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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

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STENOGRAPHER  
CLERK  
FOR THE U.S. DISTRICT COURT  
OF INDIANA

FEDERAL TRADE COMMISSION,  
  
Plaintiff,

v.

TRI-STATE ADVERTISING  
UNLIMITED, INC.,  
a corporation, and  
JEROME ANTHONY WILKINS,  
individually and as an officer  
of said corporation, and  
DARYL ALLEN BENDER,  
individually,  
  
Defendants.

CIVIL NO. 1:98CV0302

JUDGE WILLIAM C. LEE

U.S. MAGISTRATE JUDGE  
ROGER B. COSBEY

**RECEIVED**

APR 19 1999

CLEVE. REGIONAL OFFICE

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**STIPULATED FINAL JUDGMENT AND ORDER**

Plaintiff, the Federal Trade Commission ("FTC"), filed its complaint pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants with violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). On October 5, 1998, this Court granted the FTC's motion for a temporary restraining order with asset freeze, appointment of a temporary receiver and other equitable relief, and ordered defendants to show cause why a preliminary injunction should not issue against them. The parties subsequently agreed to entry of a stipulated preliminary injunction, which this Court granted on October 16, 1998.

NOW, plaintiff, by and through its counsel, and Defendant Daryl A. Bender ("Defendant Bender," as hereinafter defined), appearing on behalf of himself, have agreed to the entry of this

Stipulated Final Judgment and Order ("Order") by this Court, to resolve all matters of dispute between them in this action without trial or adjudication of any issue of law or fact. The said parties having requested the Court to enter this Order, it is, therefore, ORDERED, ADJUDGED AND DECREED as follows:

### FINDINGS

1. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the defendants. Venue in the Northern District of Indiana is proper.
2. The Complaint states a claim upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
3. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.
4. The activities of Defendant Bender are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. Defendant Bender is a collector for Tri-State Advertising Unlimited, Inc. At all times material to this proceeding, individually or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of the corporate defendant, including the acts and practices set forth in plaintiff's Complaint.
6. By stipulating and consenting to the entry of this Order, defendant does not admit any of the allegations in the Complaint, except those contained in paragraphs 1 through 5 herein. Likewise, by executing this Order, plaintiff does not admit that any defense to the Complaint is valid.
7. Defendant Bender enters into this Order freely and without coercion and acknowledges that he understands the provisions of this Order and is prepared to abide by its terms.

8. Defendant Bender waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and further waives and releases any claims he may have against the Commission and the Commission's employees, agents, or representatives. Defendant Bender also waives any claim he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412.

9. Any voluntary bankruptcy petition filed by Defendant Bender does not automatically stay this action, which the Court finds is the "commencement or continuation of any action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." 11 U.S.C. § 362(b)(4); *FTC v. R.A. Walker*, 37 F.R. 608, 610 (D.D.C. 1983).

10. Any voluntary bankruptcy petition filed by Defendant Bender does not divest this Court of jurisdiction to enter this final judgment against Defendant Bender.

11. 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 both civil and criminal remedies; and,

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

## DEFINITIONS

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

1. "Defendant Bender" means Daryl A. Bender, and his officers, agents, directors, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, successors, assigns, all other persons or entities directly or indirectly under his or their control or under common control with him or them, and all other persons or entities in active concert or participation with him or them, who receive actual notice of this Order by personal service or

otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, and each of them.

