

**UNITED STATES DISTRICT COURT
FOR DISTRICT OF SOUTH CAROLINA**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:02-3979-22
)	
DARRELL RICHMOND, an individual,)	
doing business as BSN Direct!, Bargain Shopper)	
Network Direct!, SMW Direct!, Specialty)	
Merchandise Wholesale Direct!, Apex Direct)	
Marketing Group, and Apex Enterprises,)	
)	
Defendant.)	

STIPULATED PERMANENT INJUNCTION & FINAL ORDER

On November 26, 2002, Plaintiff Federal Trade Commission (“Commission”) filed a Complaint seeking a permanent injunction and other relief, pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b), and a motion for an *ex parte* temporary restraining order with equitable relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure. On November 26, 2002, the Court entered the temporary restraining order against Defendant, Darrell Richmond. On December 16, 2002, the Court entered an order for a Stipulated Preliminary Injunction. The parties hereby stipulate to the below-stated terms, conditions, and findings of this Stipulated Permanent Injunction and Final Order, as follows:

FINDINGS

The Court finds that:

1. This Court has jurisdiction over the subject matter of this action and over the Defendant.
2. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b);
3. This action was brought pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 53(b), and states a claim upon which relief may be granted.
4. This Court has the authority pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to award injunctive and consumer redress and /or disgorgement for alleged unfair or deceptive acts or practices in connection with the marketing and sale of a work-at-home opportunity.
5. The activities of Defendant, as alleged in the Complaint, were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. The parties stipulate and agree to this Order, without trial or adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the Complaint to the date of entry of this Order.
7. Defendant does not admit any of the allegations set forth in the Complaint, other than jurisdictional facts.
8. Defendant waives all rights to seek judicial review or otherwise challenge or

contest the validity of this Order. He also waives any claim that he may have held 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) concerning the prosecution of this action to the date of this Order. Each party shall bear its own costs and attorney's fees.

9. Defendant waives and releases any claim arising from this action that he may have against the Federal Trade Commission, and its employees, agents and representatives.

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

DEFINITIONS

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

1. "Assisting others" means knowingly 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 the formulation or provision of any written marketing materials; (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.

2. "Business Venture" means any written or oral business arrangement, however, denominated, 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) 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.

3. “Consumer” means any person, including any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

4. “Defendant” means Darrell Richmond, whether acting directly or through any corporation, subsidiary, division, or other device.

5. “Person” means any natural person, organization, or other legal entity including a corporation, partnership, proprietorship, association, cooperative, government agency, or any other group or combination acting as an entity.

6. “Work-at-home opportunity” means any program, plan, product, or service that represents that it enables a participant or purchaser to earn money while working from home.

7. The terms “and” and “or” have both conjunctive and disjunctive meanings.

ORDER

I. PERMANENT BAN

IT IS THEREFORE ORDERED that Defendant, and any entity through which he does business, and his successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, is hereby permanently restrained and enjoined from engaging in, or receiving any remuneration of any kind whatsoever from, holding any ownership interest, share, or stock in, or serving as an officer, director, trustee, general manager of, or consultant or advisor to, any business entity engaged in, or assisting others engaged in, in whole or in part, the

advertising, marketing, promoting, offering for sale, or sale of any work-at-home opportunity or business venture. Nothing in this Order shall be construed as to nullify the prohibitions set forth in Paragraph I.

II. PROHIBITED REPRESENTATIONS

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of any good or service, Defendant and any entity through which he does business, and his successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, is permanently enjoined and restrained from directly or by implication, making any false or misleading oral or written representation of material fact or engaging in deceptive or misleading acts and practices, including, but not limited to:

- A. Misrepresenting the earnings a consumer is likely to achieve;
- B. Misrepresenting the earnings that consumers have actually achieved;
- C. Misrepresenting that Defendant will provide tools and materials of adequate quantity or quality, or some other type of assistance, to enable the consumer to achieve the represented earnings;
- D. Misrepresenting the typical amount of time a person would need to expend in order to achieve the represented earnings;
- E. Misrepresenting that remuneration is guaranteed to the consumer; and
- F. Misrepresenting that the Defendant has pending orders for products, or business

to fulfill, or that he will purchase products from the consumers.

III. CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant, and any entity through which he does business, and his successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, are permanently enjoined and restrained from:

Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any customer of Defendant who paid any money to Defendant at any time prior to entry of this Order in connection with the purchase of a work-at-home business opportunity; *provided, however*, that Defendant may disclose such identifying information (i) to a law enforcement agency, or (ii) as required or authorized by any law, regulation, or court order.

IV. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that upon entry of this Order, and the transfer and sale of all assets as required by Paragraph V, the freeze of Defendant's remaining assets provided for in the Stipulated Preliminary Injunction Order shall be lifted.

V. CONSUMER REDRESS

IT IS FURTHER ORDERED that Defendant shall make restitution as follows:

- A. Within three (3) business days of the entry of this Final Order, all funds located in the following accounts shall be released and transferred to the Commission:

1. BB&T account # 5122848371 (approximate amount \$26,922.05);
2. BB&T account # 5124768359 (approximate amount \$11,952.74);
3. First Citizens account 80050229609 (approximate amount \$1,356.44); and
4. First Citizens account 80045571901 (approximate amount \$337.93).

B. The residence located at 4 Aderlay Court, Irmo, South Carolina, and the 2001 Porsche Boxter automobile, South Carolina State Registration Number 13894776, shall be released to the United States Attorneys' Office for the District of South Carolina, or its designee, for sale in accordance with an anticipated order of forfeiture in a concurrent criminal proceeding against Defendant. The proceeds of such sales shall be transferred to the Commission. The proceeds, together with the funds listed in Section V.A., shall constitute the "Redress Payments" for equitable monetary relief, including but not limited to, consumer redress.

C. The Redress Payments shall be made by wire transfers to the account of the Federal Trade Commission, Treasury ABA Number 021030004, via the New York Federal Reserve Bank, at the Federal Trade Commission's Agency Location Code Number 29000001 and the following information shall accompany each wire transfer to properly identify the funds:

Appropriation: 29x6013

FTC Matter Name: Darrell Richmond, et al.

FTC Matter Number: 0223264

Mr. Richmond's Tax Identification Number: xxx-xx-xxxx.

If the Redress Payments are not received by the Federal Trade Commission as Ordered, the Court shall enter judgment in the amount of \$782,668.82 in favor of the Commission and against the Defendant, without further notice, which will be immediately due and payable.

B. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendant's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Paragraph.

C. In establishing a redress plan, the Commission shall have full and sole discretion to determine the criteria and parameters for participation by injured consumers in a redress program, and may delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations, and pay the fees, salaries, and expenses incurred thereby in carrying out said tasks from the funds received pursuant to this Order.

D. Defendant further agrees that the acts as alleged in the Complaint shall be taken as true in the event of any subsequent litigation to collect amounts due pursuant to this Order, including but not limited to a non-dischargeability complaint in any bankruptcy proceeding.

E. The judgment entered pursuant to this Paragraph is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.

VI. RIGHT TO REOPEN

IT IS FURTHER ORDERED that within five (5) business days after entry of this Order, Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order and shall reaffirm and attest to the truthfulness, accuracy and completeness of Defendant's Financial Disclosure Statement. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of such financial disclosure statement. If, upon motion by the Commission, the Court finds that the financial disclosure statement contains any material misrepresentation or omission, the Court shall enter judgment against Defendant, in favor of the Commission, in the amount of \$782,668.82 which Defendant and the Commission stipulate is the total consumer loss caused by Defendant, which will be immediately due and payable, less any payment already made, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance. *Provided, however,* that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court. *Provided further,* that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Order. Defendant expressly waives all rights to contest the imposition or amount of the judgment specified in this Paragraph.

VII. AUTHORITY TO MONITOR COMPLIANCE

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, Defendant shall submit additional written reports, sworn to 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 Defendant's possession or direct or indirect control to inspect the business operation;

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;
2. Posing as consumers and suppliers to Defendant, his employees, or any other entity managed or controlled in whole or in part by him, without the necessity of identification or prior notice.

Provided 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, 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)).

