

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. ATTORNEY
535 4TH ST. N.W.
W.D.C. Plaintiff,
20001

v.

SCHOLASTIC INC.,
GROLIER INCORPORATED,
and SCHOLASTIC AT HOME, INC.,
Defendants.

CIVIL ACTION NO.

COMPLAINT FOR CIVIL PENALTIES
AND PERMANENT INJUNCTION

CASE NUMBER 1:05CV01216

JUDGE: Richard W. Roberts

DECK TYPE: General Civil

DATE STAMP: 06/21/2005

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), for its complaint, alleges that:

1. Plaintiff brings this action under Sections 5(a), 13(b), and 16(a) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 56(a), and 57b; the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101, et seq.; and the Unordered Merchandise Statute, 39 U.S.C. § 3009, to secure a permanent injunction and other equitable relief from Defendants for engaging in acts or practices violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); the FTC's Trade Regulation Rule entitled "Use of Prenotification Negative Option Plans" ("Prenotification Negative Option Rule"), 16 C.F.R. Part 425; the FTC's Rule entitled "Telemarketing Sales Rule" ("Telemarketing Sales Rule"), 16

C.F.R. Part 310; and the Unordcred Merchandise Statute, and to recover monetary civil penalties pursuant to Section 5(m)(1)(A) and (B) of the FTC Act, 15 U.S.C. § 45(m)(1)(A) and (B), from Defendants for engaging in acts or practices previously determined by the Commission to be unfair and deceptive and unlawful under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and for engaging in acts or practices violating the Prenotification Negative Option Rule and the Telemarketing Sales Rule.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 45(m)(1)(A) and (B), 53(b), 56(a), 57b, and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), 1339, 1345, and 1355.

3. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c), and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant Scholastic Inc., ("Scholastic"), a New York corporation with its principal place of business located at 557 Broadway, New York, New York, 10012, transacts or has transacted business in this district. Scholastic is the corporate parent of Defendant Grolier Incorporated, which Scholastic acquired in June 2000.

5. Defendant Grolier Incorporated ("Grolier") is a wholly-owned subsidiary of Scholastic. Grolier is a Delaware corporation with its principal place of business located at 90 Sherman Turnpike, Danbury, Connecticut, 06816. Grolier transacts or has transacted business in this district.

6. Defendant Scholastic at Home, Inc., ("SAH"), is a wholly-owned subsidiary of Grolier. SAH is a Delaware corporation with its principal place of business located at 90 Sherman Turnpike, Danbury, Connecticut, 06816. SAH transacts or has transacted business in this district.

7. Scholastic, Grolier, and SAH, ("Defendants"), operated a common business enterprise while engaging in the acts and practices alleged below and are therefore jointly and severally liable for said acts and practices.

COMMERCE

8. At all times relevant to this Complaint, Defendants' course of business, including the acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

COURSE OF CONDUCT

9. Scholastic describes itself as the largest publisher and distributor of children's books in the world. Scholastic, through Grolier, operates direct-to-home book clubs, primarily serving children, as one of its principal distribution channels.

10. Scholastic's subsidiary Grolier is a children's book publisher. Prior to its acquisition by Scholastic, Grolier independently operated various book clubs. Currently, Grolier operates these and other book clubs together with Scholastic. Among other things, Grolier's subsidiary SAH invoices consumers, attempts to collect unpaid balances, and handles consumer inquiries and complaints. SAH also creates, prepares, and disseminates certain promotional materials for the book clubs, as does Scholastic.

11. Since at least January 2001, Defendants have marketed their direct-to-home book clubs through direct mail solicitations; through Internet advertising on their own websites, including www.homeclubs.scholastic.com; through various third-party Internet websites with which they have directly or indirectly contracted; and through an outbound telemarketing campaign, among other methods.

