

STATE OF OREGON  
Marion County Circuit Courts  
SEP 04 2013  
**ENTERED**

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SEP 04 2013  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

IN THE MATTER OF

XACTI LLC,  
RSOP HOLDINGS DELAWARE, LLC  
RSOP HOLDINGS, LLC,  
BESTBRANDVALUES.COM, LLC,  
DISCOUNT BOOK SALE, LLC,  
SMART SAVINGS CENTER, LLC,  
SMARTSAVINGSCENTER.COM, LLC,  
HOTMOVIESALE.COM, LLC,  
HOTBOOKSALE.COM, LLC,

Respondents.

Case No. 13C20192  
ASSURANCE OF VOLUNTARY  
COMPLIANCE

1.

This Assurance of Voluntary Compliance ("AVC") is between Respondents and the Oregon Department of Justice ("DOJ") pursuant to ORS 646.632(2). Respondents and DOJ are hereinafter collectively referred to as "the Parties."

2.

Respondents have done and continue to do business in Oregon through various websites, including but not limited to, BestBrandValues.com, SmartSavingsCenter.com, Nuvalife.com, DiscountBookSale.com, DiscountMovieSale.com, DiscountPosterSale.com, TopMusicZone.com, HotBookSale.com, HotMovieSale.com and SmartGameShopper.com. Through these websites, Respondents have offered "negative option" memberships, including SmartSavingsCenter memberships, BestBrandValues memberships, and specific

1 “webshop” memberships with HotMovieSale.com, HotBookSale.com, and  
2 DiscountBookSale.com (collectively, the “Memberships”). A “negative option” Membership  
3 for purposes of this AVC is a Membership that results in automatically-recurring charges  
4 (usually monthly) against a consumer’s credit card, debit card, or bank account; the charges  
5 continue until the consumer cancels the Membership. Between 2008 and 2012, Respondents  
6 offered negative option Memberships in Oregon and approximately 5233 Oregonians  
7 purchased such Memberships from Respondents, paying approximately \$252,645.00 in  
8 unrefunded Membership fees.

9 3.

10 This AVC is an agreement between Respondents and the DOJ acting pursuant to ORS  
11 646.632. It is a settlement of a disputed matter, and shall not be considered an admission of a  
12 violation for any purpose. Respondents deny that they have engaged in unlawful or  
13 otherwise inappropriate business practices. Respondents and DOJ agree that no provision of  
14 the AVC operates as a penalty, forfeiture, or punishment under the Constitution of the United  
15 States, under the Constitution of the State of Oregon, or under any other provision of law.  
16 DOJ agrees not to represent or imply that the AVC constitutes a finding of fact or conclusion  
17 of law by any court that any Respondents have engaged in unlawful conduct. Except as  
18 otherwise expressly provided in paragraph 14 herein, Respondents agree not to represent or  
19 imply that DOJ or any other governmental unit of the State of Oregon approves of  
20 Respondents’ business practices. The Parties agree to this AVC so that this matter may be  
21 resolved amicably, without further cost or inconvenience to the State of Oregon, its citizens  
22 or to Respondents. This AVC shall not be considered an admission of any violation of law  
23 by Respondents for any purpose, nor shall it be considered as an admission of personal  
24 jurisdiction over Respondents for any purpose unrelated to the AVC or enforcement thereof.

25 4.

26

1 DOJ hereby forgoes issuing, and Respondents hereby waive receipt of, any notice  
2 pursuant to ORS 646.632(2).

3 5.

4 Respondents understand and agree this AVC applies to Respondents and  
5 Respondents' parents, subsidiaries, affiliates and their respective owners, managers,  
6 principals, agents, officers, directors, employees, representatives, successors and assigns, or  
7 all other related parties, jointly and severally, while acting personally or through any  
8 corporation or other business entities whose acts, practices or policies are directed,  
9 formulated or controlled by Respondents (collectively, the "Related Parties"). This expressly  
10 includes any corporation or other business entities formed after the execution of the AVC,  
11 whose acts, practices or policies are directed, formulated or controlled by Respondents and  
12 the Related Parties.

13 6.

14 DOJ represents that it has sent a copy of each and every consumer complaint it has  
15 received through the date of entry of this AVC concerning Respondents to Respondents or  
16 Respondents' Oregon legal counsel. DOJ shall send a copy of any future consumer  
17 complaints it receives concerning Respondents to Respondents within ten (10) business days  
18 after DOJ's receipt. Respondents shall resolve such consumer complaints within ten (10)  
19 business days after receipt of such complaint.