2. "Person" means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

3. "Consumer" includes any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

4. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

## ORDER

### I.

#### PROHIBITED BUSINESS ACTIVITIES

**IT IS THEREFORE ORDERED** that Defendant Bender is hereby restrained and enjoined from, directly or indirectly, making or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation in connection with the distribution, marketing or sale of advertisements in, or sponsorships of, publications or programs, including—but not limited to:

A. any misrepresentation concerning the distribution of any advertisement, publication or program;

B. any misrepresentation concerning the printing or publishing of any advertisement, publication or program;

C. any misrepresentation concerning any person's approval or authorization or obligation to make any payment for or to sponsor any advertisement, publication or program;

D. any misrepresentation concerning the printing of any advertisement or listing in reliance on prior authorization to do so;

E. any misrepresentation concerning the costs incurred in printing, publishing or distributing any advertisement, publication or program;

F. any misrepresentation concerning any payment constituting a donation or concerning the use, distribution, or tax deductibility, of any payment or payments received;

G. any misrepresentation concerning any publication or program being in any way associated with any federal, state or community association or other entity;

H. any misrepresentation concerning his or their identity(ies) and/or relationship with each other and/or to any publication, program, corporation or any other entity.

## II.

### PERMANENT BAN

**IT IS FURTHER ORDERED** that Defendant Bender is hereby permanently restrained and enjoined from:

A. contacting, directly or indirectly, any person who previously paid, or was asked to pay, for any advertisement or sponsorship by any defendant, or from whom any defendant collected, or attempted to collect, any payment since 1990;

B. engaging or participating — whether directly, in concert with others or through any business entity, investment or other device — in the offering for sale, sale, marketing or distribution of any advertising, listing, or sponsorship in any publication or program; and from

C. using any aliases, pen names or pseudonyms, or otherwise misrepresenting his true identity in the course of business dealings or in publicly filed documents.

### III.

#### PROHIBITION AGAINST DISTRIBUTION OF CUSTOMER LISTS

**IT IS FURTHER ORDERED** that Defendant Bender is permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, or other identifying information of any person who paid any money to Defendant Bender, at any time, in connection with the offering for sale, sale, distribution, marketing, or sponsorship of any advertisement, publication, program or product. *Provided, however,* that Defendant Bender may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

### IV.

#### JUDGMENT

**IT IS FURTHER ORDERED** that:

A. Judgment is entered against Defendant Bender in favor of the Commission in the amount of \$102,625 (One Hundred Two Thousand Six Hundred Twenty-Five Dollars), for equitable monetary relief, including but not limited to consumer redress. The Commission and Defendant Bender agree that this sum represents the estimated loss to consumers arising from the individual activities of Defendant Bender described in the Commission's Complaint;

B. In lieu of the foregoing monetary judgment, which shall be suspended subject to the conditions set forth in this Section and Section VI of this Order, and based upon the sworn

representations in Defendant Bender's financial statement and during Defendant Bender's deposition, as described in Sections VI and VII of this Order, defendant shall pay to the FTC \$8,400 (Eight Thousand Four Hundred Dollars) within ten (10) business days after the date of entry of this Order. Such payment shall be remitted, by certified or cashier's check, from account number 121-91611 in the name of Daryl Bender at Star Financial Bank, Columbia City, Indiana, to the Federal Trade Commission, Eaton Center—Suite 200, 1111 E. Superior Avenue, Cleveland, Ohio 44114. No portion of the money paid by Defendant Bender pursuant to this Order shall be deemed the payment of any fine, penalty, or punitive assessment;

C. One hundred (100) days after the payment of \$8,400 has been made to the Commission or its agent, the suspended judgment shall be extinguished, except as provided in Section VII of this Order.

## V.

### USE OF CONSUMER REDRESS AND DISGORGEMENT FUNDS

#### IT IS FURTHER ORDERED that:

A. Funds transferred to the Commission pursuant to Paragraph IV of this Order shall fully satisfy all monetary claims against Defendant Bender asserted by the Commission in the Complaint filed herein and shall be used to provide redress to purchasers of defendants' advertisements and pay expenses of administering the redress fund.

B. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury, or shall be used to educate consumers allegedly affected by the practices in the Commission's Complaint in this matter. No portion of the payment as herein provided shall be

deemed a payment of any fine, penalty or punitive assessment. Defendant Bender shall have no right to contest the manner of distribution chosen by the Commission;

C. Defendant Bender expressly waives any right to litigate the issue of disgorgement;

D. Defendant Bender acknowledges and agrees that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between the Commission and Defendant Bender of the Commission's claims against Defendant Bender in this action.