12. Defendants' advertising in connection with direct-to-home book clubs offered two associated programs: (1) a base book club operated as a continuity program (*i.e.*, consumers receive periodic shipments of books without prior notification by Defendants before each shipment) and, (2) supplemental plans selling books and other merchandise operated as Prenotification Negative Option plans within the meaning of the Prenotification Negative Option Rule (*i.e.*, consumers periodically receive announcements which identify books or other merchandise that Defendants propose to send, and the consumers thereafter receive and are billed for the merchandise identified in each such announcement, unless they instruct Defendants not to send the identified merchandise) (hereinafter referred to as "supplemental plans" or "Prenotification Negative Option plans"). Consumers typically were required to purchase a minimum of four monthly continuity program shipments in order to fulfill base book club requirements. Merchandise consumers purchased as part of a supplemental plan did not count toward the base book club minimum purchase requirement. In addition, consumers had to cancel the base book club and supplemental plans separately.

13. Defendants' direct mail solicitations, Internet advertising, and outbound telemarketing campaign advertised Defendants' base book clubs and supplemental plans by offering consumers a promotional "introduction" to a base book club. The advertising for the

promotional introduction offered consumers (1) one or more free gifts – (typically books and/or book-related items such as book bags or cardboard book shelves), (2) a “preview” of one or more base book club “trial books” priced below typical club selections, and (3) a supplemental plan.

14. Defendants’ marketing materials disclosed the terms and conditions of base book clubs, including that consumers who are enrolled in a base book club would receive, each month, 2 books and other materials; that consumers would have 10 days to review the books and to decide whether to keep or return them; and that consumers could cancel after purchasing four regular monthly packages.

15. After describing the base book club’s terms and conditions, the Defendants’ marketing materials referred to a supplemental plan. For example, many of Defendants’ marketing materials, including, but not limited to, scripts and direct mail solicitations, stated:

By joining, up to three times each year you will also receive, on approval, special . . . [club related] items as they are made available. You will be notified prior to shipment with details and the price; and you may cancel any annual shipment you do not wish to receive.

Defendants did not state that the supplemental plan is a Prenotification Negative Option plan; that consumers had to send back a form to Defendants to avoid shipments and the obligation to pay for or return them; that consumers’ purchase of supplemental plan shipments did not count toward the minimum purchase requirements of Defendants’ base book clubs; how consumers could cancel their enrollment in a supplemental plan; and that cancelling the base book club did not cancel enrollment in a supplemental plan, or that cancelling a supplemental plan did not cancel enrollment in a base book club.

16. Introductory shipments of the base book club and the free gifts were accompanied by an invoice, typically for \$8.98 (including shipping and handling). Attached to the invoice was a letter that described the introductory shipment; the terms of the base book club, including that consumers must purchase four monthly shipments to fulfill their minimum purchase requirement; and, using essentially the same language as in the initial advertising, the existence of a supplemental plan. The letter did not state that the supplemental plan is a Prenotification Negative Option plan; that consumers had to send back a form to Defendants to avoid shipments and the obligation to pay for or return them; that consumers' purchase of supplemental plan shipments did not count toward the minimum purchase requirements of Defendants' base book clubs; how consumers could cancel their enrollment in a supplemental plan; and that cancelling the base book club did not cancel enrollment in a supplemental plan, or that cancelling a supplemental plan did not cancel enrollment in a base book club.

17. If consumers kept the invoiced trial book(s) beyond the preview period and/or paid the invoice in full or in part, Defendants enrolled them in the base book club. Defendants shipped to consumers enrolled in a base book club monthly, continuity program shipments "on approval," without prior notification of any individual shipment. Each base book club shipment was accompanied by an invoice, typically for \$13.47. Consumers could return a base book club shipment they did not wish to purchase by paying to return the shipment and seeking reimbursement of their shipping costs from Defendants or by requesting a postage paid return label from the Defendants.

18. Once base book club members purchased two base book club shipments, Defendants enrolled them into a supplemental Prenotification Negative Option plan. (Although

Defendants sometimes call the supplemental Prenotification Negative Option shipments "annual" shipments, the shipments occur up to three times per year and are thus not "annual supplements" excluded from coverage under the Prenotification Negative Option Rule.)