20 7.

21 Respondents and Respondents' attorneys agree and understand that following  
22 acceptance of the AVC by DOJ, DOJ may communicate directly with Respondents for the  
23 purpose of executing and enforcing the terms of this AVC, and conducting undercover  
24 investigations of Respondents to the extent permitted by law and by the Oregon Rules of  
25 Professional Responsibility. However, neither this paragraph nor any other language  
26 contained in this AVC is intended in any manner to be a waiver of Respondents' right to seek

1 the advice and assistance of counsel at any time or to direct DOJ to communicate with  
2 Respondents through specified counsel at any time.

3 8.

4 Respondents understand and agree that if this AVC is accepted by DOJ, it will be  
5 submitted to the Circuit Court of the State of Oregon in Marion County for approval, and, if  
6 approved, will be filed with the court pursuant to ORS 646.632(2). Respondents agree to  
7 accept service of a conformed or certified copy of this AVC by prepaid first class mail sent to  
8 Respondents' Oregon counsel of record listed below.

9 9.

10 Respondents understand that, in addition to any other remedies which may be  
11 imposed under this AVC or under the law, *willful* violation (ORS 646.605(10)) of any of the  
12 terms of this AVC may result in contempt of court proceedings, civil penalties of up to  
13 twenty-five thousand dollars (\$25,000.00) for each violation, and such further relief as the  
14 court may deem appropriate as provided for in ORS 646.632(4), ORS 646.642(1), and ORS  
15 646.642(2). If DOJ becomes aware of circumstances which could result in a determination  
16 by DOJ that Respondents have failed to comply with any terms of the AVC, whether willful  
17 or not, DOJ shall promptly notify Respondents and Respondents' Oregon legal counsel in  
18 writing of such circumstances and Respondents shall have ten (10) business days from  
19 receipt of such written notice to provide a good faith written response to DOJ's  
20 determination.

21 10.

22 The Parties acknowledge that no other promises, representations or agreements of any  
23 nature have been made or entered into by the Parties. The Parties acknowledge that this  
24 AVC constitutes a single and entire agreement that is not severable or divisible, except that if  
25 any provision herein is found to be legally insufficient or unenforceable, the remaining  
26 provisions shall continue in full force and effect.

1 REMEDIES

2 11.

3 Respondents shall obey Oregon's Unlawful Trade Practices Act, ORS 646.605 to  
4 ORS 646.656, ORS 646A:292 to ORS 646A:295(5), and all related Oregon Administrative  
5 Rules (collectively, the "UTPA").

6 12.

7 For purposes of this AVC, the following definitions shall apply:

- 8 a. "Claim Form" means the Claim Form attached as Exhibit 5.  
9 b. "Eligible Consumer" means an individual person who (1) paid monthly  
10 Membership fees to Respondents for participation in a Membership, and (2) was  
11 an Oregon resident at the time such payment(s).  
12 c. "Refund" means a full refund of all charges paid by an Eligible Consumer for  
13 monthly Membership fees through the date of entry of this AVC, less previous  
14 refunds and/or chargebacks made in favor of the Eligible Consumer by  
15 Respondents.

16 13.

17 DOJ's decision to settle this matter or to otherwise unilaterally limit current or future  
18 enforcement action does not constitute approval or imply authorization for any past, present,  
19 or future business practice, except the future practices expressly set forth in paragraph 14.  
20 Similarly, Respondents' decision to settle this matter and/or adjust its business practices does  
21 not constitute an admission or any other form of acknowledgement that Respondents engaged  
22 in any unlawful practices or otherwise violated any law.

23 14.

24 Within 30 days of execution of this AVC, Respondents shall make the following  
25 changes to all websites that offer the Memberships:  
26

- 1 a. At the point-of-sale when a consumer makes a decision to add an item to a  
2 "shopping cart" to which a negative option Membership applies on Respondents'  
3 websites, a pop-up window will appear in the form attached hereto as Exhibit 1.  
4 b. Immediately prior to submitting a final order to purchase an item to which a  
5 negative option Membership applies on Respondents' websites, consumers will be  
6 required to affirmatively check a box in the form attached hereto as Exhibit 2.  
7 c. Within 24 hours of an order described in paragraph 14.b, Respondents shall  
8 transmit a "welcome email" to consumers in the form attached hereto as Exhibit  
9 3.  
10 d. At least five days before charging a consumer a second or subsequent  
11 membership fee after the trial period for a negative option Membership,  
12 Respondents shall transmit a "reminder email" to consumers in the form attached  
13 hereto as Exhibit 4.

