

STATE OF NEBRASKA
Department of Banking & Finance

In the Matter of)	FINDINGS OF FACT
RecycleRewards, Inc.,)	CONCLUSIONS OF LAW
149 5 th Avenue, 4 th Floor)	AND
New York, New York)	CONSENT AGREEMENT

THIS MATTER comes before the Nebraska Department of Banking and Finance (“Department”), by and through its Director, pursuant to its authority under the Nebraska Banking Act, Neb. Rev. Stat. §§ 8-101 to 8-1,140 (Reissue 2007; Cum. Supp. 2008). Pursuant to Neb. Rev. Stat. §§ 8-108 and 8-1,134 (Reissue 2007), the Department has investigated the acts of RecycleRewards, Inc., 149 5th Avenue, 4th Floor, New York, New York (“RecycleRewards”). As a result of such investigation, and being fully advised and informed in the matter, the Director and RecycleRewards enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement (“Agreement”).

FINDINGS OF FACT

1. RecycleRewards is currently, and at all times relevant to this Agreement, a company domiciled in New York. RecycleRewards is a for profit company, that enters into agreements with municipalities, waste haulers, and material processors regarding incentive-based recycling of waste materials. RecycleRewards conducts business in several states and is registered to do business in the State of Nebraska under the name RecycleRewards.
2. RecycleRewards is not a financial institution, but uses the term “RecycleBank” to describe a program whereby consumers can receive reward points for recycling solid waste material. These points allow consumers to obtain premiums such as discounts at

grocery stores, pharmacies and other retail stores. Consumers can contribute their points towards Nebraska schools and environmental charities.

3. During early 2008, individuals on behalf of RecycleRewards contacted the Nebraska Secretary of State's Office to determine if RecycleRewards could register a company under the trade name "RecycleBank" in Nebraska. On two occasions, the Nebraska Secretary of State's Office informed RecycleRewards' representatives that the company did not qualify to register a company under the name "RecycleBank" pursuant to Nebraska statutes.

4. RecycleRewards was registered as a foreign corporation with the Secretary of State as of April 23, 2008.

5. On November 13, 2007, the United States Patent and Trademark office issued to RecycleBank, LLC, an affiliated company to RecycleRewards, LLC, a federal trademark for the trademark and trade name "RecycleBank."

6. The trade name "RecycleBank" is not currently registered with the Nebraska Secretary of State's Office. The Nebraska Secretary of State's Office has provided RecycleRewards and the Department a November 17, 2008 written statement consenting to the filing of the trade name "RecycleBank" in Nebraska subject to the conditions listed in this Consent Agreement. RecycleBank will file for reservation of the trade name with the Nebraska Secretary of State within fifteen (15) days from the signing of this Consent Agreement.

7. RecycleRewards entered into a license agreement with Firststar Fiber Corporation, 10330 "I" Street, Omaha, Nebraska ("Firststar"), in May 2008. RecycleRewards was and is

the licensor of the RecycleBank program. Firststar was and is the licensee of the RecycleBank program in Nebraska.

8. A representative of Firststar contacted the Director of the Department regarding the use of the term “bank” on three separate occasions in March and April 2008. No reference to Firststar, RecycleRewards, or RecycleBank was made during those contacts. The Department informed this representative that Section 8-113 of the Nebraska Banking Act controls the use of the word “bank” in Nebraska.

9. The RecycleRewards/Firststar program currently has approximately five thousand (5,000) customers in Nebraska.

10. The Department learned that the trade name “RecycleBank” was being used in Nebraska by way of a newspaper article that was published in the Lincoln Journal Star on July 12, 2008. The Department mailed a letter to RecycleRewards on July 28, 2008, regarding this matter.

11. RecycleRewards and Firststar use the term “RecycleBank” in their mailings, and on trash bins, garbage trucks, a website, and other forms of communication with Nebraska residents.

12. No consumer complaint has been filed with the Department, as of the date of this Agreement, that asserts a consumer has been led to believe that the term “RecycleBank” refers to a bank or banking activity.

13. Since August 1, 2008, the Department has met with representatives of RecycleRewards and Firststar on four occasions to discuss the use of the word “bank” by RecycleRewards and Firststar, and, more generally, the business practices of RecycleRewards and Firststar in connection with the use of the word “bank.” After the

third meeting, the Director issued a letter on September 12, 2008 requiring certain changes by the licensor, RecycleRewards. The letter was issued in accordance with the Director's understanding of the RecycleRewards program at that time.

14. Neither an administrative law judge nor a court of competent jurisdiction has determined that a violation has occurred in this matter.

15. The parties desire to resolve this matter by way of a Consent Agreement.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 8-1,134(2) (Reissue 2007) provides, in part, that the Director may by order impose a fine, in addition to the costs of the investigation, upon a person found to have violated any provision of Chapter 8 of the Nebraska Statutes or the rules, regulations, or orders of the Department.

2. Section 8-1,134(2) further provides that the fine shall not exceed ten thousand dollars per violation for the first offense and twenty-five thousand dollars per violation for a second or subsequent offense involving a violation of the same provision of Chapter 8.