19. After the Defendants enrolled consumers in a supplemental plan, they sent consumers "Announcement" letters notifying them in advance of each Prenotification Negative Option plan shipment. The letters instructed consumers that "[i]f you do not wish to examine [the featured product], tell us "no" by writing "cancel" on the bottom third of this letter and returning it to us within ten days." The letters did not include rejection forms and did not state that the supplemental plan was a Prenotification Negative Option plan; that consumers' purchase of supplemental plan shipments did not count toward the minimum purchase requirements of Defendants' base book clubs; or that cancelling the base book club did not cancel enrollment in a supplemental plan, or that cancelling a supplemental plan did not cancel enrollment in a base book club.

20. If consumers did not send back the letter to cancel the shipment, the Defendants sent the Prenotification Negative Option plan shipment, accompanied by an invoice. The price of supplemental plan shipments varied depending on the books or other merchandise offered. For example, a shipment of two "giant-size" books cost \$17.96, including shipping and handling; a shipment of three "full-color" books in another supplemental plan cost \$13.74, including shipping and handling. Consumers who did not return the announcement letter to avoid the shipment and who did not wish to purchase the shipment could return it by paying to return the shipment and seeking reimbursement of their shipping costs from Defendants or by requesting a postage paid return label from the Defendants.

21. Defendants, in numerous instances: (1) received requests to cancel from consumers who believed that they had met Defendants' base book club minimum purchase requirements by making at least four purchases from Defendants' solicitations (including supplemental plan solicitations), (2) failed to cancel such consumers' accounts, on the basis that the consumers' purchase of supplemental plan shipments did not count toward Defendants' minimum purchase requirements, and (3) continued to send and invoice further monthly base book club and supplemental plan shipments to such consumers.

22. Since at least January 2001, Defendants, in numerous instances, received requests to cancel from acknowledged contract-complete consumers (*i.e.*, consumers acknowledged by Defendants to have fulfilled minimum purchase requirements for the base book club). In numerous instances Defendants cancelled those consumers' enrollment in the base book club but continued to send and invoice further supplemental plan shipments to such consumers.

PRIOR INJUNCTION AND DEFENDANTS' ACTUAL KNOWLEDGE

23. On February 14, 1994, the U.S. District Court for the District of Connecticut entered a consent decree ("1994 consent decree") between the United States and Grolier (and its then-corporate parent Hachette Book Group USA, Inc.) requiring payment of a \$200,000 civil penalty and enjoining Grolier and its successors and assigns from violating Sections 5(a)(1) and 5(m)(1)(B) of the FTC Act, 15 U.S.C. § § 45(a)(1) and 45(m)(1)(B), and the Unordered Merchandise Statute, 39 U.S.C. § 3009, by sending merchandise to consumers without their prior express consent. Unless Grolier obtains a consumer's express authorization to participate in a Prenotification Negative Option marketing plan, the consent decree further enjoins Grolier from representing that: (1) the consumer's failure to do something shall constitute a request that

Grolier send merchandise to the consumer, and (2) the consumer is obligated to pay for or return the merchandise.

24. Attached as Appendix A to the 1994 consent decree was a copy of the Unordered Merchandise Statute, and the Synopsis of Federal Trade Commission Decisions Concerning Unordered Merchandise. The Commission determined in those decisions that shipping unordered merchandise and sending communications that seek to obtain payment for or return of merchandise shipped without the expressed consent of the recipient are unfair and deceptive acts or practices and are unlawful. (A copy of the 1994 consent decree, with its attached Appendix A, is attached herewith as Exhibit A.) On May 25, 2000, prior to Grolier's acquisition by Scholastic, the FTC served a copy of the 1994 consent decree and its attached Appendix A on Scholastic. The consent decree and Appendix A were also an exhibit to the Acquisition Agreement effecting the June 2000 acquisition. The FTC again served a copy of the 1994 consent decree and Appendix A on Scholastic on June 18, 2003.

25. Defendants therefore have had actual, ongoing knowledge that shipping unordered merchandise and sending communications that seek to obtain payment for or return of merchandise shipped without the expressed consent of the recipient are unfair and deceptive acts or practices and are unlawful. As set forth above, Defendants continued to ship unordered merchandise to consumers and continued to send communications that seek to obtain payment for it at least since January 2001.