14 15.

15 DOJ acknowledges that Respondents have already voluntarily provided 100 percent  
16 Refunds to certain individuals (the "Refunded Consumers"). Except for the Refunded  
17 Consumers, Respondents agree to send the Claim Form to each Eligible Consumer within 30  
18 days of entry of this AVC (the "Mailing Date") to the mailing address on file with  
19 Respondents. Any Claim Forms returned as undeliverable will be provided to DOJ. Any  
20 Eligible Consumer who completes the Claim Form and post-marks it no later than 60 days  
21 after the Mailing Date is entitled to a Refund ("Timely Claims"). Any Claim Form  
22 postmarked more than 60 days after the Mailing Date shall be void ("Untimely Claims");  
23 provided, however, that any Eligible Consumer may still contact Respondents regarding  
24 complaints or requesting a Refund, but any such complaints shall be handled in Respondents'  
25 normal course of business and with the normal procedures for which Respondents resolve  
26

1 day-to-day customer complaints. Respondents shall have no obligation under this AVC to  
2 pay a Refund for Untimely Claims.

3 16.

4 For Timely Claims, Respondents shall pay (electronically or by check at the Eligible  
5 Consumer's option) the Eligible Consumer the Refund (the "Refund Payment") no later than  
6 120 days after the Mailing Date. Respondents shall not be required to issue any duplicate  
7 Refund Payments pursuant to this AVC. Within 180 days after the Mailing Date,  
8 Respondents shall provide to DOJ a report, in Excel format, detailing the Refund Payments  
9 made to Eligible Consumers pursuant to the AVC (the "Refund Payment Report").

10 17.

11 Respondents may, at their sole discretion, elect to utilize a third-party administrator to  
12 mail Claim Forms and administer payment of Refund Payments, communicate with Eligible  
13 Consumers, and complete the tasks identified in paragraphs 15 and 16 above.

14 18.

15 Any Refund Payments by Respondents shall not be construed under this AVC or in  
16 any judicial, arbitral, regulatory, or other proceeding, whether or not related to this AVC, as  
17 an admission or evidence of any wrongdoing by Respondents, or that the Eligible Consumer  
18 had a valid claim under the UTPA, or any other state or federal law, or that Respondents lack  
19 or lacked evidence legally sufficient to dispute any such claim.

20 19.

21 Within 30 days of execution of the AVC, Respondents shall pay the sum of \$300,000  
22 to the Consumer Protection & Education Account, established pursuant to ORS 180.095, to  
23 be utilized by the State of Oregon as allowed by law.

24 20.

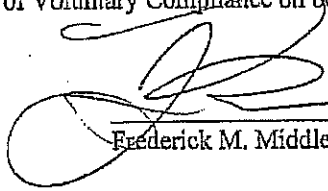
25 The parties acknowledge and agree that this AVC constitutes a full and final release  
26 by DOJ of Respondents and the Related Parties from any and all liability under the consumer

Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204  
MAIN (503) 254-3380 FAX (503) 250-7480

1 protection laws of the State of Oregon which occurred before the date of execution of this  
2 AVC. Respondents agree and understand that nothing in this AVC precludes any private  
3 right of action or Respondents' defense or claims related to any such private right of action.  
4

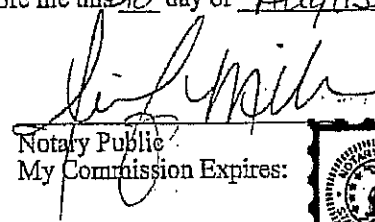
5 **CORPORATE RESPONDENTS' SIGNATURE AND ACKNOWLEDGMENT**

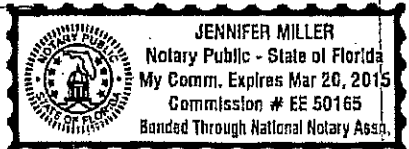
6 I, Frederick M. Middleton, being first duly sworn on oath, depose and say that I am  
7 the agent of respondents, and that I am fully authorized and  
8 empowered to sign this Assurance of Voluntary Compliance on behalf of Respondents, and  
9 bind the same thereto.

