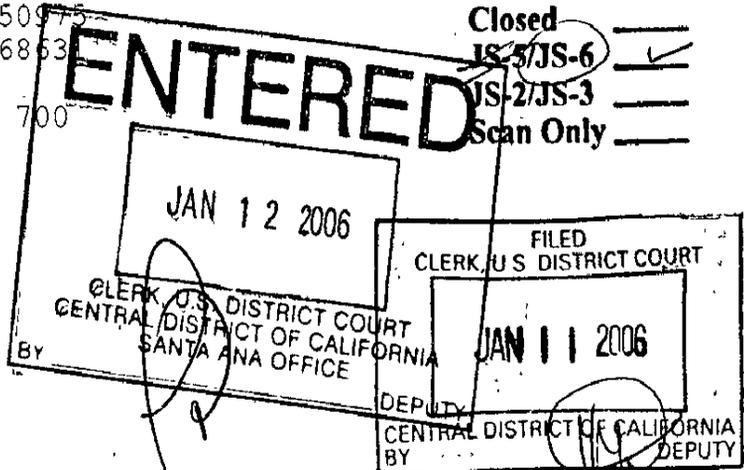


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7 Attorneys for Plaintiff
8 FEDERAL TRADE COMMISSION

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

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11 FEDERAL TRADE COMMISSION)

12 Plaintiff,)

13 v.)

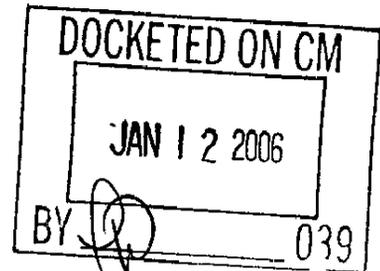
14 SACV. 04-1264 JVS (JTLx)

15 CONVERSION MARKETING, INC., dba)
16 NATIONAL HEALTH SUPPORT CENTER,)
17 NATURAL BRIGHT, and POUNDS OFF)
18 PATCH; and)

17 ADAM TYLER MACDONALD, dba)
18 FAST WHITE;)

19 Defendants.)

20 **STIPULATED FINAL JUDGMENT AND**
21 **ORDER FOR PERMANENT INJUNCTION**
22 **AS TO DEFENDANTS CONVERSION**
23 **MARKETING, INC. AND ADAM TYLER**
24 **MACDONALD**



23 Plaintiff Federal Trade Commission ("FTC") commenced this
24 civil action on October 29, 2004, pursuant to Section 13(b) of the
25 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and
26 the Telemarketing and Consumer Fraud and Abuse Prevention Act
27 ("Telemarketing Act"), 15 U.S.C. §§ 6101 et seq., to secure a
28 permanent injunction, rescission of contracts and restitution,

37

1 disgorgement of ill-gotten gains, and other equitable relief,
2 alleging that Defendants engaged in unfair or deceptive acts or
3 practices in violation of Sections 5(a) and 12 of the FTC Act, 15
4 U.S.C. §§ 45(a) and 52, and the FTC's Telemarketing Sales Rule
5 ("TSR"), 16 C.F.R. Part 310. The FTC and Defendants Conversion
6 Marketing, Inc. and Adam MacDonald hereby stipulate to this Final
7 Judgment and Order for Permanent Injunction as to Defendants
8 Conversion Marketing Inc. and Adam Tyler MacDonald ("Order").

9 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

10 **FINDINGS**

- 11 1. This Court has jurisdiction over the subject matter of
12 this action and over Defendants.
- 13 2. Venue for this action is proper in the Central District
14 of California.
- 15 3. The activities of Defendants are in or affecting
16 commerce, as defined in Section 4 of the FTC Act, 15
17 U.S.C. § 44.
- 18 4. The Complaint states a claim upon which relief may be
19 granted against Defendants under Sections 5(a), 12, and
20 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 52, and 53(b),
21 the Telemarketing Act, 15 U.S.C. §§ 6101 et seq., and the
22 TSR, 16 C.F.R. Part 310.
- 23 5. Defendants waive: (a) all rights to seek appellate review
24 or otherwise challenge or contest the validity of this
25 Order; (b) any claim Defendants may have against the
26 Commission, its employees, representatives, or agents;
27 (c) all claims under the Equal Access to Justice Act, 28
28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat.

1 847, 863-64 (1996); and (d) any rights to attorneys' fees
2 that may arise under said provision of law.

3 6. The FTC and Defendants stipulate and agree to this Order,
4 without trial or adjudication of any issue of fact or
5 law, to settle and resolve all matters in dispute arising
6 from the Complaint to the date of entry of this Order.
7 Defendants do not admit any of the allegations set forth
8 in the Complaint, other than jurisdictional facts.

9 7. Entry of this Order is in the public interest.

10 **DEFINITIONS**

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

13 1. "Billing Information" means any data that enable any
14 person to access a customer's or donor's account, such as a credit
15 card, checking, savings, share or similar account, utility bill,
16 mortgage loan account, or debit card.

