

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

FEDERAL TRADE COMMISSION
Plaintiff

v.

IMAGE SALES & CONSULTANTS, INC., a corporation, and
MICHAEL DEWAYNE DAGUE, individually and as an officer of said corporation,
Defendants.

JUDGE WILLIAM C. LEE
CIVIL NO. 1:97CV 0131
UNITED STATES MAGISTRATE
ROGER B. COSBEY

**STIPULATED FINAL JUDGMENT AND ORDER
AS TO DEFENDANTS IMAGE SALES & CONSULTANTS, INC.,
AND MICHAEL DEWAYNE DAGUE, INDIVIDUALLY
AND AS AN OFFICER OF THE DEFENDANT CORPORATION**

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 April 8, 1997, this Court granted plaintiff 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 April 29, 1997.

NOW, plaintiff FTC, by and through its counsel, and defendants Image Sales & Consultants, Inc., and Michael Dewayne Dague, individually and as an officer of said corporation, by and through their counsel, have agreed to the entry of this Stipulated Final Judgment and Order ("Order" or "Judgment") by this Court, to resolve all matters of dispute between plaintiff FTC and defendants in this action without trial or adjudication of any issue of law or fact. The said parties having agreed and stipulated to this Order, and 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 and 53(b).

3. Plaintiff FTC 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 defendants Image Sales & Consultants, Inc., and Michael Dewayne Dague, individually and as an officer of said corporation, are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. Defendant **Image Sales & Consultants, Inc.**, is an Indiana corporation that has done business under the names of:

- Child Safety Digest;
- Children's Safety & Protection Network;
- Crime Watch Advisor;
- Crime Watch Awareness;
- Drug Abuse Prevention Program;
- Fire Prevention & Safety Coloring Book for Kids;
- Fire Prevention Advisor;
- Fire Prevention Awareness;
- Fire Safety Advisor;
- Image Marketing Company;
- Teens Against Drugs & Alcohol;

and possibly under other names.

6. At all times material to this proceeding, defendant Michael Dewayne Dague was the sole stockholder, director, president, treasurer and secretary of Image Sales & Consultants, Inc., and as such had control of said corporation. Individual defendant Michael Dewayne Dague denies any personal intention to violate Section 5 of the FTC Act, 15 U.S.C. § 45.

7. In connection with the offering for sale and sale of advertisements to businesses, corporate defendant Image Sales & Consultants, Inc., has falsely represented, expressly or by implication:

(a) that the proceeds from the advertisements will be used for a local, civic purpose and to defray the costs of printing and distributing the publications locally; and

(b) that the publication in which the advertising is to appear will receive widespread local distribution and will be distributed to community organizations or specially targeted audiences within the business's local community.

8. In connection with the offering for sale and sale of advertisements to businesses, corporate defendant Image Sales & Consultants, Inc. has falsely represented, expressly or by implication, that a business or a named person acting on behalf of the business previously authorized placement of the advertising in defendants' publications.

9. In connection with the offering for sale and sale of advertisements to businesses, corporate defendant Image Sales & Consultants, Inc. has falsely represented, expressly or

by implication, that defendants incurred the cost of printing the publication in reliance on a business's authorization of and promise to pay for the advertisement.

10. In connection with the offering for sale and sale of advertisements to businesses, corporate defendant Image Sales & Consultants, Inc. has sent to businesses C.O.D. packages containing bills for such advertisements and has threatened to take action to collect payment of such bills, thereby falsely representing, expressly or by implication, that businesses have ordered the advertisements billed to them by defendants.

11. Corporate defendant Image Sales & Consultants, Inc.'s false representations have caused financial injury to the businesses that have paid for advertisements in defendants' publications.

12. Plaintiff Federal Trade Commission and defendants Image Sales & Consultants, Inc. and Michael Dewayne Dague, individually and as an officer of said corporation, hereby waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and defendants waive any right that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

13. 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,

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

DEFINITIONS

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

1. "Defendants" means Image Sales & Consultants, Inc., and Michael Dewayne Dague, and their officers, agents, directors, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, successors, assigns, all other persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with 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.