**PRIOR COMMISSION DETERMINATIONS CONCERNING
UNFAIR AND DECEPTIVE ACTS OR PRACTICES IN COMMERCE**

In a proceeding under Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), concerning *Sunshine Art Studios, Inc.*, FTC Docket No. 8825, 81 F.T.C. 836 (1972), *aff'd*, 481 F.2d 1171 (1st Cir. 1973), the Commission on November 30, 1972, determined that, in connection with the advertising, offering for sale, sale or distribution of any product in commerce, as "commerce" is defined in the FTC Act, certain acts or practices are unfair and deceptive and unlawful under Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), and in that proceeding on that date with respect to such acts or practices the Commission issued a final order to Cease and Desist ("the Commission's Final Order").

26. In *Sunshine Art Studios, Inc.* the Commission determined that:
- i. It is an unfair and deceptive act or practice to send any merchandise by any means without the expressed request or consent of the recipient unless such merchandise has attached to it a clear and conspicuous statement that the recipient may treat the merchandise as a gift and has the right to retain, use, discard, or dispose of it in any manner that the recipient sees fit without any obligation whatsoever to the sender;
 - ii. It is an unfair and deceptive act or practice to send any communication that in any manner seeks to obtain payment for or return of merchandise shipped without the expressed consent of the recipient.

THE FTC ACT

27. Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), provides that "unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful."

28. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

29. In numerous instances since January 2001, in connection with the sale, offering for sale, or distribution of books and other merchandise through direct-to-home clubs, as described in Paragraphs 9-22, Defendants failed to disclose or to disclose adequately prior to automatic enrollment, which occurred once consumers paid for two base book club shipments, the terms and obligations of their Prenotification Negative Option plans including: (1) how consumers must act to avoid periodic supplemental plan shipments and the obligation to pay for or return them; (2) that the purchase of supplemental plan shipments did not count toward the minimum purchase requirements of Defendants' base book clubs; and (3) that the cancellation of a consumer's enrollment in a base book club did not cancel future supplemental plan shipments. These facts would have been material to consumers in their decisions to: (1) order and pay for introductory base book club shipments; (2) purchase supplemental plan shipments; and (3) cancel future supplemental plan shipments expressly.

30. Defendants' failure to disclose or to disclose adequately these material facts is a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

31. In numerous instances since January 2001, in connection with the sale, offering for sale, or distribution of books and other merchandise through direct-to-home clubs, as described in Paragraphs 9-22, Defendants:

- i. Mailed or caused to be mailed shipments of books and other merchandise (1) to consumers who had already purchased four shipments from Defendants' book clubs (including supplemental plan shipments) but were refused cancellation of their enrollment by Defendants on the basis that their purchase of supplemental plan shipments did not count toward minimum purchase requirements; and (2) to acknowledged contract-complete consumers who cancelled their enrollments but were not informed that cancellation of a consumer's enrollment in Defendants' base book clubs did not cancel future supplemental plan shipments, without the prior expressed request or consent of the recipients, or without attaching to the shipments statements that the recipients may treat the shipments as a gift and have the right to retain, use, discard, or dispose of them in any manner the recipients see fit without any obligation to the Defendants; and, consequently
- ii. Sent communications that seek to obtain payment for or return of books and other merchandise shipped without the expressed consent of the recipients.

32. Defendants engaged in the acts and practices described in Paragraph 32 with actual knowledge that such practices have been determined by the Commission to be unfair and deceptive and are unlawful under Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), as set

forth in Section 5(m)(1)(B) of the FTC Act 15 U.S.C. § 45(m)(1)(B). Defendants, therefore, violated Section 5(m)(1)(B) of the FTC Act.

THE UNORDERED MERCHANDISE STATUTE

33. The Unordered Merchandise Statute was enacted in 1970 and since that date has remained in full force and effect. It prohibits the shipping and billing for unordered merchandise that does not fall into narrow exceptions. The statute also prohibits sending dunning communications to recipients of unordered merchandise.