17 2. "Clearly and Conspicuously" means:

18 a. in print communications, the message shall be in a
19 type size and location sufficiently noticeable for an ordinary
20 consumer to read and comprehend it, in print that contrasts with
21 the background against which it appears;

22 b. in communications disseminated orally, the message
23 shall be delivered in a volume and cadence sufficient for an
24 ordinary consumer to hear and comprehend it;

25 c. in communications made through an electronic medium
26 (such as television, video, radio, and interactive media such as
27 the Internet, online services and software), the message shall be
28 presented simultaneously in both the audio and visual portions of

1 the communication. In any communication presented solely through
2 visual or audio means, the message may be made through the same
3 means in which the communication is presented. Any audio message
4 shall be delivered in a volume and cadence sufficient for an
5 ordinary consumer to hear and comprehend it. Any visual message
6 shall be of a size and shade, with a degree of contrast to the
7 background against which it appears, and shall appear on the screen
8 for a duration and in a location sufficiently noticeable for an
9 ordinary consumer to read and comprehend it; and

10 d. regardless of the medium used to disseminate it, the
11 message shall be in understandable language and syntax. Nothing
12 contrary to, inconsistent with, or in mitigation of the message
13 shall be used in any communication.

14 3. "Competent and reliable scientific evidence" means tests,
15 analyses, research, studies, or other evidence based on the
16 expertise of professionals in the relevant area, that have been
17 conducted and evaluated in an objective manner by persons qualified
18 to do so, using procedures generally accepted in the profession to
19 yield accurate and reliable results.

20 4. "Defendants" means Conversion Marketing, Inc. and Adam
21 Tyler MacDonald.

22 5. "Document" is synonymous in meaning and equal in scope to
23 the usage of the term in Federal Rules of Civil Procedure 34(a),
24 and includes writings, drawings, graphs, charts, photographs,
25 audio, and video recordings, computer records, and other data
26 compilations from which the information can be obtained and
27 translated, if necessary, through detection devices into reasonably
28

1 usable form. A draft or non-identical copy is a separate document
2 within the meaning of the term.

3 6. "Material" means likely to affect a person's choice of, or
4 conduct regarding, goods or services or a charitable contribution.

5 7. A "Negative Option" offer or agreement is one to sell or
6 provide goods or services under which the consumer's silence or
7 failure to take an affirmative action to reject goods or services
8 or to cancel the agreement is interpreted by the seller or provider
9 as acceptance of the offer. Negative option offers or agreements
10 include but are not limited to: (i) free-to-pay conversion offers
11 in which the consumer receives a product or service for free for an
12 initial period and will incur an obligation to pay for the product
13 or service if he or she does not take affirmative action to cancel
14 before the end of that period; (ii) continuity plans, in which,
15 subsequent to the consumer's agreement to the plan, the seller or
16 provider automatically ships goods to a consumer unless the
17 consumer notifies the seller or provider within a certain time
18 period not to ship the goods; and (iii) automatic renewal plans, in
19 which the seller or provider automatically renews the agreement and
20 charges the consumer unless the consumer cancels before the
21 renewal.

22 8. "Outbound telephone call" means a telephone call initiated
23 by a telemarketer to induce the purchase of goods or services or to
24 solicit a charitable contribution.

25 9. "Preacquired account information" means any information
26 that enables a seller or telemarketer to cause a charge to be
27 placed against a customer's or donor's account without obtaining
28 the account number directly from the customer or donor during the

1 telemarketing transaction pursuant to which the account will be
2 charged.

3 10. "Telemarketing" means a plan, program, or campaign which
4 is conducted to induce the purchase of goods or services or a
5 charitable contribution, by use of one or more telephones and which
6 involves more than one interstate telephone call. Except as to TSR
7 Sections 310.4(a)(1), (a)(7), (b), and (c), "telemarketing" does
8 not include solicitation calls where the sale is not completed, and
9 payment or authorization of payment is not required, until after a
10 face-to-face meeting between the seller and consumer. For the
11 purposes of Section I.D., the definition of telemarketing will
12 conform to that of 16 C.F.R. § 310.2.

13 11. "Upselling" means soliciting the purchase of goods or
14 services following an initial transaction during a single telephone
15 call. The upsell is a separate telemarketing transaction, not a
16 continuation of the initial transaction. An "external upsell" is a
17 solicitation made by or on behalf of a seller different from the
18 seller in the initial transaction, regardless of whether the
19 initial transaction and subsequent solicitation are made by the
20 same telemarketer. An "internal upsell" is a solicitation made by
21 or on behalf of the same seller as in the initial transaction,
22 regardless of whether the initial transaction and subsequent
23 solicitation are made by the same telemarketer.

