

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PRACTICAL MARKETING, INC.,
a Florida corporation;

ROBERT M. DESALVO, individually and as an
officer and director of the corporate defendant; and

VALERIE DESALVO, individually and as an
officer and director of the corporate defendant,

Defendants.

No. 3:07-cv-00685-JPG-DGW

FILED
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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

STIPULATED ORDER FOR PERMANENT INJUNCTION AND FINAL JUDGMENT

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), has filed a Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging Defendants Practical Marketing, Inc., Robert M. DeSalvo, and Valerie DeSalvo, with engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and with assisting and facilitating the commission of deceptive and abusive telemarketing acts and practices, in violation of Sections 310.3(b) and 310.4 of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

The Commission and Defendants Practical Marketing, Inc., Robert M. DeSalvo, and Valerie DeSalvo, having been represented by counsel and acting by and through such counsel,

have consented to the entry of this Stipulated Order for Permanent Injunction and Final Judgment ("Order") in settlement of the Commission's Complaint against them, without a trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and Defendants Practical Marketing, Inc., Robert M. DeSalvo, and Valerie DeSalvo, having requested the Court to enter this Order, it is hereby **ORDERED, ADJUDGED, AND DECREED:**

FINDINGS

1. This is an action by the Commission initiated under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the relief contained herein.

2. The Commission's Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 13(b) and 19 of the 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. §§ 6101-6108.

3. This Court has jurisdiction over the subject matter of this case and all parties hereto. Venue in the Southern District of Illinois is proper.

4. The alleged activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. Defendants, without admitting the allegations set forth in the Commission's Complaint, agree to entry of this Order.

6. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claims any of them

may have against the Commission, its employees, representatives or agents.

7. Defendants agree that this Order does not entitle them to seek or obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended* by Pub. L 104-121, 110 Stat. 847, 863-64 (1996), and Defendants further waive any right to attorneys' fees that may arise under said provision of law.

8. Any voluntary bankruptcy petition filed by any Defendant does not automatically stay this action, which the Court finds is the "commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power," as set forth in 11 U.S.C. § 362(b)(4).

9. Any voluntary bankruptcy petition filed by any Defendant does not divest this Court of jurisdiction to enter this Order against the Defendant.

10. Entry of this Order is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Account number" means any credit or debit card number, bank account number, deposit account number, personal identification number ("PIN"), access code, or security code, needed to charge or debit a consumer's account.
2. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), and

all cash, wherever located.

3. **“Assisting others”** means providing goods or services to any person or entity engaged in marketing or telemarketing, including, but not limited to: (a) preparing, printing, or transmitting invoices; (b) recording or verifying sales solicitations; (c) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints, obtaining or receiving identifying and financial information from consumers, and communicating with consumers on behalf of the seller or telemarketer; (d) providing for or arranging for the provision of mail or telephone lists; (e) preparing or providing, or causing to be prepared or provided, telephone sales scripts or other materials for use in connection with the promotion of products or services to consumers; (f) providing, mailing or shipping, or arranging for the provision, mailing, or shipping, of fulfillment products or services; (g) providing or arranging for the provision of telemarketing services; (h) providing or facilitating the means of obtaining payment from consumers, by providing or facilitating access to the credit card or bank account payment and collection system; (i) developing, providing, or arranging for the provision of names of potential customers; (j) providing or arranging for the provision of post office boxes or the services of commercial receiving agencies; and (k) performing or providing marketing services of any kind.

4. **“Consumer”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

5. **“Customer”** means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by Defendants.

6. **“Defendant” or “Defendants”** means Practical Marketing, Inc., Robert M.

DeSalvo, and Valerie DeSalvo, and each of them, by whatever names each may be known.

7. **"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 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.

8. **"Fulfillment product or service"** means any product or service sold or provided or intended to be sold or provided to consumers.

9. **"Seller"** shall have the meaning set forth in Section 310.2(z) of the Telemarketing Sales Rule, 16 C.F.R. § 310.2(z).

10. **"Telemarketing"** means any plan, program, or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services or the payment of money by means of the use of one or more telephones.

11. **"Telemarketer"** shall have the meaning set forth in Section 310.2(bb) of the Telemarketing Sales Rule, 16 C.F.R. § 310.2(bb).

