

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____)	
FEDERAL TRADE COMMISSION)	
)	
and)	
)	
STATE OF NEW JERSEY)	
)	Civil Action No. 97-2423 (WHW)
Plaintiffs,)	
)	
v.)	SUBSTITUTED
)	<u>EX PARTE</u> TEMPORARY
)	RESTRAINING ORDER
NATIONAL SCHOLASTIC SOCIETY, INC.)	
a New Jersey Corporation; also d/b/a)	
University Society Publishers Periodicals,)	
)	
and)	
)	
DAVID C. BEASLEY, JR., individually and as an)	
officer of National Scholastic Society, Inc.)	
)	
Defendants.)	
_____)	

Plaintiffs, the Federal Trade Commission and the State of New Jersey, having filed their complaint for a permanent injunction and other relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, Sections 6101(c), 6103(a) and 6105(b) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101(c), 6103(a) and 6105(b), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, and having moved ex parte for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, and now being

advised in the premises, finds that:

1. This Court has jurisdiction of the subject matter of this case, and there is good cause to believe it will have jurisdiction of all parties hereto;
2. There is good cause to believe that the defendants, National Scholastic Society, Inc., also d/b/a University Society Publishers Periodicals, and David C. Beasley, Jr., have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, a copy of which is attached to this Order, and that the Plaintiffs are therefore likely to prevail on the merits of this action;
3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or corporate records unless Defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for relieving the Plaintiffs of the duty to provide Defendants with prior notice of the Plaintiffs' motion;
4. Weighing the equities and considering the Plaintiffs' likelihood of ultimate success, a temporary restraining order with asset freeze and other equitable relief is in the public interest; and
5. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

Definitions

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

1. "Defendants" means National Scholastic Society, Inc., University Society

Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr., and each of their successors, assigns, officers, agents, servants, employees, attorneys and those persons in active concert with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device.

2. “Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.

3. “Prize” means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

4. “Prize promotion” means
- a. a sweepstakes or other game of chance; or
 - b. an oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

ORDER

I. PROHIBITED BUSINESS PRACTICES

IT IS THEREFORE ORDERED that, in connection with the offering for sale or sale of magazine subscriptions through telemarketing, Defendants, and their agents, employees, officers, servants, and attorneys and those persons in active concert or participation with them who receive

actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

A. Violating Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), by making, directly or by implication, any misrepresentation of material fact, including but not limited to representations regarding the purpose for which Defendants seek or obtain consumers' credit card information.

B. Violating Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), by failing to disclose material conditions and restrictions associated with the receipt of any good, service or prize, including but not limited to:

1. the requirement that consumers must complete and mail to a third party numerous forms; and
2. that consumers must pay a substantial amount of money for postage and processing in order to receive their good, service or prize.

C. Violating Section 310.3(a)(1) of the Telemarketing Sales Rule, 16 C.F.R. §310.3(a)(1), by failing to disclose, before the customer pays for a good or service, material information, including but not limited to:

1. the odds of being able to receive the prize offered or the factors used in calculating the odds;
2. all material restrictions, limitations, or conditions to purchase, receive or use any good or service that is the subject of the sales offer; and
3. that defendants have a policy of not making refunds, cancellations, exchanges, or repurchases.

II. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr., and their successors and assigns, are hereby temporarily restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, that are (1) owned or controlled, directly or indirectly, by Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., or David C. Beasley, Jr., in whole or in part; or (2) in the actual or constructive possession of Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., or David C. Beasley, Jr., including but not limited to, any assets held by, for, or under the name of Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., or David C. Beasley, Jr., at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

B. Opening or causing to be opened any safe deposit boxes titled in the name of Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., or David C. Beasley, Jr., or subject to access by Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., or David C. Beasley, Jr.; and

C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic

Society, Inc., or David C. Beasley, Jr.

III. PROHIBITION ON DISSIPATION OF PROCEEDS OF DEFENDANT UNIVERSITY SOCIETY PUBLISHERS PERIODICALS, A D/B/A OF NATIONAL SCHOLASTIC SOCIETY, INC.'S, MAGAZINE SALES

IT IS FURTHER ORDERED that Defendant National Scholastic Society, Inc. and its successors and assigns, are hereby temporarily restrained and enjoined from transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, that are the proceeds from the sale of magazines by Defendant University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc.

IV. APPOINTMENT OF THE COURT'S EXAMINER

IT IS FURTHER ORDERED that Peter B. Zlotnick, at Whitman, Breed, Abbott & Morgan, is appointed, with full equity powers and pursuant to Fed. R. Civ. P. 53, as this Court's Examiner to examine, determine, investigate, and, to the extent the Examiner, in his sound discretion deems appropriate, hold hearings concerning the following matters: (1) which, if any, of the funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, of Defendant National Scholastic Society, Inc., are the proceeds from the sale of magazines by Defendant University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc.; and (2) whether, if at all, the successors, assigns, officers, agents, servants, or employees of Defendant National Scholastic Society, Inc., have been or are engaged in the offering for sale or sale of magazine subscriptions through telemarketing. The Court's Examiner may hire legal counsel,

accountants or other professionals or experts to assist him in conducting the examination, described above.

