

**A. Federal Reserve Bank of Cleveland** (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *LNB Bancorp, Inc.*, Lorain, Ohio; to merge with Morgan Bancorp, Inc., and thereby indirectly acquire Morgan Bank, N.A., both of Hudson, Ohio.

Board of Governors of the Federal Reserve System, March 12, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7-4792 Filed 3-15-07; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 2007.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. *MountainOne Financial Partners, MHC and MountainOne Financial Partners, Inc.*, both of North Adams,

*Massachusetts*; to acquire 100 percent of the voting shares, and thereby merge with South Coastal Holdings, MHC and its subsidiary bank, South Coastal Bank, both of Rockland, Massachusetts.

**B. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Dickinson Financial Corporation II and Dickinson Financial Corporation*, both of Kansas City, Missouri; to acquire 100 percent of the voting shares of SunBank, N.A., Phoenix, Arizona (in organization).

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Bozka Investments, Ltd.*, Hallettsville, Texas, to become a bank holding company by acquiring 15.63 percent of Peoples State Bank of Hallettsville, Hallettsville, Texas.

Board of Governors of the Federal Reserve System, March 13, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7-4828 Filed 3-15-07; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL TRADE COMMISSION

[File No. 062 3088]

### **Kmart Corporation, Kmart Services Corporation, and Kmart Promotions, LLC; Analysis of Proposed Consent Order To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before April 10, 2007.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Kmart Corporation, File No. 062 3088,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H,

600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

#### **FOR FURTHER INFORMATION CONTACT:**

Peggy Twohig or Alice Saker Hrdy, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3224.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

full text of the consent agreement package can be obtained from the FTC Home Page (for March 12, 2007), on the World Wide Web, at <http://www.ftc.gov/os/2007/03/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

#### **Analysis of Agreement Containing Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Kmart Corporation, Kmart Services Corporation, and Kmart Promotions, LLC (collectively, “respondents”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

Respondents advertise, sell, and distribute the Kmart Gift Card through their retail stores and Internet Web site, <http://www.Kmart.com>. The Kmart Gift Card is a plastic, stored-value card, similar in size and shape to a credit or debit card, that can be used to purchase goods or services from Kmart retail locations. This matter concerns the respondents’ alleged failure to disclose, or failure to disclose adequately, material terms and conditions of the Kmart Gift Card as well as a deceptive claim regarding the Kmart Gift Card.

The Commission’s complaint alleges that, in the advertising and sale of Kmart Gift Cards, respondents have represented, expressly or by implication, that a consumer can redeem a Kmart Gift Card for goods or services of an equal value to the monetary amount placed on the card. Respondents have failed to disclose, or failed to disclose adequately, that, after 24 consecutive months of non-use, a \$2.10 fee is deducted, for each of the past 24 months, and again for each successive month of continued inactivity, from the value of the Kmart Gift Card. The proposed complaint alleges that the failure to disclose

adequately this material fact is a deceptive practice.

The complaint also alleges that respondents have represented on the *Kmart.com* Web site that the Kmart Gift Card never expires. In truth and in fact, after 24 months of non-use, the application of the Kmart Gift Card dormancy fee causes any Kmart Gift Card valued at less than \$50.40 to expire. The complaint alleges that the representation that the Kmart Gift Card never expires is false and misleading.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I.A. of the proposed order prohibits respondents from advertising or selling Kmart Gift Cards without disclosing, clearly and prominently: (a) The existence of any expiration date or automatic fees, in all advertising, and (b) all material terms and conditions of any expiration date or automatic fee, at the point of sale and prior to purchase. The effect of this provision is to require respondents to alert consumers to potential fees and expiration dates during advertising, and to fully disclose all relevant details at the point of sale, before consumers purchase the gift cards.

Part I.B. of the proposed order prohibits respondents from advertising or selling Kmart Gift Cards without disclosing, clearly and prominently the existence of any automatic fee or expiration date on the front of the gift card.

Part II of the proposed order prohibits respondents from making any misrepresentation about any material term or condition associated with the Kmart Gift Card.

Part III.A. of the proposed order prohibits respondents from collecting or attempting to collect any dormancy fee on any Kmart Gift Card activated prior to the date of issuance of the proposed order.

Part III.B. of the proposed order requires respondents to create, maintain, and distribute a written policy to reimburse consumers whose gift cards were diminished by fees. The policy: (1) Must specify a toll free number, a valid email address and a postal address that consumers can use to complete a request for reimbursement of dormancy fees from Kmart; (2) must be clearly and prominently disclosed on Kmart’s web site for two years from the issuance of the order; (3) must be disclosed to anyone who complains or inquires to Kmart about a gift card balance; and (4) requires reimbursement to any eligible consumer who (a) contacts Kmart by phone, email, or

postal mail, and (b) provides a Kmart gift card number, a mailing address, and a phone number. Once a consumer provides the required information, Kmart must issue a reimbursement within 10 business days, provided however, that for thirty (30) days after issuance of the order, respondents shall issue a reimbursement within fifteen (15) business days.

Part IV of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondents maintain accounting and sales records for the Kmart Gift Card, copies of ads and promotional material that contain representations covered by the proposed order, complaints and refund requests relating to the Kmart Gift Card, and other materials that were relied upon by respondents in complying with the proposed order.

Part V of the proposed order requires respondents to distribute copies of the order to various principals, officers, directors, and managers of respondents as well as to the officers, directors, and managers of any third-party vendor who engages in conduct related to the proposed order.

Part VI of the proposed order requires respondents to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the proposed order requires respondents to file with the Commission one or more reports detailing compliance with the order.

Part VIII of the proposed order is a “sunset” provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in Federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify in any way its terms.