## VI.

### FINANCIAL STATEMENT

**IT IS FURTHER ORDERED** that within five (5) business days after entry of this Order, Defendant Bender shall submit to the Commission a truthful sworn statement, in the form that is Attachment A to this Order, that shall reaffirm and attest to the truth, accuracy, and completeness of the financial statements and documentation described in Section VII, below. The Commission is authorized to verify all information provided on the financial statements and other documentation with all appropriate third parties, including, but not limited to, financial institutions.

## VII.

### RIGHT TO REOPEN

**IT IS FURTHER ORDERED** that the Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of the financial statement filed by Defendant Bender with the Court in this matter and submitted to the FTC, and upon the deposition testimony of Defendant Bender regarding that statement, given on December 16, 1998, which contains material information upon which the FTC has relied in negotiating and agreeing to the terms



of this Order. If, upon motion by the Commission to the Court, the Court finds that Defendant Bender failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the financial statement or deposition testimony, the entire amount of the suspended judgment herein entered against Defendant Bender, less any amount defendant has paid pursuant to Section IV of this Order, will be immediately due and payable, provided that the Commission will not seek an amount in excess of said judgment. *Provided further*, that it shall be the burden of the Commission to prove by a preponderance of the evidence that any of Defendant Bender's representations were knowingly inaccurate or incomplete, or otherwise materially misleading or fraudulent.

#### VIII.

#### ASSET FREEZE LIFTED

**IT IS FURTHER ORDERED** that the freeze of Defendant Bender's assets, as ordered in Paragraph II of the Temporary Restraining Order first entered in this matter on October 5, 1998, *and continued by stipulation of the parties*, shall be lifted upon: (i) entry of this Order; and (ii) defendant's payment to the FTC of the amount set forth in and authorized by Paragraph IV of this Order.

#### IX.

#### COMPLIANCE REPORTING BY DEFENDANT

**IT IS FURTHER ORDERED** that, for a period of five (5) years commencing with the date of entry of this Order, Defendant Bender shall notify in writing the Regional Director, Cleveland Regional Office, Federal Trade Commission, Eaton Center—Suite 200, 1111 Superior Avenue, Cleveland, Ohio 44114, of:

A. Any changes in residence, mailing address, and telephone number, within ten (10) days of the date of such change;

B. Any change in Defendant Bender's employment status (including self-employment), within ten (10) working days of such change; such notice shall include the name and address of each business that Defendant Bender is affiliated with or employed by, a statement of the nature of the business, and a statement of Defendant Bender's duties and responsibilities in connection with the business; and

C. Any proposed change in the structure of any business entity owned or controlled by Defendant Bender, such as creation, incorporation, assignment, sale or dissolution of subsidiaries, or any other changes that may affect compliance obligations arising out of this Order, within thirty (30) days prior to the effective date of any proposed change; *provided, however*, that with respect to any proposed change in structure of such business about which Defendant Bender learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as practicable after learning of such proposed change.

## X.

### RECORDKEEPING PROVISIONS

**IT IS FURTHER ORDERED** that, for a period of five (5) years commencing with the date of entry of this Order, Defendant Bender, in connection with any business entity in which he is a majority owner, or which he otherwise operates or controls, shall create and maintain:

A. Records sufficient to demonstrate his compliance with the provisions of this Order:

B. Records containing the name, address, telephone number, and social security number of each person employed by defendant in any capacity, that person's job title or position, the date upon which the employee commenced work, and the date and reason for the employee's termination;

C. Records containing the name and address of each person to whom Defendant Bender sells, invoices, or ships any product for which the person pays Fifty Dollars (\$50.00) or more;

