

DAVID N. KELLEY
United States Attorney for the
Southern District of New York
By: LARA K. ESHKENAZI
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2758
Facsimile: (212) 637-2702

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
TACTICA INTERNATIONAL, INC.,)	
a corporation)	
d/b/a IGIA and IGIA.com,)	
)	
Defendant.)	

CONSENT DECREE

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendant has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendant admitting liability for any of the matters alleged in the Complaint;

THEREFORE, upon stipulation of plaintiff and defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the defendant under Sections 5(a)(1), 5(m)(1)(A), 13(b) and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 56(a).

DEFINITIONS

3. For the purposes of this Consent Decree, the term "Rule" means the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part 435, or as the Rule may hereafter be amended.

CIVIL PENALTY

4. Defendant Tactica International, Inc., its successors and assigns, shall pay to plaintiff a civil penalty, pursuant to section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of three hundred thousand dollars (\$300,000.00).
5. Defendant shall make the payment required by Paragraph 4 within thirty (30) days of the date of entry of this Consent Decree by electronic fund transfer in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.
6. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment, shall immediately become due and payable.

INJUNCTION

7. Defendant Tactica International, Inc., its successors and assigns, and its officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with it who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from violating, directly or through any corporation, subsidiary, division or other device, any provision of the Rule, in any way, including but not limited to:

- (a) Soliciting mail, telephone or Internet orders for merchandise unless it has a reasonable basis to expect that it can ship such merchandise within the time stated in the solicitation or, if no time is stated clearly and conspicuously in the solicitation, within thirty (30) days after receipt of a properly completed order, as required by 16 C.F.R. § 435.1(a)(1);
- (b) Failing to timely provide the buyer a definite revised shipping date, and to offer to the buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by 16 C.F.R. § 435.1(b)(1); and,
- (c) Failing to deem the order canceled and to make a prompt refund to buyers who are entitled to such refunds under the Rule, as required by 16 C.F.R. § 435.1(c).

8. In the event the Rule is hereafter amended or modified, defendant's compliance with that Rule as so amended or modified shall not be deemed a violation of this injunction. A copy of the Rule is attached hereto as "Appendix A" and incorporated herein as if fully set forth verbatim.

RECORDKEEPING REQUIREMENTS

9. For a period of five (5) years after the entry of this Consent Decree, defendant Tactica International, Inc., its successors and assigns, shall maintain and preserve all records demonstrating compliance with the Rule and this Consent Decree as follows:

- (a) Customer files containing the names, addresses, telephone numbers or e-mail addresses (if any), dollar amounts paid and form of payment (*e.g.*, cash, credit card), quantity of items purchased, description of items purchased, order dates, shipment dates, dates of provision of delay option or renewed option notices, dates of receipt of cancellations or refund requests based on non-delivery or untimely delivery of merchandise, and dates and amounts of refunds paid because of non-delivery or untimely delivery of merchandise;
- (b) Copies of all advertisements or other promotional materials used in the advertising, marketing, promoting, offering for sale, distribution or sale of any product by mail or telephone;
- (c) With respect to any of the materials identified in paragraph (b), all materials that were relied upon by defendant to substantiate any express or implied definite or indefinite shipment representation therein;
- (d) All reports, tests, studies, surveys, demonstrations or other

evidence that contradict, qualify, or call into question any express or implied shipment representation in any of the materials identified in paragraph (b);

- (e) All form delay notices and the periods during which they were used, and
- (f) All contracts and correspondence (excluding routine invoices) with any fulfillment house, drop shipper, agency or other person to perform any activities, directly or indirectly, relating to the advertising, sale or fulfillment of mail or telephone order merchandise, or the keeping of records required by this Consent Decree.

10. In addition to the foregoing, with respect to its compliance with the Rule, for a period of three (3) years after the entry of this Consent Decree defendant Tactica International, Inc., its successors and assigns, shall maintain and preserve from destruction each complete written complaint of each consumer, including all documentation or other materials included with the complaint by the consumer, respecting any non-delivery, partial delivery or untimely delivery of the merchandise, any non-payment, partial payment or delayed payment of any refund required by the Rule, or respecting any failure of the defendant to provide notification of delay and to obtain the consumer's consent thereto, and the date of receipt of the complaint by defendant.