C. Defendant 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.

VIII. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents and representatives having responsibility with respect to the subject matter of this Order. Defendant shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after date of service of the Order or the commencement of the employment relationship.

IX. COMPLIANCE REPORTING BY DEFENDANT

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. Defendant shall notify the Commission of the following:
 - a. any changes in Defendant's residence, mailing addresses, and telephone numbers within ten (10) days of the date of such change;
 - b. Any changes in Defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with or employed by, or performs services for; a statement of the nature of the business, and a statement of Defendant's duties and responsibilities in connection with the business;
 - c. Any changes in Defendant's name or use of any aliases or fictitious names; and

2. Defendant shall notify the Commission of any change in the corporate structure of any business entity owned or controlled by Defendant, including, but not limited to the creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising under this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as it is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include but not be limited to:

1. Any changes required to be reported pursuant to subparagraph (A) above;
2. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Paragraph VIII;

C. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director
Federal Trade Commission
225 Peachtree St., N.E.
Suite 1500

Atlanta, GA 30303

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D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendant.

X. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of Eight (8) years from the date of entry of this Order, Defendant, in connection with (a) any business where Defendant is the majority owner or otherwise controls the business or (b) the marketing or sale of any business venture, Defendant and his agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaint and refund requests (whether received directly, indirectly or through

any third party) and any responses to those complaints or requests; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

XI. NOTICES TO CONSUMERS

IT IS FURTHER ORDERED that Defendant shall within twenty (20) days after the effective date of this Order return to consumers all uncashed checks or other negotiable instruments in Defendant's possession that have been received by Defendant in response to Defendant's solicitations for work-at-home business opportunity. Along with each returned check or other negotiable instrument, Defendant shall send a notice, in the form of Appendix B, to the consumer, specifically disclosing the allegations of Section 5 violations, as stated in Appendix B, related to Defendant's work-at-home business opportunity, the existence of the court settlement with the Commission to resolve such allegations, and Defendant's prohibition against operating future work-at-home opportunities and business ventures. Within sixty (60) days after the effective date of this Order, Defendant shall provide copies of the correspondence or, in the alternative, a sample notice and a list of names and addresses of those consumers who received such notices described in this paragraph to Regional Director, Federal Trade Commission, 225 Peachtree NE, Suite 1500, Atlanta, GA 30303.

XII. EFFECT ON OTHER OBLIGATIONS AND RELIEF

A. The expiration of any requirement imposed by this Order shall not affect any other obligation arising under this Order; and

B. This action and the relief awarded herein is in addition to and not in lieu of other remedies as may be provided by law including administrative, civil and criminal remedies.

**XIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY
INDIVIDUAL DEFENDANT**

IT IS FURTHER ORDERED that, within five (5) business days after receipt of this Order, Defendant Darrell Richmond shall submit to the Commission a truthful sworn and notarized statement, in the form attached to this Order as Appendix A, acknowledging receipt of this Order as entered by this Court.

XIV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes of construction, modification, and enforcement of this Order.

SO ORDERED this _____ day of _____, 2003, at Columbia, South Carolina.

Cameron McGowan Currie
United States District Judge

CONSENTED TO BY THE PARTIES:

PLAINTIFF

DEFENDANT

Valerie M. Verduce
Ronald E. Laitsch
Federal Trade Commission
225 Peachtree Street
Suite 1500
Atlanta, GA 30303
Office: (404) 656-1358
Facsimile: (404) 656-1379

J. P. Strom, Jr. (Fed. ID #4354)
Mario A. Pacella (Fed. ID #7538)
Strom Law Firm, L.L.C.
1501 Main Street
Suite 700
Columbia, SC 29201
(803) 252-4800

Signed this _____ Day of March, 2003

Local Counsel

Signed This _____ Day of March, 2003.

Robert F. Daley, Jr. (Fed ID #6460)
Assistant United States Attorney
United States Department of Justice
District of South Carolina
141 Main Street, Suite 500
Columbia, South Carolina 29201
Voice: (803) 929-3054
Facsimile: (803) 252-2759

Signed This _____ Day of March, 2003.