24 I. PROHIBITED BUSINESS PRACTICES

25 **IT IS THEREFORE ORDERED** that Defendants and Defendants'
26 successors, assigns, officers, agents, servants, salespersons,
27 employees, independent contractors, and all other persons within
28 the scope of Fed. R. Civ. P. 65, and those persons in active

1 concert or participation with them, whether acting directly or
2 through any sole proprietorship, partnership, limited liability
3 company, corporation, subsidiary, branch, division, or other
4 entity, who receive actual notice of this Order by personal service
5 or otherwise, in connection with the advertising, promoting,
6 offering for sale, or sale of any product or service, are hereby
7 permanently restrained and enjoined from:

8 A. Misrepresenting, or assisting others in misrepresenting,
9 expressly or by implication, any material fact, including but not
10 limited to:

11 1. that consumers can obtain a free product or service,
12 a free trial membership, or any product or service at no cost;

13 2. that a good or service is offered at "no obligation"
14 or words of similar import, denoting or implying the absence of any
15 obligation on the part of the recipient of the offer to
16 affirmatively act in order to avoid charges if, in fact, a charge
17 will be assessed pursuant to the offer unless the consumer takes
18 affirmative action to cancel;

19 3. the amount that a consumer will be charged or billed;

20 4. that a consumer will not be charged or billed;

21 5. the timing or manner of any assessment of a charge;

22 6. the length of any trial period that consumers receive
23 before a charge is assessed against them;

24 7. the terms and conditions of Defendants' refund and
25 cancellation policies, including but not limited to, that (a)
26 consumers who accept an offer from either Defendant can easily
27 cancel to avoid the assessment of a charge, and (b) consumers will
28

1 be able to obtain prompt refunds of amounts that have been paid to
2 either Defendant;

3 8. whether Defendants possess consumers' billing
4 information;

5 9. that consumers purchased or agreed to purchase goods
6 or services, and therefore owe money to Defendants;

7 10. that use of a product causes substantial weight loss
8 for all users;

9 11. that products worn on the body or rubbed into the
10 skin cause substantial weight loss; or

11 12. that products block the absorption of carbohydrates,
12 fat, or calories and cause substantial weight loss.

13 B. Failing to clearly and conspicuously disclose, before
14 consumers are asked to pay money, submit consideration, or reveal
15 billing information: all fees, costs, cancellation terms, material
16 refund terms or the fact that refunds are not provided; all
17 material conditions, limitations, restrictions to purchase,
18 receive, or use the good or service that is the subject of the
19 offer (including any promotion associated with "free" goods or
20 services); and all material terms and conditions of any negative
21 option offer, including but not limited to:

22 1. the dollar amount of the first payment and when it
23 will be charged or become due; the dates or frequency (e.g.,
24 monthly, quarterly) of all subsequent charges or payment(s); and
25 the dollar amount or range of costs of all subsequent charges or
26 payments;

27 2. if a charge will be submitted for payment at the end
28 of a trial period unless the consumer cancels: this fact; the

1 length of the trial period; the specific steps in which a
2 cancellation request must be submitted; and the date or time period
3 by which a cancellation request must be received to avoid a charge;
4 and

5 3. if the seller automatically ships goods to a consumer
6 or automatically renews a membership, subscription, or agreement
7 for goods or services that are offered on a periodic basis unless
8 the consumer notifies the seller within a certain time not to ship
9 or renew: this fact; the length of the subsequent renewal period;
10 the manner in which a notice not to ship or renew must be
11 submitted; the date or time period by which a notice not to ship or
12 renew must be received to avoid shipment or renewal (e.g., two
13 weeks after consumer advised of an upcoming shipment); and either a
14 telephone number or address to which such a notice may be directed;

15 C. Directly or indirectly causing billing information to be
16 submitted for payment, in connection with the telemarketing of any
17 good or service, without the express informed consent of the
18 consumer, which shall include express informed consent to be
19 charged for the good or service, to be charged using a specified
20 billing account, and disclosure of the information identified in
21 Section I.B., above. In connection with the telemarketing of any
22 good or service pursuant to a negative option offer or agreement,
23 the following requirements must be met to evidence express informed
24 consent:

25 1. Defendants must obtain the consumer's express written
26 agreement to purchase the good or service and authorization to
27 submit a charge on a specified billing account for payment that
28 includes: (a) all of the information required to be disclosed

1 pursuant to Section I.B., above, and (b) the consumer's signature
2 (the term "signature" includes a verifiable electronic or digital
3 form of signature, to the extent such form of signature is
4 recognized as a valid signature under applicable federal law or
5 state contract law); or

6 2. Defendants must obtain the consumer's express oral
7 authorization to purchase the good or service that is the subject
8 of the telemarketing transaction and the consumer's authorization
9 to submit a charge on a specified billing account for payment that
10 is audio-recorded, as follows:

11 a. in connection with any telemarketing transaction
12 involving preacquired account information and a negative option
13 feature, the recording must evidence that Defendants have obtained
14 from the consumer, during that transaction, at a minimum, the last
15 four (4) digits of the account number to be charged; and