3. Section 8-1,134(2) further provides that an alleged violator shall have an opportunity for a fair hearing.

4. Section 8-113 limits the use of the word bank as follows:

No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity. This section does not apply to: (1) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency; (2) bank holding companies registered pursuant to section 8-913 if

the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used; (3) affiliates or subsidiaries of (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used; (4) organizations substantially owned by (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used, or (d) any combination of entities listed in subdivisions (a) through (c) of this subdivision; (5) mortgage bankers licensed or registered under the Mortgage Bankers Registration and Licensing Act, if the word mortgage immediately precedes the word bank or its derivative; (6) organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 and exempt from taxation under section 501(a) of the code; (7) trade associations which are exempt from taxation under section 501(c)(6) of the code which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof; and (8) such other firms, companies, corporations, or associations as have been in existence and doing business prior to December 1, 1975, under a name composed in part of the word bank or some derivative thereof. Any violation of this section shall be a Class V misdemeanor.

5. The facts recited in Findings of Facts #s 1-11, above, have led the Director to conclude that Neb. Rev. Stat. § 8-113 (Cum. Supp. 2008) was violated by RecycleRewards, in that it used the name “bank” in its “business activities.” RecycleRewards disagrees with the Director’s conclusions in this matter and concludes its use of the term “RecycleBank”

does not refer to a “business activity” within the meaning of Section 8-113 of the Nebraska Banking Act.

6. The Director of the Department has legal and equitable authority to fashion significant protective remedies.

7. It is in the best interest of RecycleRewards, and it is in the public’s best interest that RecycleRewards and the Director resolve the issues included herein.

CONSENT AGREEMENT

NOW THEREFORE, the parties to this Agreement agree as follows:

Stipulations: In connection with this Agreement, RecycleRewards, Inc. and the Director of the Department agree to the following:

- a. The Department has jurisdiction as to all matters herein.
- b. An Agreement should be entered in this matter, which shall be in lieu of all other proceedings by the Department, except as specifically referenced in this Agreement.

RecycleRewards further represents as follows:

1. RecycleRewards is aware of its right to a hearing on this matter at which it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing and any related appeal on all matters covered by this Agreement is irrevocably waived.

2. RecycleRewards is acting free from any duress or coercion of any kind or nature.

3. This Agreement is executed to avoid further proceedings and does not constitute an admission of violation of Section 8-113.

FURTHER, RecycleRewards agrees that:

1. It will seek the passage of an amendment to Neb. Rev. Stat. § 8-113 which would clarify that the use of the term “RecycleBank” in connection with an activity identical or similar to that contemplated by RecycleRewards in Nebraska is permissible. This legislative change shall be in place and approved by the Nebraska Unicameral prior to June 5, 2009.

2. It will mail a postcard to all Nebraska residents using RecycleRewards services, within ten (10) days of the execution by the parties to this Agreement, stating the following:

“Thank you for being a RecycleRewards, Inc. customer. We appreciate your business. We use the term ‘RecycleBank’ to refer to the accumulation of reward points when you recycle. We want to remind you that this program is not a banking activity and ‘RecycleBank’ is not a banking institution. If you have any questions about our recycling or our business services, please contact us during normal business hours at 1-888-727-2978. Thank you and thank you for recycling!”

3. The first time a telephone call is received in the RecycleRewards customer service center from an identified Nebraska resident, RecycleRewards will begin the dialogue by asking for his or her verbal acknowledgment of the following statement:

“RecycleBank is not a financial institution and not engaged in the banking business. Please signify your understanding of this statement by saying, ‘Yes, I understand’.”

RecycleRewards will make a good faith effort to ascertain the origin of all telephone calls by checking area codes, and make other inquiries as to the customer’s domicile.

RecycleRewards has implemented this requirement voluntarily. RecycleRewards will continue to use this telephonic practice after the effective date of this Agreement.

4. The first time a Nebraska resident visits the RecycleRewards web site, RecycleRewards will show him or her a message that states, “RecycleBank is not a

financial institution and is not engaged in the banking business. RecycleBank is a subsidiary of RecycleRewards, Inc.” RecycleRewards has implemented this requirement voluntarily. RecycleRewards will continue to use this disclosure practice after the effective date of this Agreement. Beginning one hundred and twenty (120) days after the execution of this Agreement, the Nebraska resident member of the RecycleRewards program will need to click on “yes” to acknowledge that he or she has read the disclosure; to the extent that the resident does not acknowledge the disclosure by clicking on “no” or not clicking on anything, he or she will not be able to view his or her account, redeem points, or conduct any other business with the company.

5. In all future written communications to current or potential Nebraska customers regarding RecycleBank, RecycleRewards will prominently include the statement “RecycleBank is not a financial institution and not engaged in the banking business.” As used herein, the term “communication” shall include all advertisements in newspaper, mailings, and other medium.

6. By March 1, 2009, RecycleRewards will display on all recycle-waste trucks in operation in Nebraska bearing the term “RecycleBank” a statement that “RecycleBank is not a financial institution and not engaged in the banking business.” This disclosure language will be of a printed size that is prominent in size to other printed material on the trucks.