34. Specifically, the Unordered Merchandise Statute, 39 U.S.C. § 3009, reads as follows:

Sec. 3009. Mailing of unordered merchandise

- (a) Except for (1) free samples clearly and conspicuously marked as such, and (2) merchandise mailed by a charitable organization soliciting contributions, the mailing of unordered merchandise or of communications prohibited by subsection (c) of this section constitutes an unfair method of competition and an unfair trade practice in violation of section 45(a)(1) of title 15.
- (b) Any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. . . .
- (c) No mailer of any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications.

(d) For the purposes of this section, "unordered merchandise" means merchandise mailed without the prior expressed request or consent of the recipient.

35. Pursuant to Section (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a), violations of the Unordered Merchandise Statute are unfair or deceptive acts or practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

COUNT III

36. In numerous instances since January 2001, in connection with the sale, offering for sale, or distribution of books and other merchandise through their direct-to-home clubs, as described in Paragraph 9-22, Defendants:

- i. Mailed books or other merchandise, without prior expressed request or consent (1) to consumers who had already purchased four shipments from Defendants' book clubs (including supplemental plan shipments) but were refused cancellation of their enrollment by Defendants on the basis that their purchase of supplemental plan shipments did not count toward minimum purchase requirements; and (2) to acknowledged contract-complete consumers who cancelled their enrollments but were not informed that cancellation of a consumer's enrollment in Defendants' base book clubs did not cancel future supplemental plan shipments; and, consequently,
- ii. Mailed bills and dunning communications to consumers to whom they mailed books or other merchandise without the prior expressed request or consent of the recipients.

Defendants thereby violated Sections (a) and (c) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a) and (c).

THE PRENOTIFICATION NEGATIVE OPTION RULE

37. The Prenotification Negative Option Rule, promulgated by the Commission on February 15, 1973, became effective on June 7, 1974. The Rule was amended by the Commission in 1998 under Section 18 of the FTC Act, 15 U.S.C. § 57a. The amended Rule became effective on August 20, 1998, and has since that date remained in full force and effect.

38. The Prenotification Negative Option Rule regulates sellers of merchandise that operate negative option plans. A negative option plan is defined by the Rule as “a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement which identifies merchandise (other than annual supplements to previously acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time specified by the seller with respect to each such announcement the subscribers, in conformity with the provisions of such plan, instruct the seller not to send the identified merchandise.” 16 C.F.R. § 425.1(c)(1).

39. The Prenotification Negative Option Rule requires a seller to disclose all material terms of membership in a negative option plan in any promotional material that contains a device, such as an order form, that a consumer can return to the seller to subscribe to the plan. 16 C.F.R. § 425.(a)(1).

40. Specifically, the Prenotification Negative Option Rule contains the following provisions:

Sec. 425.1 The rule.

(a) . . . it is an unfair or deceptive act or practice, for a seller in connection with the use of any negative option plan to fail to comply with the following requirements:

(1) Promotional material shall clearly and conspicuously disclose the material terms of the plan

41. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Prenotification Negative Option Rule are unfair or deceptive acts or practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

42. Defendants are sellers that operate negative option plans within the meaning of the Commission's Prenotification Negative Option Rule, 16 C.F.R. §§ 425.1(c)(1).

COUNT IV

43. In numerous instances since January 2001, in connection with the sale, offering for sale, or distribution of books and other merchandise through their direct-to-home clubs, as described in Paragraphs 9-22, Defendants disseminated promotional material that failed to disclose clearly and conspicuously all of the material terms of Defendants' supplemental Prenotification Negative Option plans, including, without limitation, that the cancellation of a consumer's enrollment in a base book club did not cancel future supplemental Prenotification Negative Option shipments, thereby violating Section 425.1(a)(1) of the Prenotification Negative Option Rule.

TELEMARKETING SALES RULE

44. Pursuant to the Telemarketing Act, on August 16, 1995, the FTC promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, with a Statement of Basis and Purpose, 60 Fed.

Reg. 43842 (Aug. 23, 1995). The Rule became effective on December 31, 1995, and was amended by the Commission in 2003. The amended Rule became effective on March 31, 2003 (except for specific provisions not at issue in this case), and since that date has remained in full force and effect.