16 b. the recording must evidence that Defendants have
17 complied with the disclosure requirements of Section I.B., above,
18 and the disclosure requirements of the Telemarketing Sales Rule;

19 c. the recording must include the entirety of the
20 transaction;

21 d. the recording can be identified and located by
22 either the consumer's name or telephone number; and

23 e. a copy of the recording is provided upon request
24 to the consumer, the consumer's bank, credit card company or other
25 billing entity, state attorney general or consumer protection
26 agency, and the Commission;

27 D. Violating any provision of the Telemarketing Sales Rule,
28 16 C.F.R. Part 310, as in effect now or as it may be amended;

1 E. Failing to take reasonable steps sufficient to monitor and
2 ensure that all Defendants' agents, representatives, employees,
3 independent contractors, and contract telemarketers comply with the
4 requirements of this Section I, and when such persons are engaged
5 in telemarketing such steps shall include but are not limited to
6 the following:

7 1. establishing a procedure for receiving and responding
8 to consumer complaints of violations of the FTC Act, the
9 Telemarketing Sales Rule, or this Order;

10 2. ascertaining the number and nature of consumer
11 complaints in which each employee or independent contractor is
12 involved;

13 3. failing promptly to investigate fully any consumer
14 complaint;

15 4. failing to take corrective action with respect to any
16 telemarketer whom Defendants determine is not complying with the
17 FTC Act, the Telemarketing Sales Rule, or this Order, which may
18 include training, disciplining, and/or terminating such person;

19 Provided however, that this subsection does not authorize or
20 require Defendants to take any action that violates any federal,
21 state, or local law; and

22 F. Failing to investigate and resolve, within forty-five (45)
23 days of receipt, any consumer complaint or request for refund
24 received by Defendants, their successors, assigns, officers,
25 agents, servants, salespersons, employees, independent contractors,
26 and attorneys, as well as those persons in active concert or
27 participation with them, whether acting directly or through any
28 sole proprietorship, partnership, limited liability company,

1 corporation, subsidiary, branch, division, or other entity, and to
2 notify the consumer of the resolution of the complaint or request
3 and the reason therefor.

4 **II. REPRESENTATIONS PROHIBITED UNLESS TRUE AND SUBSTANTIATED**

5 **IT IS FURTHER ORDERED** that Defendants and Defendants'
6 successors, assigns, officers, agents, servants, salespersons,
7 employees, independent contractors, and all other persons within
8 the scope of Fed. R. Civ. P. 65, and those persons in active
9 concert or participation with them, whether acting directly or
10 through any sole proprietorship, partnership, limited liability
11 company, corporation, subsidiary, branch, division, or other
12 entity, who receive actual notice of this Order by personal service
13 or otherwise, in connection with the advertising, promoting,
14 offering for sale, or sale of any product, service, or program,
15 including but not limited to those that purportedly provide
16 cosmetic or health benefits such as weight loss, inch loss, fat
17 loss, or exercise or fitness benefits, are hereby permanently
18 restrained and enjoined from making any representation, expressly
19 or by implication, including through the use of endorsements or
20 trade names:

21 A. That any such product, service, or program:

- 22 1. causes weight loss;
 - 23 2. eliminates fat;
 - 24 3. reduces appetite;
 - 25 4. regulates metabolism;
 - 26 5. reduces or dissolves cellulite;
 - 27 6. boosts energy; or
- 28

1 B. About the benefits, performance, efficacy, safety, or side
2 effects of any such product, service, or program;

3
4 unless, at the time the representation is made, the representation
5 is true and Defendants possess and rely upon competent and reliable
6 evidence, which when appropriate must be competent and reliable
7 scientific evidence, that substantiates the representation.

8 **III. PROHIBITION ON RENEWALS OF CURRENT OR PAST MEMBERSHIPS**

9 **IT IS FURTHER ORDERED** that Defendants and Defendants'
10 successors, assigns, officers, agents, servants, salespersons,
11 employees, independent contractors, and all other persons within
12 the scope of Fed. R. Civ. P. 65, and those persons in active
13 concert or participation with them, whether acting directly or
14 through any sole proprietorship, partnership, limited liability
15 company, corporation, subsidiary, branch, division, or other
16 entity, who receive actual notice of this Order by personal service
17 or otherwise, in connection with the advertising, promoting,
18 offering for sale, or sale of any weight loss patch are hereby
19 permanently restrained and enjoined from causing any charges to be
20 made or any payments to be billed to a consumer, or causing
21 collection of, or attempts to collect, payment, directly or
22 indirectly, from a consumer, for any order for any such product or
23 service offered or provided to consumers by any Defendant or by any
24 entity owned or controlled directly or indirectly by any Defendant,
25 where the purported authorization for such order occurred prior to
26 the effective date of this Order.