7. All future contracts between RecycleRewards and local Nebraska merchants who participate in the rewards program will include in bold type the disclosure: “RecycleBank is not a financial institution and not engaged in the banking business.”

8. As of the date the Director signs this Agreement, RecycleRewards shall cause new RecycleBank welcome kits and other promotional materials to include the disclosure: "RecycleBank is not a financial institution and not engaged in the banking business."

9. RecycleRewards confirms that it is the licensor of the RecycleBank program in Nebraska. As such, it is in the appropriate position to take the measures detailed in this Agreement.

10. RecycleRewards, Inc. shall pay a fine in the amount of fifteen thousand dollars (\$15,000.00) for its claimed violation of Section 8-113.

11. RecycleRewards, Inc., shall pay the Department's investigation costs in this matter of five thousand five hundred dollars (\$5,500.00).

12. The total amount of the fine and costs, twenty thousand five-hundred dollars (\$20,500.00), shall be paid by one check or money order to the Department within ten (10) days after the Director signs this Agreement.

IT IS AGREED by the Department that in the event that an appropriate statutory amendment is adopted by the Nebraska Legislature prior to June 5, 2009 (to be effective in calendar year 2009), the Department will, upon written request, vacate and withdraw this Agreement, provided that at the time of said request RecycleRewards has fully complied with the terms of the Agreement. Said vacating shall have no effect on any fines or costs paid to the Department in this matter.

IT IS FURTHER AGREED by RecycleRewards that in the event that an appropriate statutory amendment is not adopted by the Nebraska Legislature prior to June 5, 2009 (to be effective in calendar year 2009), RecycleRewards will:

1. Remove the word “bank” from all advertising, mailings, and other non-electronic communications intended for a Nebraska resident. This includes trash cans, trash trucks, and other RecycleRewards non-electronic media that use the word “bank” and which are used in Nebraska. RecycleRewards, in a good-faith manner, will have stickers affixed to those items to block the word “bank” or otherwise insure that the word “bank” will be removed from public view. RecycleRewards may offer consumers stickers for the trash cans to cover the word “bank,” may itself place stickers over the trash cans or accomplish said removal through other reasonable means. Incidental, good faith contact with a Nebraska resident, such as newspapers, television, and radio station broadcasts not originating from Nebraska would not be included in any restriction at this time. RecycleRewards will take the actions described in this paragraph by August 15, 2009.

2. Take all necessary steps to change any telephonic communications with Nebraska residents to ensure that it does not knowingly communicate with a Nebraska resident using the term “bank.” These steps will be in effect by November 1, 2009.

3. Implement a conspicuous website disclosure that is automatically triggered whenever a Nebraska resident, as determined by the “Identification Steps” described in this paragraph, visits the RecycleBank website. This disclosure shall conspicuously state the following: “Notice to Nebraska Residents: This website contains the word ‘RecycleBank.’ However, the Nebraska Department of Banking and Finance has determined that RecycleRewards may not use the term ‘RecycleBank’ in communication with residents of Nebraska. In order to comply with the State of Nebraska’s statute, we are required to notify you that ‘RecycleBank’ is not a bank or financial institution.” “Identification Steps” shall mean taking commercially reasonable steps to automatically identify the Internet “IP”

address of each website visitor in order to make a determination of his or her likely geographic location. These steps will be in effect by November 1, 2009.

4. RecycleRewards will cease any and all use of the word “bank” in whatever capacity, in Nebraska, by July 1, 2010, provided however, incidental contact by a Nebraska resident through a nationally available website containing the disclosures required pursuant to this Agreement, or through incidental, good faith contact with a Nebraska resident such as through newspapers, television and radio broadcasts not originating, nor targeting, Nebraska, shall be excepted.

FURTHER, RecycleRewards agrees to take whatever action is necessary to ensure compliance in the future with Neb. Rev. Stat. § 8-113 of the Nebraska statutes. If, at any time, the Department determines that RecycleRewards has committed any violation, the Department may take any action available to it under Nebraska law and may consider this Agreement when fashioning any such remedies.

FURTHER, as of the effective date of this Agreement, the requirements of the Department’s September 12, 2008 letter to RecycleRewards are summarily suspended. Upon RecycleRewards’ compliance with the Items 1-12 of this Agreement, said letter will be deemed withdrawn without further action by the Department.

IN THE EVENT THAT RecycleRewards fails to comply with any of the provisions of this Agreement, the Department may commence such action as it deems necessary and appropriate in the public interest.

Nothing in this Consent Agreement shall be interpreted to mean that the Department will assist or support RecycleRewards with any legislation that it decides to pursue on this

matter. This Consent Agreement does not commit the Department to any position regarding legislation on this matter.

The effective date of this Agreement shall be the date of the Director's signature.

DATED this 17th day of December, 2008.

RECYCLEREWARDS, INC.

By: _____

Matthew J. Tucker, President

149 5th Avenue, 4th Floor
New York, NY 10010
(888) 727-2978

DATED this 18th day of December, 2008.

**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**

By: _____

John Munn, Director

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