**V. DUTY OF DEFENDANTS TO COOPERATE WITH
THE COURT'S EXAMINER**

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, Defendants National Scholastic Society, Inc., University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr., any other person or entity served with a copy of this Order, shall provide the Court's Examiner and any personnel hired by him with immediate access to and entry upon the business premises (wherever they may be located) of Defendant National Scholastic Society, Inc. and Defendant University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., during such times and on such days as the Examiner may request until the Examiner's Report (as described herein below) is filed with this Court. Defendants National Scholastic Society, Inc., University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr., shall also, forthwith or within such time as permitted by the Court's Examiner in writing, deliver over to the Court's Examiner: (A) possession and custody of all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title document, and other papers of Defendants National Scholastic Society, Inc., University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr.; (B) all keys, computer passwords, entry codes, combinations to locks required to open or gain access all books and records of accounts, all financial and accounting records, balance sheets,

income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title document, and other papers of Defendants National Scholastic Society, Inc., University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr.; and (C) information identifying the accounts, employees, properties, or other assets or obligations of Defendants National Scholastic Society, Inc., University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr. Defendants shall not undertake any act whatsoever to interfere with the Examiner, or to harass, or interfere in any manner with the duties of the Examiner or any agent appointed by said Examiner, or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr.

VI. COMPENSATION OF THE COURT'S EXAMINER

IT IS FURTHER ORDERED that the Court's Examiner and all personnel hired by him, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by him, from assets now held by or in the possession or control of, or which may be received by Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr. The Court's Examiner shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty days after the date of this Order. The Court's Examiner and any other professional retained by the Examiner, including but not limited to his attorneys and

accountants, be and are hereby authorized to withdraw from their respective appointments or representations at any time after the date of this Order, for any reason in their sole and absolute discretion, by sending written notice of their intention to withdraw to the Court and to counsel for the Commission and the State of New Jersey, and such Examiner and professionals shall be relieved of all liabilities and responsibilities from the date of such notice or withdrawal.

VII. DUTY OF THE COURT'S EXAMINER TO SUBMIT REPORT TO THIS COURT AND THE PARTIES

IT IS FURTHER ORDERED that the Court's Examiner shall submit a Report to this Court and that such Report shall set forth the Examiner's findings of fact in accordance with Fed. R. Civ. P. 53(e)(1). The Court's Examiner may, but is not required, to file with his Report a recorded transcription of any hearings he may conduct and any exhibits admitted into evidence at said hearings or any statements of account prepared by accountants employed by him in conjunction with his examination. The Court's Examiner shall file his report at least three days prior to the date of the preliminary injunction hearing in this matter.

VIII. FINANCIAL REPORTS

IT IS FURTHER ORDERED that at least three days prior to the preliminary injunction hearing in this matter and, in no event, later than two weeks after the entry of this Order, each Defendant shall provide the Plaintiffs and the Court's Examiner with a completed financial statement, on the forms attached to this Order, accurate as of the date of service of this Order upon such Defendant.

IX. RETENTION OF ASSETS AND RECORDS

IT IS FURTHER ORDERED that, pending determination of the Plaintiffs' request for a preliminary injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., or David C. Beasley, Jr., or has held, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court;

B. Deny Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr., and their successors and assigns, access to any safe deposit box that is:

1. titled in the name of Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., or David C. Beasley, Jr., either individually or jointly;
or

2. otherwise subject to access by Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., or David C. Beasley, Jr.;

C. Provide the Plaintiffs' counsel, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any Defendant;

2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., or David C. Beasley, Jr., and their successors and assigns, or is otherwise subject to access by any Defendant; and

D. Upon the request by the Plaintiffs, or the Court's Examiner, promptly provide the Plaintiffs or the Court's Examiner with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Plaintiffs or the Court's Examiner to obtain copies of any such records which they seek.

X. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants National Scholastic Society, Inc., University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr., and their agents, employees, officers, servants, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal

service or otherwise, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the Defendants' business practices or business or personal finances.

XI. RECORD KEEPING/BUSINESS OPERATIONS

IT IS FURTHER ORDERED that Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr., and their agents, employees, officers, servants, and attorneys, and those persons who receive actual notice of this order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and
- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Plaintiffs with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

XII. SERVICE OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and representative of any Defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Plaintiffs with a sworn statement that Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of this Order.

VIII. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendants University Society Publishers Periodicals, a d/b/a of National Scholastic Society, Inc., and David C. Beasley, Jr., or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served by agents of any Plaintiff, and by agents of any process service retained by any Plaintiff.

XIV. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to any Plaintiff.

XV. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that the parties shall serve all memoranda, affidavits and other evidence on which they intend to rely at the preliminary injunction hearing set in this matter not later than 4:00 p.m. (EST) of the second day prior to the hearing date. Service on the Commission shall be performed by delivery to the attention of counsel at the Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW, Room 238, Washington, DC 20580, or by facsimile transmission to 202-326-3395. Service on the State of New Jersey shall be performed by delivery to the attention of counsel at the New Jersey Division of Law, 124 Halsey Street, P.O. Box 45029, Newark, NJ 07101, or by facsimile transmission to 201-648-3879.

XVI. WITNESS IDENTIFICATION

IT IS FURTHER ORDERED that, if any party to this action intends to present the testimony of any witness at the hearing on a preliminary injunction in this matter, that party shall, at least forty-eight (48) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness's expected testimony, or the witness's affidavit revealing the substance of such witness's expected testimony. Service on the Commission shall be performed by personal delivery to the attention of counsel at the Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW, Room 238, Washington, DC 20580, or by facsimile transmission to 202-326-3395. Service on the State of New Jersey shall be performed by delivery to the attention of counsel at the New Jersey Division of Law, 124 Halsey Street, P.O. Box 45029, Newark, NJ 07101, or by facsimile transmission to 201-648-3879.

XVII. PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that each of the Defendants shall appear before this Court on the 29th day of May, 1997 at 10:00 o'clock a.m., to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendants, enjoining them from further violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

XVIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this ___ day of _____, 1997, at ___m.

United States District Judge