27 **IV. MONETARY RELIEF**

28 **IT IS FURTHER ORDERED** that:

1 A. Judgment is hereby entered against Defendants, jointly and
2 severally, in the amount of \$979,204, provided however, that this
3 judgment will be suspended:

4 1. upon payment of \$463,000 to the Commission or its
5 designated agent by wire transfer pursuant to instructions provided
6 by the Commission within five (5) days of entry of this judgment.

7 In the event of default by Defendants of any obligation imposed on
8 Defendants under this Section IV, including but not limited to the
9 failure to timely and completely fulfill the payment obligation:

10 a. the suspension of the \$979,204 judgment shall be
11 vacated as to Defendants, and the full amount of that judgment
12 shall immediately become due, plus interest from the date of entry
13 of this Order pursuant to 28 U.S.C. § 1961, less any payments
14 already made; and

15 b. the Commission shall be entitled to immediately
16 exercise any and all rights and remedies against Defendants and
17 their property, to collect the full amount of the judgment amount
18 and interest thereon, less any payments already made; and

19 2. so long as the Court makes no finding, as provided in
20 Section V, that either Defendant materially misrepresented or
21 omitted the nature, existence, or value of any asset, or any
22 material information that was or should have been stated in the
23 documents listed in Attachment A;

24 B. All funds paid pursuant to this Section shall be deposited
25 into a fund administered by the Commission or its agent to be used
26 for equitable relief, including but not limited to consumer redress
27 and any attendant expenses for the administration of such equitable
28 relief. In the event that direct redress to consumers is wholly or

1 partially impracticable or funds remain after redress is completed,
2 the Commission may apply any remaining funds for such other
3 equitable relief (including consumer information remedies) as it
4 determines to be reasonably related to Defendants' practices as
5 alleged in the Complaint. Any funds not used for such equitable
6 relief will be deposited with the United States Treasury as
7 disgorgement. Defendants shall have no right to challenge the
8 Commission's choice of remedies under this Section. Defendants
9 shall have no right to contest the manner of distribution chosen by
10 the Commission. No portion of any payment under the judgment
11 herein shall be deemed a payment of any fine, penalty, or punitive
12 assessment;

13 C. Defendants acknowledge and agree that all money paid
14 pursuant to this Order is irrevocably paid to the Commission for
15 purposes of settlement between the parties, and Defendants shall
16 make no claim or demand for return of the funds, directly or
17 indirectly, through counsel or otherwise, and in the event of
18 bankruptcy of either Defendant, such Defendant acknowledges that
19 the funds are not part of the debtor's estate, nor does the estate
20 have any claim or interest therein;

21 D. Defendants shall provide the Commission, or its agent,
22 within thirty (30) days of such a request, the name, last known
23 address, telephone number, e-mail address, date of purchase, total
24 amount paid to Defendants, amount of any full or partial refund,
25 credit card, debit card or bank account information, and the
26 complete file record, including computer records and correspondence
27 for each consumer who paid Defendants or any entity owned or
28 controlled, in full or in part, by either Defendant, for any Pounds

1 Off Patch or Carbs Off Patch weight loss product, and any further
2 information the Commission deems necessary to effectuate any
3 redress program for consumers;

4 E. Unless already done so, each Defendant is hereby required,
5 in accordance with 31 U.S.C. § 7701, to furnish to the Commission
6 their respective taxpayer identifying numbers (social security
7 numbers or employer identification numbers), which will be used for
8 purposes of collecting and reporting on any delinquent amount
9 arising out of such Defendant's relationship with the government;
10 and

11 F. Defendants shall destroy all records relating to the
12 distribution of this judgment six (6) years after the last of the
13 funds are credited, delivered to the Commission, or delivered to
14 the FTC Treasury account, provided that no records shall be
15 destroyed unless and until a representative of the Commission has
16 received and approved the final accounting report pertaining to
17 Defendants' payment. Records shall be destroyed in accordance with
18 disposal methods and procedures to be specified by the Commission.
19 The Commission may, in its sole discretion, require that such
20 records, in whole or in part, be transferred, in lieu of
21 destruction, to the Commission.

22 V. RELIANCE ON DISCLOSURES

23 **IT IS FURTHER ORDERED** that:

24 A. The Commission's agreement to this Order is expressly
25 premised upon the truthfulness, accuracy, and completeness of the
26 individual and corporate financial statements and other documents
27 and information provided by Defendants as listed in Attachment A.
28

1 Such data constitute material information relied upon by the
2 Commission in negotiating and agreeing to the terms of this Order;

3 B. If, upon motion by the Commission, this Court finds that
4 the financial statements produced by either Defendant or the
5 documents listed in Attachment A contain any material
6 misrepresentation or omission, the suspended judgment entered in
7 Section IV shall become immediately due and payable as to that
8 Defendant (less any amounts already paid); provided however, that
9 in all other respects this Order shall remain in full force and
10 effect unless otherwise modified by the Court;

11 C. Any proceedings instituted under this Section V are in
12 addition to, and not in lieu of, any other civil or criminal
13 remedies as may be provided by law, including any other proceedings
14 that the FTC may initiate to enforce this Order; and

15 D. For purposes of this Section V and any subsequent
16 proceedings to enforce payment, including but not limited to a non-
17 dischargeability complaint filed in a bankruptcy proceeding,
18 Defendants waive any right to contest any of the allegations in the
19 Complaint.