D. Records of every written or oral consumer complaint—including complaints referred from any third party, such as any office of the Better Business Bureau or any State Attorney General—and every refund request received by defendant, which records shall include, to the extent that the information is available from the written complaint or the consumer is willing to provide the information:

1. The person's name, address, telephone number, and the dollar amount paid by the person;

2. The written complaint or refund request, if any, and the date of the complaint or refund request;

3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;

4. Each response and the date of the response;

5. Any final resolution and date of resolution;

6. In the event of a denial of a refund request, the reason for the denial, or if satisfied, the basis for determining that the complaint has been satisfied; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials that relate to any product or service offered for sale, sold or promoted, directly or indirectly, by defendant.

**XI.**

**ACKNOWLEDGMENT OF RECEIPT OF  
ORDER BY DEFENDANT BENDER**

**IT IS FURTHER ORDERED** that, within five (5) business days after receipt by Defendant Bender of this Order as entered by the Court, defendant shall submit to the Commission a truthful, sworn statement, in the form that is Attachment B to this Order, that shall acknowledge receipt of this Final Order.

**XII.**

**FTC's AUTHORITY TO MONITOR COMPLIANCE**

**IT IS FURTHER ORDERED** that the Commission is authorized to monitor Defendant Bender's compliance with this Order by all lawful means—including, but not limited to, the following:

A. The Commission is authorized—without further leave of this Court—to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26–37, including the use of compulsory process pursuant to Federal R. Civ. P. 45, for the purpose of monitoring and investigating compliance with any provision of this Order by defendant.

B. The Commission is authorized—without the necessity of prior notice—to use representatives posing as consumers to Defendant Bender, and his employees or any other entity managed, operated or controlled in whole or in part by the defendant; and

C. 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 investigate whether defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

**XIII.**

**ORDER DISTRIBUTION**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendant Bender shall:

A. Immediately provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of the same, from each officer, director, managing agent, employee, or independent contractor in any company or other business entity directly or indirectly owned, operated, or controlled by Defendant Bender; and

B. Maintain, and upon reasonable notice make available to the FTC's representatives, the original and dated acknowledgments of the receipts required by this Paragraph.

**XIV.**

**NOTICES**

**IT IS FURTHER ORDERED** that for purposes of this Order, Defendant Bender shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

REGIONAL DIRECTOR  
*In Re: FTC v. Tri-State Advertising Unlimited, Inc., et al.*  
Federal Trade Commission – Cleveland Regional Office  
Eaton Center—Suite 200, 1111 Superior Avenue  
Cleveland, Ohio 44114

XV.

**WAIVER OF CLAIMS**

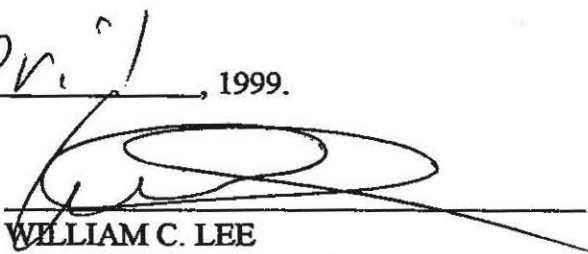
**IT IS FURTHER ORDERED** that Defendant Bender waives all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended* by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and all rights to seek appellate review or otherwise challenge or contest the validity of this Order, or the temporary or preliminary orders entered in this proceeding, and further waives and releases any claim he may have against the FTC, or its employees, agents, or representatives.

XVI.

**CONTINUED JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for the purpose of enabling the FTC and Defendant Bender 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 Order, for the enforcement of compliance therewith, or the punishment of violations thereof.

SO ORDERED, this 14 day of April, 1999.

  
WILLIAM C. LEE  
United States District Judge

The parties consent to the terms and conditions set forth above and to entry of this Stipulated Final Judgment and Order without further notice to them.