11. For a period of three (3) years after the entry of this Consent Decree, defendant Tactica International, Inc., its successors and assigns, shall, within seven (7) business days of their receipt of a written request:

- (a) make available to the Federal Trade Commission or its staff business records demonstrating compliance with the terms and provisions of this Consent Decree; and
- (b) permit the Commission or its staff to inspect and copy all records

defendant is required by this Consent Decree to keep, provided, however, that any documents or records being actively used during the ordinary course of business are to be inspected during non-business hours or at a mutually convenient time.

PERSONS AFFECTED; CONTINUING JURISDICTION

12. Defendant Tactica International, Inc., its successors and assigns, shall, within thirty (30) days of the entry of this Consent Decree, provide a copy of this Consent Decree and the Business Guide to the Federal Trade Commission's Mail or Telephone Order Merchandise Rule (1995) ("Business Guide") to each of its supervisory or managerial agents, servants, employees and attorneys who are engaged in defendant's mail, telephone, facsimile or Internet order sales business, secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree and Business Guide, and shall, within ten (10) days of complying with this paragraph, file an affidavit with the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, setting forth the fact and manner of its compliance, including the name and title of each person to whom a copy of the Consent Decree and Business Guide has been provided.

13. For a period of ten (10) years, Defendant Tactica International, Inc., and its successors and assigns, shall notify the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, at least thirty (30) days prior to any merger, incorporation, dissolution, assignment, sale resulting in the emergence of a successor corporation, creation or dissolution of a subsidiary or parent, or any other changes in corporate status which may affect defendant's obligations under this Consent Decree. *Provided, however,* that with

respect to any proposed change in the corporation about which defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission's Associate Director for Enforcement as soon as practicable after obtaining such knowledge.

14. One hundred twenty (120) days after entry of this Consent Decree, defendant Tactica International, Inc., its successors and assigns, shall provide a written report to the Federal Trade Commission, sworn to under penalty of perjury, setting forth the manner and form in which defendant has complied and is complying with this Consent Decree. This report shall include but not be limited to:

- (a) a specimen copy of each advertisement or telemarketing script that contains a shipping or delivery representation;
- (b) a specimen copy of each delay option notice used for purposes of complying with any provision of the Rule, and a statement setting forth in detail the procedures in place for providing such notices to consumers in a timely fashion; and
- (c) a statement setting forth defendant's procedures for timely shipping, providing notification of delay, and prompt refunds pursuant to the Rule.

Defendant shall mail this written report to: the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

15. Defendant is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission its taxpayer identifying number (employer identification number), which shall be used for purposes of collecting and reporting on any

delinquent amount arising out of its relationship with the government.

16. This Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against defendant, pursuant to all the terms and conditions recited above.

Dated this ____ day of _____, 2004.

UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation and prosecution of this action.

FOR THE UNITED STATES OF AMERICA:

PETER D. KEISLER
Assistant Attorney General
Civil Division
U.S. Department of Justice

DAVID N. KELLEY
United States Attorney
Southern District of New York

By: _____
LARA K. ESHKENAZI (LE-1974)
Assistant United States Attorney
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. No.: (212) 637-2758

EUGENE THIROLF
Director
Office of Consumer Litigation

By: _____
ELIZABETH STEIN
Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044
(202) 307-0486
(202) 514-8742 FAX

FOR THE FEDERAL TRADE COMMISSION:

ELAINE D. KOLISH
Associate Director
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission

ROBERT M. FRISBY
Assistant Director
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission

JOEL N. BREWER
Attorney
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580
(202) 326-2967

FOR THE DEFENDANT:

TACTICA INTERNATIONAL, INC.

By: _____
PREM RAMCHANDANI, President
Tactica International, Inc.
11 West 42nd Street
New York, New York 10136

VENABLE, BAETJER, HOWARD & CIVILETTI,
LLP
Attorneys for Defendant

By: _____
JEFFREY D. KNOWLES, ESQ.
GARY D. HAILEY, ESQ.
575 7th Street, N.W.
Washington, D.C. 20004-1601
(202) 344-4860