20 VI. COMPLIANCE MONITORING

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

23 A. Within fifteen (15) days of receipt of written notice from
24 a representative of the Commission, Adam MacDonald and Conversion
25 Marketing, Inc. shall submit additional written reports, sworn to
26 under penalty of perjury; produce documents for inspection and
27 copying; appear for deposition; and/or provide entry during normal
28 business hours to any business location in such Defendant's

1 possession or direct or indirect control, to inspect the business
2 operation;

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

6 1. obtaining discovery from any person, without further
7 leave of Court, using the procedures prescribed by Fed. R. Civ. P.
8 30, 31, 33, 34, 36, and 45;

9 2. posing as consumers and suppliers to Adam MacDonald
10 or Conversion Marketing, Inc., either Defendant's employees, or any
11 other entity managed or controlled in whole or in part by Adam
12 MacDonald or Conversion Marketing, Inc., without the necessity of
13 identification or prior notice; and

14 C. Adam MacDonald and Conversion Marketing, Inc. shall permit
15 representatives of the Commission to interview any employer,
16 consultant, independent contractor, representative, agent, or
17 employee who has agreed to such an interview, relating in any way
18 to any conduct subject to this Order. The person interviewed may
19 have counsel present;

20 Provided however, that nothing in this Order shall limit the
21 Commission's lawful use of compulsory process, pursuant to Sections
22 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any
23 documentary material, tangible things, testimony, or information
24 relevant to unfair or deceptive acts or practices in or affecting
25 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

26 VII. COMPLIANCE REPORTING BY DEFENDANTS

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

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

3 1. Adam MacDonald shall notify the Commission of the
4 following:

5 a. any changes in residence, mailing addresses, and
6 telephone numbers of Adam MacDonald, within ten (10) days of the
7 date of such change;

8 b. any changes in employment status (including
9 self-employment) of Adam MacDonald, and any change in the ownership
10 interest of Adam MacDonald in any business entity, within ten (10)
11 days of the date of such change. Such notice shall include the
12 name and address of each business that Adam MacDonald is affiliated
13 with, employed by, creates or forms, or performs services for; a
14 statement of the nature of the business; and a statement of Adam
15 MacDonald's duties and responsibilities in connection with the
16 business or employment; and

17 c. any change in Adam MacDonald's name or use of
18 any aliases or fictitious names;

19 2. Adam MacDonald and Conversion Marketing, Inc. shall
20 notify the Commission of any changes in the corporate structure of
21 Conversion Marketing, Inc. or any business entity that Adam
22 MacDonald directly or indirectly controls, or has an ownership
23 interest in, that may affect compliance obligations arising under
24 this Order, including but not limited to a dissolution, assignment,
25 sale, merger, or other action that would result in the emergence of
26 a successor entity; the creation or dissolution of a subsidiary,
27 parent, or affiliate that engages in any acts or practices that are
28 subject to this Order; the filing of a bankruptcy petition; or a

1 change in the corporate name or address, at least thirty (30) days
2 prior to such change, provided that, with respect to any proposed
3 change in the corporation about which the Defendants learn of less
4 than thirty (30) days prior to the date such action is to take
5 place, Defendants shall notify the Commission as soon as is
6 practicable after obtaining such knowledge;

7 B. One hundred eighty (180) days after the date of entry of
8 this Order, Adam MacDonald and Conversion Marketing, Inc. each
9 shall provide a written report to the FTC, sworn to under penalty
10 of perjury, setting forth in detail the manner and form in which
11 they have complied and are complying with this Order. This report
12 shall include, but not be limited to:

13 1. for Adam MacDonald:

14 a. the then-current residence address, mailing
15 addresses, and telephone numbers of Adam MacDonald;

16 b. the then-current employment and business
17 addresses and telephone numbers of Adam MacDonald, a description of
18 the business activities of each such employer or business, and the
19 title and responsibilities of Adam MacDonald for each such employer
20 or business; and

21 c. any other changes required to be reported under
22 subparagraph A of this Section VII;

23 2. for all Defendants:

24 a. a copy of each acknowledgment of receipt of this
25 Order obtained pursuant to Section IX; and

26 b. any other changes required to be reported under
27 subparagraph A of this Section VII;

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

4 Associate Director, Division of Enforcement
5 Federal Trade Commission
6 601 New Jersey Avenue, N. W.,
7 Washington, D.C. 20580
8 RE: FTC v. Conversion Marketing

9 D. For purposes of the compliance reporting and monitoring
10 required by this Order, the Commission is authorized to communicate
11 directly with Defendants.