**FOR THE FEDERAL TRADE COMMISSION:**

By:   
GERALD C. ZEMAN  
Federal Trade Commission  
Cleveland Regional Office  
Eaton Center — Suite 200  
1111 E. Superior Avenue  
Cleveland, Ohio 44114  
(216) 263-3429

Date April 14, 1999

**Daryl Allen Bender:**

  
By: DARYL ALLEN BENDER, *pro se*  
Individually

Date February 26, 1999

**ATTACHMENT A**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

FEDERAL TRADE COMMISSION,	)	
	)	
	)	CIVIL NO. 1:98CV0302
Plaintiff,	)	
v.	)	
	)	
TRI-STATE ADVERTISING	)	JUDGE WILLIAM C. LEE
UNLIMITED, INC.,	)	
a corporation, and	)	U.S. MAGISTRATE JUDGE
JEROME ANTHONY WILKINS,	)	ROGER B. COSBEY
individually and as an officer	)	
of said corporation, and	)	
DARYL ALLEN BENDER,	)	
individually,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF DARYL ALLEN BENDER**

I, Daryl Allen Bender, depose and say as follows:

1. I have personal knowledge of the matters set forth below. I understand that the Plaintiff Federal Trade Commission, in the matter of *FTC v. Tri-State Advertising Unlimited, Inc., et al.*, Civil No. 1:98CV 0302, pending in the United States District Court for the Northern District of Indiana, Fort Wayne Division, has agreed to enter into an Order to settle this matter with limited contribution by me to consumer redress on the basis of my financial information provided to plaintiff Federal Trade Commission.



2. I further understand that in arriving at this decision, Plaintiff is relying on my assertion, which I reaffirm herein, that:

- (a) all statements regarding my financial resources which were made by me in the deposition testimony I gave on Wednesday, December 16, 1998, are true and correct, and
- (b) all disclosures included in the Financial Statement I signed pursuant to the Court's Temporary Restraining Order issued in this matter on October 5, 1998, continue to be true and correct.

3. I further attest that on this date that I have no other assets which would be required to be reported on the Financial Statement I signed pursuant to the Court's Temporary Restraining Order issued October 5, 1998.

I declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and belief.

Executed on Feb. 26, 1999

  
**DARYL ALLEN BENDER**

**ATTACHMENT B**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

FEDERAL TRADE COMMISSION,	)	
	)	
	)	CIVIL NO. 1:98CV0302
Plaintiff,	)	
v.	)	
	)	
TRI-STATE ADVERTISING	)	JUDGE WILLIAM C. LEE
UNLIMITED, INC.,	)	
a corporation, and	)	U.S. MAGISTRATE JUDGE
JEROME ANTHONY WILKINS,	)	ROGER B. COSBEY
individually and as an officer	)	
of said corporation, and	)	
DARYL ALLEN BENDER,	)	
individually,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF DARYL ALLEN BENDER**

I, Daryl Allen Bender, being duly sworn, hereby state and affirm as follows:

1. My name is Daryl Allen Bender. My residence address is 817 Countryside Drive, <sup>129 Raleigh Court</sup> Columbia City, Indiana 46725. I am a citizen of the United States and I am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in *Federal Trade Commission v. Tri-State Advertising Unlimited, Inc, et al.* (United States District Court for the Northern District of Indiana).

3. On 4-22-99, I received a copy of the STIPULATED FINAL JUDGMENT AND ORDER, which was signed by the Honorable William C. Lee, U.S. District Court Judge, and entered by the Court on 4-22-99. A true and correct copy of the STIPULATED FINAL JUDGMENT AND ORDER I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on April 23, at Columbia City, Ind.

Daryl Allen Bender  
DARYL ALLEN BENDER

STATE OF Indiana, CITY OF Columbia City

Subscribed and sworn to before me  
this 23 day of April 1999

Rebecca J. Austley  
Notary Public

My Commission Expires:  
Sept 20, ~~19~~ 2006