

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
v.)	
)	
INTERNET MARKETING GROUP, INC.,)	CIVIL ACTION No.
a Tennessee corporation;)	
ONESETPRICE, INC., a Florida corporation;)	3-04 0568
FIRST CHOICE TERMINAL, INC.,)	
a Louisiana corporation;)	
FIRST CHOICE TERMINAL, INC.,)	JUDGE TRAUGER
an Arizona corporation;)	United States District Judge
B & C VENTURES, INC.,)	
a Nevada corporation;)	
RPM MARKETING GROUP, INC.,)	JUDGE KNOWLES
a Florida corporation;)	United States Magistrate
NATIONAL EVENT COORDINATORS, INC.,)	
a Florida corporation;)	
DAVID G. CUTLER;)	
CINDY GANNON;)	
PAUL D. BONNALLIE;)	
TISA CHRISTIANA SPRAUL; and)	
MICHAEL J. HATCH,)	
)	
Defendants.)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AGAINST DAVID G. CUTLER**

Plaintiff, the Federal Trade Commission (“Commission”), filed its complaint for a permanent injunction and other equitable relief in this matter pursuant to Sections 5(a), 13(b) and

19 of the Federal Trade Commission Act (“FTC ACT”), 15 U.S.C. §§ 45(a), 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*, charging the Defendants Internet Marketing Group, Inc., OneSetPrice, Inc., First Choice Terminal, Inc. (a Louisiana corporation), First Choice Terminal, Inc. (an Arizona corporation), B & C Ventures, Inc., RPM Marketing Group, Inc., National Event Coordinators, Inc., David G. Cutler, Cindy Gannon, Paul D. Bonnallie, Tisa Christiana Spraul, and Michael J. Hatch with deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the Commission’s Trade Regulation Rules entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310, and “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures” (the “Franchise Rule”), 16 C.F.R. Part 436.

Plaintiff Commission and Defendant David G. Cutler, by and through their attorneys, have agreed to entry of this Final Judgment and Order by this Court in order to resolve all claims against Defendant David G. Cutler in this action. The Commission and Defendant David G. Cutler have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without Defendant David G. Cutler admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

Being fully advised in the premises and acting upon the joint motion of the parties, the Commission and Defendant David G. Cutler, to enter this Final Judgment and Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defendant David G. Cutler;

2. The Complaint states a claim upon which relief may be granted against Defendant David G. Cutler under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b, and the Telemarketing Sales Rule and the Franchise Rule;

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

4. The activities of Defendant David G. Cutler are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;

5. Entry of this Final Judgment and Order is in the public interest;

6. Defendant David G. Cutler has read and fully understands the Complaint against him and the provisions of this Stipulated Final Judgment and Order, and he freely enters into this Stipulated Final Judgment and Order; and

7. Defendant David G. Cutler has waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order. The parties shall each bear their own costs and attorney’s fees incurred in this action.

DEFINITIONS

For the purpose of this Final Judgment and Order, the following definitions shall apply:

A. “Assets” means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever

located.

B. **“Franchise Rule”** is defined as the Commission’s Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” 16 C.F.R. Part 436, as currently promulgated or as it may hereafter be amended. A copy of the current Franchise Rule is attached hereto.

C. **“Franchise”** means any written or oral business arrangement, however denominated, which is a “franchise” as that term is defined in Section 436.2(a) of the Franchise Rule, 16 C.F.R. § 436.2(a).

D. **“Business Venture”** means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, 16 C.F.R. Part 436, which consists of the payment of any consideration for: (a) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and (b) more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

E. **“Telemarketing Sales Rule”** means the FTC Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310, as currently promulgated or as it may hereafter be amended. A copy of the current Telemarketing Sales Rule is attached hereto.

F. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not

include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer’s call or in a substantially similar catalog.