12 VIII. RECORD KEEPING

13 **IT IS FURTHER ORDERED** that, for a period of eight (8) years
14 from the date of entry of this Order, in connection with any
15 business where either Adam MacDonald or Conversion Marketing, Inc.
16 is the majority owner of the business or directly or indirectly
17 manages or controls the business, each Defendant and its agents,
18 employees, officers, corporations, successors, and assigns, and
19 those persons in active concert or participation with them who
20 receive actual notice of this Order by personal service or
21 otherwise, are hereby restrained and enjoined from failing to
22 create and retain the following records:

23 A. Accounting records that reflect the cost of goods or
24 services sold, revenues generated, and the disbursement of such
25 revenues;

26 B. Personnel records accurately reflecting: the name,
27 address, and telephone number of each person employed in any
28 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

1 purchased, and description of items or services purchased, to the
2 extent such information is obtained in the ordinary course of
3 business;

4 D. Complaint and refund requests (whether received directly,
5 indirectly or through any third party) and any responses to those
6 complaints or requests;

7 E. Copies of all sales scripts, training materials,
8 advertisements, or other marketing materials; and

9 F. All records and documents necessary to demonstrate full
10 compliance with each provision of this Order, including but not
11 limited to, copies of acknowledgments of receipt of this Order,
12 required by Sections IX and X, and all reports submitted to the FTC
pursuant to Section VII.

13 IX. DISTRIBUTION OF ORDER BY DEFENDANTS

14 **IT IS FURTHER ORDERED** that, for a period of five (5) years
15 from the date of entry of this Order, Defendants shall deliver
16 copies of this Order as directed below:

17 A. Corporate Defendant: Conversion Marketing, Inc. must
18 deliver a copy of this Order to all of its principals, officers,
19 directors, and managers. Conversion Marketing, Inc. also must
20 deliver a copy of this Order to all of its employees who are
21 engaged in conduct related to the advertising, marketing, sale, or
22 delivery of, or who respond to consumer complaints or inquiries
23 regarding, tooth whitening products, weight loss products, or other
24 products or services sold to consumers. For current personnel,
25 delivery shall be within five (5) days of service of this Order
26 upon Defendants. For new personnel, delivery shall occur prior to
them assuming their responsibilities;

27 B. Adam MacDonald as control person: For any business that
28 Adam MacDonald controls, directly or indirectly, or in which Adam
MacDonald has a majority ownership interest, Adam MacDonald must

1 deliver a copy of this Order to all principals, officers,
2 directors, and managers of that business. Adam MacDonald must also
3 deliver copies of this Order to all employees, agents, and
4 representatives of that business who are engaged in conduct related
5 to the advertising, marketing, sale, or delivery of, or who respond
6 to consumer complaints or inquiries regarding, tooth whitening
7 products, weight loss products, or other products or services sold
8 to consumers. For current personnel, delivery shall be within five
9 (5) days of service of this Order upon Defendants. For new
10 personnel, delivery shall occur prior to them assuming their
responsibilities;

11 C. Adam MacDonald as employee or non-control person: For any
12 business where Adam MacDonald is not a controlling person of a
13 business but otherwise supervises or engages in telemarketing, or
14 conduct related to the advertising, marketing, sale, or delivery of
15 tooth whitening products or weight loss products, he must deliver a
16 copy of this Order to all principals and managers of such business
17 before engaging in such conduct; and

18 D. Conversion Marketing, Inc. and Adam MacDonald must secure
19 a signed and dated statement acknowledging receipt of this Order,
20 within thirty (30) days of delivery, from all persons receiving a
21 copy of the Order pursuant to this Section.

22 **X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

23 **IT IS FURTHER ORDERED** that each Defendant, within five (5)
24 business days of receipt of this Order as entered by the Court,
25 must submit to the Commission a truthful sworn statement
26 acknowledging receipt of this Order, in the form shown
27 on Attachment B.
28

1 **XI. RETENTION OF JURISDICTION**

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

5 **XII. COSTS AND ATTORNEYS' FEES**

6 **IT IS FURTHER ORDERED** that each party shall bear its own costs
7 and attorneys' fees incurred in connection with this action.

8 Date: January 4, 2006

Raymond E. McKown
Raymond E. McKown
Faye Chen Barnouw
Attorneys for Plaintiff
Federal Trade Commission

11 Date: 11/18/05

Adam Tyler MacDonald
Adam Tyler MacDonald,
individually, and as the
President and CEO of Conversion
Marketing, Inc.

