.1 The Attorney General, the Division or the Attorney General's designated representative shall have the authority to enforce the provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

7.2 Defendant agrees to pay all reasonable attorneys fees and litigation costs including, but not limited to investigative and court costs, associated with any successful collection efforts by the New Jersey Attorney General, the Division or the Attorney General's designated representative.

#### **8. RELEASE**

8.1 In consideration of the injunctive relief, payments, undertakings and acknowledgments provided for in this Consent Judgment, and conditioned on Defendant making the settlement payment as specified in Section 6, the Division hereby agrees to release Defendant from any and all civil claims that occurred prior to the Effective Date which were asserted in the Complaint, as well as the matters specifically addressed in this Consent Judgment (the "Released Claims").

8.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: private rights of action, any criminal liability that Defendant has or may have to the State of New Jersey and actions by any other entity or subdivision of the State.

#### **9. GENERAL PROVISIONS**

9.1 This Consent Judgment does not constitute an admission by Defendant that any of

its acts and/or practices are unfair or deceptive or violate any of the consumer protection laws of New Jersey.

9.2 This Consent Judgment shall be governed by the laws of the State of New Jersey.

9.3 Defendant represents that it has fully read and understood this Consent Judgment, that it understands the legal consequences involved in signing the Consent Judgment, and that there are no other representations or agreements not stated in writing herein.

9.4 Defendant represents and warrants that it is represented by the undersigned legal counsel, that it is fully advised of its legal rights in this matter, and that the person signing below is fully authorized to act on its behalf.

9.5 This Consent Judgment shall be binding upon the Defendant, its owners, officers, directors, employees, agents, assigns and successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment avoid compliance with this Consent judgment.

9.6 This Consent Judgment contains the entire agreement among the parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Division and Defendant.

9.7 Nothing contained in this Consent Judgment shall be construed to deprive any consumer or other person or entity of any private right under the law.

9.8 Defendant shall not represent or imply that any business practice or other act or practice hereinafter used or engaged in by the Defendant has been required or approved, in whole or part, by the Attorney General, the Division, the State of New Jersey or any of the State's agencies, agents or subdivisions.

9.9 If any provision of this Consent Judgment or the application thereof shall to any

extent be deemed invalid or unenforceable, the remainder of the Consent Judgment or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Consent Judgment shall be valid and enforced to the fullest extent permitted by law.

9.10 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

IT IS ON THE 28<sup>th</sup> DAY OF October, 2009 SO ORDERED.

  
HON. Patricia K. Costello, A.J.S.C.

THE ATTORNEYS FOR THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT JUDGMENT ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By: *James J. Savage*  
*David M. Puteska James J. Savage*  
*Deputy Attorney General Assistant Attorney General*

Dated: *10/28/* 2009

FOR ALMOST BACKSTAGE AND COMPANY, INC. d/b/a/ ALMOST BACKSTAGE, INC. and/or ABTICKETS.COM

Ansell Zaro Grimm & Aaron  
Attorneys for Defendant

By: *[Signature]*  
Mitchell J. Ansell, Esq.

Dated: *10/26/09* 2009