45. The Telemarketing Sales Rule prohibits deceptive and abusive telemarketing acts or practices. Specifically, the Telemarketing Sales Rule contains the following provision:

Sec. 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

* * *

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature

* * *

46. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales Rule are unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

47. Defendants are sellers engaged in telemarketing within the meaning of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r) and (u). Defendants' book clubs include

negative option features within the meaning of the Telemarketing Sales Rule, 16 C.F.R.

§ 310.2(t).

COUNT V

48. In numerous instances since March 31, 2003, in connection with the telemarketing of their direct-to-home clubs, as described in Paragraphs 9-22, Defendants failed to disclose truthfully, in a clear and conspicuous manner, before the customer paid for goods that resulted in enrollment in a supplemental plan, all material terms and conditions of the supplemental plan's negative option features, including, but not limited to: (1) how consumers must act to avoid periodic supplemental plan shipments and the obligation to pay for or return them; and (2) that the cancellation of a consumer's enrollment in a base book club did not cancel future supplemental plan shipments, thereby violating Section 310.3(a)(1)(vii) of the Telemarketing Sales Rule.

CONSUMER INJURY

49. Consumers throughout the United States have suffered substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

**COURT'S POWER TO AWARD
CIVIL PENALTIES, INJUNCTIVE AND OTHER RELIEF**

50. Defendants violated the Prenotification Negative Option Rule and the Telemarketing Sales Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

51. Each advertisement, piece of promotional material, or telemarketing call disseminated or made by the Defendants since January 1, 2001, that failed to comply with the Prenotification Negative Option Rule, and each telemarketing call made by Defendants since March 31, 2003, that failed to comply with the Telemarketing Sales Rule in one or more of the ways described above constituted a separate violation for which plaintiff seeks monetary civil penalties.

52. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes the Court to award monetary civil penalties of not more than \$10,000 for each such violation of the Prenotification Negative Option Rule and the Telemarketing Sales Rule. Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub.L. 104-134, 110 Stat. 1321-373 § 31001, and Federal Trade Commission Rule 1.98(d), 16 C.F.R. § 1.98(d), 61 Fed. Reg. 54549 (Oct. 21, 1996), authorizes the Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Prenotification Negative Option Rule and the Telemarketing Sales Rule.

53. Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B), Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub.L. 104-134, and Federal Trade Commission Rule 1.98(e), 16 C.F.R. § 1.98(e), 61 Fed. Reg. 54548 (Oct. 21, 1996), authorize the Court to

award monetary civil penalties of not more than \$11,000 for each violation of previous Commission determinations concerning unfair and deceptive acts or practices in commerce.

54. Each shipment of unordered merchandise made by Defendants since January 1, 2001, constituted a separate violation for which Plaintiff seeks monetary civil penalties.

55. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to award such relief as is necessary to redress the injury to consumers or others resulting from defendant's violation of the Prenotification Negative Option Rule and the Telemarketing Sales Rule.

56. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to enjoin the defendant from violating the Prenotification Negative Option Rule, the Telemarketing Sales Rule, the Unordered Merchandise Statute, and the FTC Act, as well as to grant plaintiff ancillary equitable relief.

PRAYER FOR INJUNCTIVE AND MONETARY RELIEF

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a), 45(m)(1)(A) and (B), 53b, 57b, and the Court's own equity powers:

- (1) Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;
- (2) Enjoin Defendants from violating the Prenotification Negative Option Rule, the Telemarketing Sales Rule, the Unordered Merchandise Statute, and the FTC Act;
- (3) Award Plaintiff monetary civil penalties from Defendants for each violation of Commission determinations concerning unfair and deceptive acts or practices in commerce; and for each violation of the Prenotification Negative Option Rule and the Telemarketing Sales Rule alleged in this Complaint; and

(4) Award Plaintiff such other and additional equitable relief as the Court may deem just and proper.

DATED:

Of Counsel:

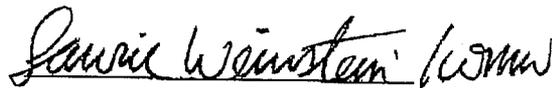
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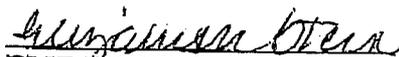
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