15 APPROVED AS TO FORM:

16 Date:

Dan Forman
Dan Forman
Manatt, Phelps & Phillips
Attorney for Defendants
Conversion Marketing, Inc. and
Adam Tyler MacDonald

20 **IT IS SO ORDERED.**

22 Date: 1.11.06

James V. Selna
Honorable James V. Selna
United States District Judge

ATTACHMENT A

[List of Documents and Information Relied On By the Commission]

1
2
3 1. Conversion Marketing, Inc. FTC Financial Statement
4 executed on November 1, 2004;

5 2. Adam T. MacDonald FTC Financial Statement executed on
6 November 3, 2004, as updated by 26-page November 18, 2004 facsimile
7 from William Heberer to Raymond McKown;

8 3. Take 2 Direct, LLC, FTC Financial Statement executed on
9 November 2, 2004;

10 4. Equity 101 Solutions, DBA Equity 101 FTC Financial
11 Statement executed on November 3, 2004;

12 5. Fulfill USA, LLC, FTC Financial Statement executed on
13 November 3, 2004;

14 6. New Innovations, LLC, FTC Financial Statement executed on
15 November 3, 2004.

16 7. Mothers Village, LLC, FTC Financial Statement executed on
17 November 2, 2004;

18 8. New Innovations, LLC, FTC Financial Statement executed on
19 November 3, 2004;

20 9. 2003 Federal Income Tax Return for Adam MacDonald and
21 related documents (including Orange County property tax statements;
22 California Tax Statements; profit and loss and balance sheet
23 statements for Test Consulting, and Test Marketing Group, LLC;
24 year-end statements from Countrywide Home Loans, Smith-Barney, and
25 National City Mortgage; W-2 Statements for Tami L. Mitchell; and
26 associated documents bates stamped 3469 through 3586);

27 10. 2002 Federal and California Income Tax Return for Adam
28 MacDonald and related documents (including year end or tax

1 statements from Bank of America, and Smith Barney; profit and loss
2 and balance sheet statements from Test Consulting; and associated
3 documents bates stamped 3586 through 3840);

4 11. 2002 and 2003 Conversion Marketing, Inc., Federal and
5 California Income Tax Returns and related documents (including
6 profit and loss and balance sheet statements; transaction by
7 account statements; Smith Barney year end statements; and
8 associated documents bates stamped 730 through 866);

9 12. Email communications from William Heberer to Raymond
10 McKown dated May 5, 2005 11:49 am; April 14, 2005 9:38 am; April
11 12, 2005 11:14 am; April 11, 2005 7:51 am; April 7, 2005 8:59 am;
12 and March 18, 2005 3:05 pm;

13 13. Correspondence, including attachments, sent from William
14 Heberer to Raymond McKown dated March 25, 2004; January 28, 2005;
15 December 17, 2004; December 8, 2004; November 24, 2004; and
16 November 10, 2004; and

17 14. 2004 Federal Income Tax Returns for Conversion Marketing,
18 Inc., Take 2 Direct, LLC, and Adam MacDonald.

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ATTACHMENT B

UNITED STATES DISTRICT COURT

DISTRICT OF _____

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DEFENDANT, et al.

Defendants.

CIVIL ACTION NO. _____

AFFIDAVIT OF
DEFENDANT -----

[Name of defendant], being duly sworn, hereby states and affirms as follows:

1. My name is _____. My current residence address is

_____. I am a citizen of the United

States and am over the age of eighteen. I have personal knowledge of the facts set forth in this

Affidavit.

2. I am a defendant in FTC v. Defendant, et al. (United States District Court for the

_____ District of _____).

3. On [date], I received a copy of the [state full name of the Final Order as it appears

1 on the Order itself], which was signed by the Honorable [name of U.S. District Judge] and entered
2 by the Court on [date of entry of Order].

3 I declare under penalty of perjury under the laws of the United States that the
4 foregoing is true and correct. Executed on [date], at [city and state].
5

6
7 _____
8 [Full name of defendant]
9

10 State of _____, City of _____

11 Subscribed and sworn to before me this ____ day of _____, 2005 ____.

12
13 _____
14 Notary Public
15 My Commission Expires:
16 _____

17 acknowledging receipt of this Order.
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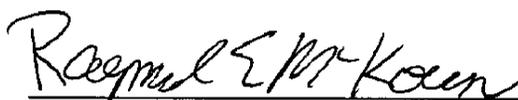
CERTIFICATE OF SERVICE

My name is Raymond E. McKown. I am an attorney employed by the Federal Trade Commission, 10877 Wilshire Blvd., Ste. 700, Los Angeles, California 90024. On January 4, 2006, I placed the document captioned: "STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AS TO DEFENDANTS CONVERSION MARKETING, INC. AND ADAM TYLER MACDONALD" in the first class United States mail, postage prepaid, addressed to the following:

Linda A. Goldstein, Esq.
William M. Heberer, Esq.
Manatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036

Dan Forman, Esq.
Manatt, Phelps & Phillips, LLP
11355 West Olympic Blvd.
Los Angeles, CA 90064

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of January 2006, at Los Angeles, California.


Raymond E. McKown