  
Frederick M. Middleton

Address: 999 W. Garfield  
Boca Raton FL 33431

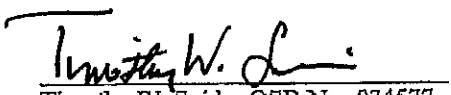
14 SUBSCRIBED and SWORN to before me this 20<sup>th</sup> day of August,  
15 2013.

  
Notary Public  
My Commission Expires:



18 **REVIEW BY COUNSEL**

19 APPROVED as to form this 20<sup>th</sup> day of August, 2013.

21   
22 Timothy W. Snider OSB No. 034577  
23 Oregon Attorney for Respondents  
24 twsnider@stoel.com



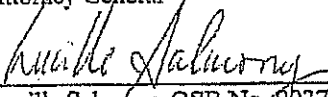
Stoel Kives LLP  
500 SW Fifth Avenue, Suite 2600, Portland, OR 97204  
AGAIN (503) 234-3380 FAX (503) 220-2480

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ACCEPTANCE OF DOJ

ACCEPTED this 19<sup>th</sup> day of August, 2013.

Ellen F. Rosenblum  
Attorney General

  
Lucille Salmony, OSB No. 903790  
Senior Assistant Attorney General  
Lucille.Salmony@doj.state.or.us

APPROVAL BY COURT

APPROVED for filing and so ORDERED this 4<sup>th</sup> day of Sept, 2013.

  
Circuit Court Judge  
For Marion County

EXHIBIT 1 (POP-UP BOX DISPLAY):