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

#### **Statement of Commissioners Pamela Jones Harbour and Jon Leibowitz (Concurring in Part and Dissenting In Part)**

Today, the Commission approves for public comment a proposed consent agreement with Kmart Corporation and two of its subsidiaries (collectively, “Kmart”) to settle charges that Kmart misrepresented material aspects of its

gift cards and failed to disclose that, after two years of non-use, Kmart would deduct a \$50 fee from the gift card and a \$2.10 monthly fee thereafter. We concur in the Commission's decision to bring an action against Kmart, but dissent in part from the proposed consent agreement because we believe the remedy should include disgorgement of ill-gotten profits. Otherwise, Kmart will remain unjustly enriched by a substantial amount of buried "dormancy fees" while many consumers will have lost the chance for reimbursement because they long ago threw out their seemingly worthless gift cards in frustration.<sup>2</sup>

Gift cards have become enormously popular with consumers and generated nearly \$28 billion in sales during the 2006 holiday season.<sup>3</sup> Gift card dormancy fees and expiration dates are material restrictions that affect the value of the cards. These restrictions must be clearly disclosed so that consumers can make informed decisions, whether they are purchasing the cards or receiving them as a gift.

The proposed order settles the Commission's allegations that Kmart deceptively advertised its gift cards by, among other things, misrepresenting the existence of any expiration dates or fees associated with the cards. Not only did Kmart claim that the gift cards could be used "like cash at all Kmart locations," but its Web site also affirmatively misled consumers by stating that the Kmart gift cards "never expire." We agree that Kmart's alleged conduct justifies the order's injunctive provisions.

But we believe the order should go further. It should require Kmart to disgorge the profits of its unlawful behavior, provide more complete consumer redress, or a combination of both.<sup>4</sup> More than three decades ago, in

<sup>2</sup> Kmart applied a dormancy fee of \$2.10 per month to the balance of every Kmart gift card that went unused for 24 months—both retroactively (\$50.40) and prospectively. Consequently, cards worth \$50 or less were rendered worthless if unused for two years. Imagine stashing a \$10, \$25 or \$50 gift card in a drawer and then pulling it out two years later for a trek to shop at Kmart, only to learn at the check-out counter that the card had no value. Kmart recently discontinued charging this dormancy fee after learning about the FTC's investigation, but only on a prospective basis.

<sup>3</sup> Press Release, Nat'l Retail Fed'n, *Gift Card Spending Surpassed Expectations as Last-Minute Shoppers Looked for Quick, Easy Gifts; Most Consumers Have Spent Less Than Half of Card Values* (Jan. 23, 2007).

<sup>4</sup> Commission consent orders have required advertisers to pay redress, offer refunds, or disgorge profits, and it is appropriate to do so here. See, e.g., *Hi-Health Supermart Corp.*, FTC Dkt. No. C-4136 (May 12, 2005) (requiring \$450,000 in redress); *ValueVision Int'l, Inc.*, FTC Dkt. No. C-4022 (Aug. 24, 2001) (requiring company to offer refunds to all

sponsoring the Magnuson-Moss Act extending the Commission's authority under Section 19 to obtain monetary remedies, Senator Magnuson explained that the Commission cannot "rely merely upon a slap of the violator's wrist to maintain fair play in the marketplace" and that "[a] mere cease-and-desist order has frequently let a wrongdoer keep his ill-gotten gains."<sup>5</sup> The same rationale holds true today.

In this case, Kmart deducted dormancy fees from consumers' gift cards. It failed to give adequate notice. In many instances, Kmart's actions rendered unused or partially used cards valueless, at significant monetary benefit to Kmart but considerable monetary detriment to consumers. The proposed consent order, in our opinion, stops the deceptive practices but does not completely cure the consumer injury or fully excise Kmart's ill-gotten gains. Pursuant to the order, Kmart may not assess additional dormancy fees on previously activated gift cards and must reimburse previously assessed dormancy fees if consumers complain and can provide the gift card number. Many consumers no doubt already have thrown out their gift cards and will have no remedy under this settlement. Moreover, the order does not require Kmart automatically to restore previously deducted dormancy fees (absent consumer inquiries) or disgorge the windfall profits it made from these fees. Although Kmart's reimbursement practices have been improved by the Commission's efforts, in our opinion the refund policy, without additional monetary relief, is still too little, too late.

We commend staff for pursuing Kmart's failure to disclose its gift card dormancy fees and for challenging Kmart's affirmative misrepresentations that its gift cards do not expire. For the foregoing reasons, however, we respectfully dissent in part from the proposed order.

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purchasers of the challenged products); *Weider Nutrition Int'l, Inc.*, FTC Dkt. No. C-3983 (Nov. 17, 2000) (requiring \$400,000 in redress); *Dura Lube, Inc.*, FTC Dkt. No. D-9292 (May 5, 2000) (requiring \$2 million in redress); *Apple Computer, Inc.*, FTC Dkt. No. C-3890 (Aug. 6, 1999) (requiring company to honor representation that customers would receive free support for as long as they own the product); *Azrak-Hamway Int'l, Inc.*, 121 F.T.C. 507 (1996) (requiring toymaker to offer refunds); *L & S Research Corp.*, 118 F.T.C. 896 (1994) (requiring \$1.45 million in disgorgement).

<sup>5</sup> 119 Cong. Rec. 29480 (1973).

## FEDERAL TRADE COMMISSION

[File No. 061 0026]

### Missouri Board of Embalmers and Funeral Directors; Analysis of Agreement Containing Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before April 9, 2007.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "Missouri Board of Embalmers and Funeral Directors, File No. 061 0026," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).