G. **“Telemarketer”** means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

H. **“Seller”** means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the Federal Trade Commission.

I. **“National Do Not Call Registry”** means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

J. **“Established business relationship”** means a relationship between the seller and a person based on: (a) the person’s purchase, rental, or lease of the seller’s goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of the telemarketing call; or (b) the person’s inquiry or application regarding a

product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

K. **“Outbound telephone call”** means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

L. **“Permanent Receiver”** means Robb Evans & Associates, L.L.C., appointed as Permanent Receiver for Defendants Internet Marketing Group, Inc., OneSetPrice, Inc., First Choice Terminal, Inc. (a Louisiana corporation), First Choice Terminal, Inc. (an Arizona corporation), B & C Ventures, Inc., RPM Marketing Group, Inc., and National Event Coordinators, Inc., pursuant to the Stipulated Preliminary Injunction Freezing Assets and Appointing a Receiver entered in this case on July 19, 2004.

M. **“Assisting others”** means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.

N. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning

of the term.

CONDUCT PROHIBITIONS

I. INJUNCTIVE PROVISIONS

A. **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that in connection with the advertising, promotion, offering for sale, or sale of any Franchise or Business Venture, Defendant David G. Cutler, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any material fact, including, but not limited to, misrepresenting:

1. That purchasers of a Franchise or Business Venture are likely to earn substantial income;
2. That purchasers of a Franchise or Business Venture will receive full refunds if they do not receive, within a specified period of time, the equipment, supplies, or products necessary to begin substantial operation of their business;
3. That purchasers of a Franchise or Business Venture will receive full refunds if they cancel their purchase agreements within three (3) days; and
4. That purchasers of a Franchise or Business Venture will receive full refunds of cash down payments if they are unable to obtain financing for, or otherwise afford payment of, the balance due under their purchase agreements.

B. **IT IS FURTHER ORDERED** that in connection with the advertising, promotion, offering for sale, or sale of any Franchise or Business Venture, Defendant David G. Cutler, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from:

1. Failing to provide, no later than ten (10) business days before any consumer signs a purchase agreement or tenders any payment for such Franchise or Business Venture, a complete and accurate basic disclosure statement that discloses all of the categories of information set forth in Section 436.1(a)(1)-(24) of the Franchise Rule;
2. Failing to provide any prospective purchaser of a Franchise or Business Venture with an earnings claim document or other disclosures required by Section 436.1(b)-(e) of the Franchise Rule, in the manner and within the times specified by the Franchise Rule;
3. Making any earnings claim or projection without having a reasonable basis for each claim or projection at the time the claim or projection is made, as required by Section 436.1(b)-(e) of the Franchise Rule; and
4. Engaging in any other act or practice prohibited by Section 436.1(f)-(h) of the Franchise Rule, or failing to fulfill any other obligation imposed by the Franchise

Rule;

provided, however, that Defendant David G. Cutler may choose to comply with the disclosure requirements of the Franchise Rule by fully and completely complying with the disclosure requirements set forth in the UFOC format. If he chooses to comply with the Franchise Rule by using the UFOC format, Defendant David G. Cutler, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, affiliate, or other device, are hereby permanently enjoined from failing to comply with any provision of the UFOC. In the event the Franchise Rule is hereafter amended or modified, or the UFOC is amended or modified and such UFOC amendment or modification is accepted by the Commission for use in lieu of the Franchise Rule's disclosure format, Defendant David G. Cutler's compliance with the Franchise Rule as so amended or modified, or the UFOC as amended or modified and accepted by the Commission, shall not be deemed a violation of this Order.

C. **IT IS FURTHER ORDERED** that Defendant David G. Cutler, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:

1. Initiating or causing others to initiate an outbound call to a telephone number listed on the National Do Not Call Registry, unless:
 - a) The seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such consumer's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or
 - b) The seller can prove an established business relationship with such person and that person has not stated that he or she does not wish to receive outbound telephone calls from the seller;
2. Initiating any outbound telephone call to a person when that person has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made by or on behalf of the charitable organization for which a charitable contribution is being solicited; or
3. Initiating any outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers within that area code that are on the National Do Not Call Registry.

II. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant David G. Cutler is hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the