I. PROHIBITED PRACTICES

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them,

are permanently restrained and enjoined from:

A. Collecting, selling, renting, brokering, purchasing, transferring, or otherwise disclosing, consumers' account numbers, or assisting others in collecting, selling, renting, brokering, purchasing, transferring, or disclosing of consumers' account numbers, in any form, including but not limited to lists, computer tapes or other media, to, from, for, or with any unaffiliated third party for any marketing purpose. *Provided, however,* that Defendants may disclose their own customers' account numbers to others for the purpose of assisting Defendants in processing and completing a specific transaction authorized by the customer; and

B. Defendants agree to relinquish any list of consumers' account numbers to the FTC that is in their possession or control and to destroy all other existing copies of the lists in their possession or control, including any copies maintained in computer readable form.

II. MONITORING REQUIREMENTS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with collecting, selling, renting, brokering, purchasing, transferring, or otherwise disclosing any information about consumers, are permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor their clients' advertising and promotional materials and activities to determine the nature of the products or services being offered, the costs, terms or conditions of sale, the representations to be made to consumers, and

the truthfulness of these representations;

B. Failing to promptly investigate fully any complaint or refund request received by Defendants, whether directly from consumers or from third parties, such as government agencies or Better Business Bureaus, regarding the business practices of Defendants' clients; notify their clients of such complaints or refund requests; determine how the complaints or refund requests will be addressed; and notify the consumer or third party from whom Defendants received the complaint or refund request of any action taken;

C. Failing to terminate any services whatsoever to any person whom Defendants know or should know, through the procedures described in Paragraphs A or B of this Section, or otherwise, has engaged or is engaging in misrepresentations or omissions of any fact material to any consumer's decision regarding any offered transaction, billing of accounts without the consumer's express authorization, or any act or practice prohibited by Section I of this Order, until such person ceases engaging in such acts or practices; and

D. Failing to immediately provide, by certified mail, all relevant information, including name, address, and telephone number of any person that Defendants terminate services to, pursuant to Paragraph C of this Section, to the Federal Trade Commission at the address provided in Section VII of this Order.

III. COMPLIANCE WITH THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are permanently restrained and enjoined from:

A. Violating or assisting others in violating any provision of the TSR, 16 C.F.R. Part 310, including, but not limited to, Sections 310.3(a), 310.3(c), 310.3(d), or 310.4, 16 C.F.R. §§ 310.3(a), 310.3(c), 310.3(d), or 310.4; and

B. Failing to obtain and review sample scripts from any seller or telemarketer prior to renting or selling any list to that seller or telemarketer in order to ensure that the rental or sale of any such list does not assist the seller or telemarketer in violating any provision of the TSR, 16 C.F.R. Part 310, including, but not limited to, Sections 310.3(a), 310.3(c), 310.3(d), or 310.4, 16 C.F.R. §§ 310.3(a), 310.3(c), 310.3(d), or 310.4.

IV. COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendants shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear or cause their officers, employees, representatives, or agents to appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by

the FTC. If requested in writing by the FTC, Defendants shall appear or cause their officers, employees, representatives, or agents to appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

V. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants Practical Marketing, Inc., Robert M. DeSalvo, and Valerie DeSalvo each shall submit additional written reports, sworn to or affirmed under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation; *provided*, however, that upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to such Defendant's business premises, wherever located, for the purpose of inspecting and copying all documents relevant to any matter contained in this Order;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and

2. Posing as consumers and suppliers to Practical Marketing, Inc., Robert M. DeSalvo, or Valerie DeSalvo, or Practical Marketing, Inc.'s, Robert M. DeSalvo's, or Valerie

DeSalvo's employees, or any other entity managed or controlled in whole or in part by any of them, without the necessity of identification or prior notice; and

C. Defendants Practical Marketing, Inc., Robert M. DeSalvo, and Valerie DeSalvo shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VI. COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order,

1. Defendants Robert M. DeSalvo and Valerie DeSalvo each shall notify the Commission of the following:

a. Any changes in residence, mailing addresses, or telephone numbers of such Defendant, within ten (10) days of the date of such change;

b. Any changes in the employment status (including self-employment) of such Defendant, and any change in the ownership interest of such Defendant in any business