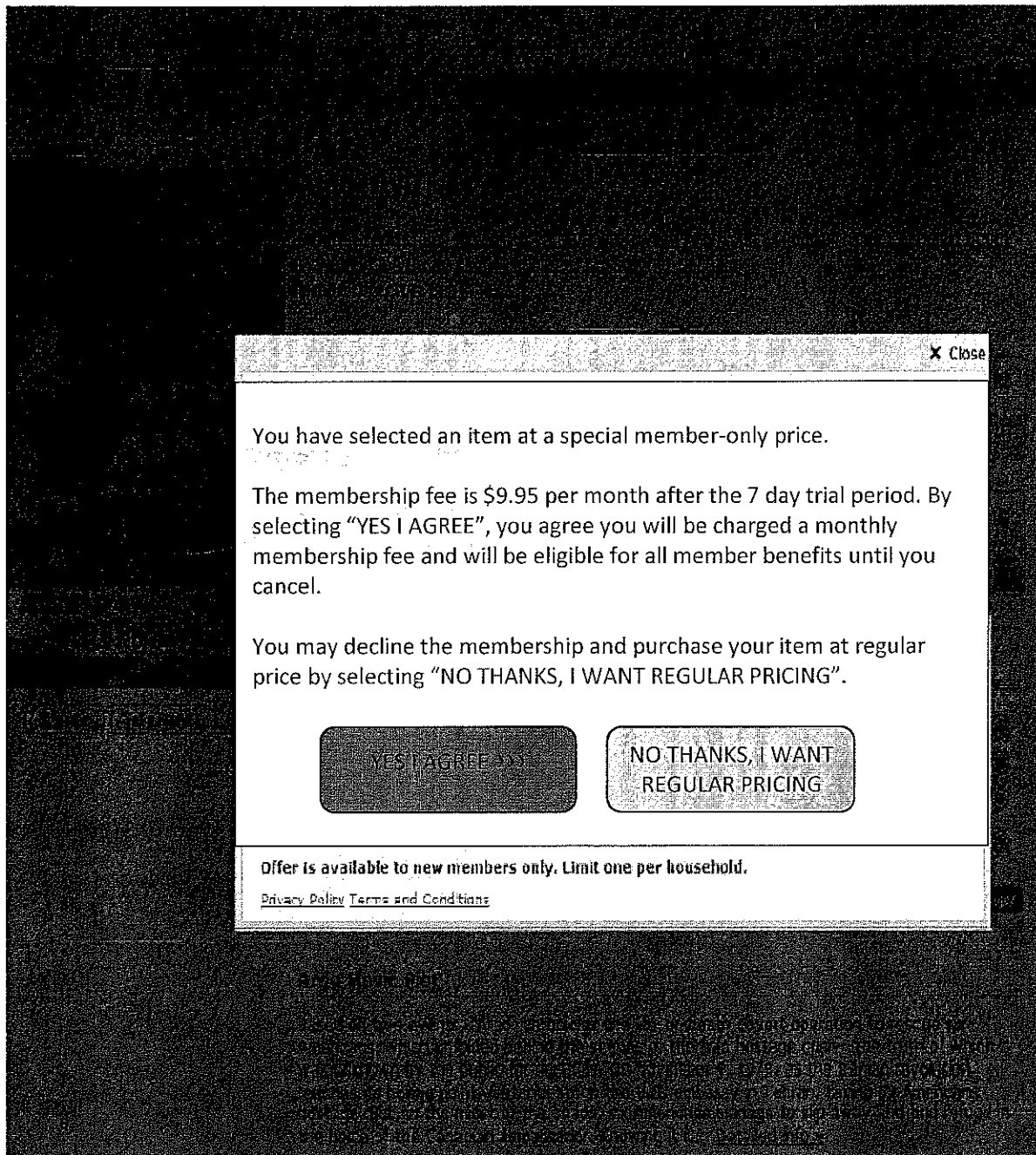


EXHIBIT 2 (CHECKOUT PAGE):

## Payment Method



Your billing information is sent to us safely, securely and encrypted to ensure your privacy and payment protection.

Your IP address 77.240.199.78 has been recorded as a security measure to help prevent credit card fraud.

Credit Card Number:  Credit Card Type:

Expiration Date:  Security Code:

[What is a Security Code?](#)

Your card may be eligible or enrolled in Verified by Visa or MasterCard SecureCode payer authentication programs. After clicking the "Submit Order" button, your Card Issuer may prompt you for your payer authentication password to complete your purchase.



Yes, please send me special offers and valuable information from HotMovieSale.com and its partners.

By checking the box and clicking "Submit Order", I agree my credit card will be billed a monthly membership fee of \$9.95 after the 7-day trial period, and that I have read and agree to the [Terms & Conditions](#), [Privacy Policy](#) and [Offer Details](#).

**Submit Order »**

As a BestBrandValues member you will enjoy big savings and wholesale pricing on over 70,000 DVD and game titles, over 1,200,000 book titles with new ones added every week, and over 300,000 art prints and posters by top artists. We make it easy and affordable to fill your home with great products and services at or below wholesale prices every day!

By placing your order today, you will begin a 7-day trial of BestBrandValues for \$1. You can cancel anytime by calling 1-856-529-3413 or via email [support@bestbrandvalues.com](mailto:support@bestbrandvalues.com).

**AUTO RENEW FEATURE:** For your convenience and to provide seamless services, your membership includes automatic monthly renewal to maintain your account. Renewal notices are sent 5 days prior to each renewal. You can cancel the auto renew feature or your account anytime by contacting customer support at 1-856-529-3413.

**I will receive an order confirmation and account related information by email after I submit this order.**

EXHIBIT 3 (WELCOME EMAIL TEMPLATE):

Subject: Your New BestBrandValues Membership!

Welcome \_\_\_\_\_, *(Name of customer)*

This email confirms that you have signed up for a Best Brand Values 7-day trial membership for \$1. At the conclusion of the 7-day trial period, your credit or debit card will automatically be billed \$9.95 each month for this membership unless you cancel your membership prior to the end of the 7-day trial period. To cancel, you can call customer support at 1-856-529-3413, or log on to [www.bestbrandvalues.com](http://www.bestbrandvalues.com) and click on the 'Cancel Membership' tab.

Your membership provides discount prices on the following websites:

[www.bestbrandvalues.com](http://www.bestbrandvalues.com)

[www.hotmoviesale.com](http://www.hotmoviesale.com)

[www.hotbooksale.com](http://www.hotbooksale.com)

[www.discountpostersale.com](http://www.discountpostersale.com)

[www.smartgameshopper.com](http://www.smartgameshopper.com)

[www.nuvalife.com](http://www.nuvalife.com)

Login to use your membership using the following information:

User Name:

Password:

Your monthly membership fee will be displayed on your credit card or bank statement as BBV/\_\_\_\_\_.

You will receive monthly reminder notifications prior to billing.

To prevent future messages from being blocked by your spam filter, mark the sender as "OK" or add to your list of contacts.

