

ORIGINAL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States Courts
Southern District of Texas
ENTERED

JUN 09 2004

Michael N. Milby, Clerk of Court

FEDERAL TRADE COMMISSION,

Plaintiff,

versus

ESTEBAN BARRIOS VEGA,

Defendant.

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CIVIL ACTION H-04-1478

Stipulated Final Order for Permanent Injunction and Settlement of Claims

Plaintiff, the Federal Trade Commission ("FTC"), commenced this action on April 14, 2004, by filing its Complaint against defendant Esteban Barrios Vega, individually and doing business as EBV Promotions, Paymentech Promotions, and Promotions of Service. The Complaint alleges that Defendant engaged in deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, and the Telemarketing Sales Rule, 16 C.F.R. Part 310, and seeks a permanent injunction and monetary relief pursuant to Sections 13(b) and 19 of the FTC Act. The FTC and Defendant hereby stipulate to the entry of this Final Order for Permanent Injunction and Settlement of Claims ("Order").

FINDINGS

By stipulation of the parties and being advised of the premises, the Court finds:

1. This is an action by the FTC instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b. The Complaint seeks both permanent injunctive relief and consumer redress for Defendant's alleged deceptive acts or practices in connection with the marketing and sale of work-at-home business opportunities.
2. The FTC has the authority under Sections 13(b) and 19 of the FTC Act to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Defendant.
3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendant. Venue in the Southern District of Texas is proper.

4. The activities of Defendant, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The parties stipulate and agree to entry of this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint to the date of entry of this Order. This settlement does not settle and resolve any matters not alleged in the Complaint. Defendant does not admit any of the allegations set forth in the Complaint, other than the jurisdictional facts, merely by stipulating and agreeing to the entry of this Order.
6. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant also waives any claim that he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorneys fees.
7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.
8. Entry of this Order is in the public interest.

DEFINITIONS

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

- A. "Work-at-home business opportunity" means any plan, program, product or service represented to enable participants or purchasers to earn money while working from home.
- B. "Telemarketing" means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing or contracting with others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, or service, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing.
- C. "Assisting others" means providing any of the following goods or services to any person or entity: (a) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other written marketing material; (c) providing names of, or assisting in the generation of, potential customers; (d) performing marketing services of any kind; or (e) acting as an officer or director of a business entity.