EXHIBIT 4 (NOTIFICATION EMAIL TEMPLATE):

From: [info@bestbrandvalues.com](mailto:info@bestbrandvalues.com)  
Sent: (Date)  
To: [customer@----.com](mailto:customer@----.com)  
Subject: [BestBrandValues](#) Membership Renewal Notification

This message serves as a reminder that your [Best Brand Values](#) monthly membership billing of \$9.95 will occur in approximately five days. The billing will appear on your monthly statement as "-----". Take advantage of your membership today with wholesale prices on DVDs, books and merchandise and the great benefits [Best Brand Values](#) has to offer.

Click here to access your account and great buys at [Best Brand Values](#):

[www.bestbrandvalues.com](http://www.bestbrandvalues.com)  
[www.hotmoviesale.com](http://www.hotmoviesale.com)  
[www.hotbooksale.com](http://www.hotbooksale.com)  
[www.discountpostersale.com](http://www.discountpostersale.com)  
[www.smartgameshopper.com](http://www.smartgameshopper.com)  
[www.nuvalife.com](http://www.nuvalife.com)

CANCELLATION AND CUSTOMER CARE

To cancel your account, or for billing inquiries, call Customer Service for assistance toll-free at +1-856-529-3413 or email us at [support@bestbrandvalues.com](mailto:support@bestbrandvalues.com) or log onto your account and cancel using the CANCEL tab on the front page of your member account page.

If you have any questions about your order, membership or benefits, please contact Customer Service, we're available to assist you 24/7, call toll-free 1-856-529-3413.

\*\*\*\*\*

This is an automated email, please do not reply to this email.

**REFUND CLAIM FORM**

According to our records, **between 2008 and 2012**, you purchased a membership with SmartSavingsCenter, BestBrandValues, HotMovieSale.com, HotBookSale.com, and/or DiscountBookSale.com (the "Membership") and paid monthly membership fees in connection with that Membership.

As a result of a negotiated settlement between the Oregon Department of Justice and Xacti, LLC et al., filed in Marion County Circuit Court in August 2013, you may be entitled to a refund for any unreimbursed monthly Membership fees (the "Refund"). To submit a claim for a Refund, you need to complete this form and send it via U.S. Mail to the address below. **If you do not want to make a claim, or if you intended to purchase your Membership, please disregard this form.**

To be valid, the Claim Form must be **completed, address information verified, signed, and postmarked no later than [60 days from mailing date]**. You are strongly encouraged to keep a copy of this claim form for your own records. Please allow 60 days for your Refund to be processed.

**In order to make a claim and receive a Refund, please verify your contact information listed below. If your address has changed, please fill out the "Current Address, If Different" column:**

Address in Membership Files	Current Address, If Different
Member Name: _____	Address: _____
Address: _____	City: _____
City: _____	State: _____ Zip: _____
State: _____ Zip: _____	Email: _____
Email: _____	Telephone number: _____
Telephone number: _____	

**Please indicate how you want to receive the Refund, by checking one of the following options:**

Credit the full amount of my Refund to the credit/debit card account that you have on file for the Membership: \_\_\_\_\_

Send me a check in the amount of the Refund: \_\_\_\_\_

**Additionally, you must verify that the following statement is true and correct, in order to receive a Refund: "I certify under penalty of perjury that I unknowingly purchased a Membership, that I unknowingly paid Membership fees in connection with my Membership, and that I hereby request a Refund."**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Provide Email Address Associated with Membership (optional): \_\_\_\_\_

**(If the information contained above is not accurate, you must correct it or it may result in denial of your claim.)**

By signing and submitting this Claim Form, the undersigned consents in accord with Title 47, United States Code, Section 551(c)(1), that this information may be disclosed to the Claims Administrator or any other person or entity charged with verifying the information on this Claim Form, your personally identifiable information as may be necessary in order to process the claim.

The address of the Claims Administrator is:

SmartSavingsCenter Refund c/o Dahl Administration. P.O. Box 3614 Minneapolis, MN 55403-0614
--

**If you have any questions about this Claim Form, please call the Oregon Department of Justice Consumer Protection Hotline at 503.378.4320 (toll free 877.877.9392) and mention the "Best Brand Values" case. The Hotline is staffed 8am-4:30pm Monday through Friday. If you call outside of those hours, you can leave a message on the Hotline message system and your call will be returned the next business day.**



STATE OF OREGON } ss  
County of Marion

The foregoing copy has been compared and is certified by me as a full, true and correct copy of the original on file in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the

Court on: 9/14/13  
TRIAL COURT ADMINISTRATOR

By [Signature]