ORDER

IT IS THEREFORE ORDERED, in connection with the offering for sale, sale, distribution, marketing or sponsorship of any advertisement, publication, program, service or product, that defendants are hereby permanently restrained and enjoined from:

1. making any express or implied representation of material fact that is false or misleading, including, but not limited to, any misrepresentation;
2. concerning distribution of any advertisement, publication, program, service or product;
3. concerning printing or publishing of any advertisement, publication, program, service or product;
4. concerning any person's approval or authorization or obligation to make any payment for any advertisement, publication, program, service or product;
5. concerning prior approval or authorization or sponsorship of any advertisement, publication, program, service or product by any person;
6. concerning the cost of any advertisement, publication, program, service or product;
7. concerning affiliation with any federal, local, state, national, or other entity;
8. concerning the use, distribution, or tax deductibility, of any payment or payments received.
9. using any alias, pen name, pseudonym or otherwise misrepresenting their true identity(ies).

IT IS FURTHER ORDERED that defendants are 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 contacted by any defendant in this matter, 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 defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IT IS FURTHER ORDERED that:

A. Any corporate funds remaining after the defendant corporation's assets have been liquidated and the corporate receiver, appointed by this Court pursuant to the Temporary Restraining Order entered April 8, 1997, and continued by stipulation of the parties, has been compensated, shall be transferred to the Commission, and subject to the conditions set forth in Part IV of this Order. *Provided*, that the receiver shall destroy, or turn over to plaintiff FTC, all corporate records containing the types of customer information described in Part II herein;

B. The receiver shall be released and discharged from his duties as receiver for the corporate defendant upon filing with the Court his final report showing receipts and disbursements of the corporate assets; and

C. Defendant Michael Dewayne Dague will be responsible for filing the corporate income tax returns, employment tax returns, and for paying any and all taxes, penalties, and interest due on those returns, *provided, however*, that the corporate receiver shall be responsible for all such filings due for the period of time after establishment of the receivership.

IT IS FURTHER ORDERED that payment of all funds for consumer redress shall be remitted to the Federal Trade Commission, Eaton Center--Suite 200, 1111 Superior Avenue, Cleveland, Ohio 44114, by certified or cashier's check. These funds shall be deposited into an account and shall be used to provide redress to consumers who have

been injured by defendants' acts pursuant to a distribution plan to be submitted by plaintiff FTC and approved by the Court. Such funds may include all funds remitted by the receiver to the redress fund pursuant to Part III herein after application for and payment of administrative costs and fees upon closing of the receivership estate. Defendants forever disclaim all right, title and interest in all sums in this account. None of the funds deposited in the account shall be returned to defendants, their successors, heirs or assigns. **Provided**, that if the monies collected by plaintiff FTC in satisfaction of this Judgment are insufficient to justify a distribution plan for the benefit of injured consumers, the Court, on motion of plaintiff FTC, may order that such monies be paid to the United States Treasury as a disgorgement remedy or be used by plaintiff FTC to educate consumers affected by the deceptive practices engaged in by the corporate defendant in this case.

Plaintiff Federal Trade Commission's agreement to this Judgment -- which does not provide for defendant Michael Dewayne Dague to contribute to consumer redress -- is expressly premised upon the truthfulness, accuracy and completeness of the financial statements filed by the defendants with the Court in this matter and submitted to plaintiff FTC, and on the deposition testimony of defendant Michael Dewayne Dague on June 11, 1997, on February 24, 25 and 26, 1998, and on March 6, 1998, and the sworn financial declaration filed contemporaneously herewith. If, upon motion by plaintiff FTC, the Court finds that defendant Michael Dewayne Dague 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 statements or deposition testimony, the Judgment herein shall be reopened for the purpose of determining an appropriate amount for defendants to pay as redress to consumers. Defendants agree that the amount of consumer redress for which they would be jointly and severally liable is an amount equal to the total gross sales of the defendant corporation during the years 1994, 1995 and 1996, as shown on line 1c of the Corporate Federal Income Tax Returns for those years which are on file with the Court.

Provided, however, that in all other respects, this Order shall remain in full force and effect unless otherwise ordered by this Court while the Judgment is reopened to determine the appropriate amount of consumer redress; **provided further** that, for purposes of this section, and any subsequent proceedings to enforce payment, including but not limited to a nondischargeability complaint filed in a bankruptcy proceeding, defendants waive any right to contest any of the allegations of the Commission's complaint; and **provided further** that a proceeding instituted under this section is in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the FTC may initiate to enforce this Order. No portion of any forfeiture shall be deemed a payment of any fine, penalty or punitive assessment.

IT IS FURTHER ORDERED that defendant Michael Dewayne Dague is hereby permanently restrained and enjoined from:

1. engaging or participating -- whether directly, in concert with others or through any business entity, investment or other device -- in the advertising, offering for sale, sale or distribution of any advertising or publication; and from
2. using any aliases, pen names or pseudonyms, or otherwise misrepresenting his true identity in the course of business dealings or in publicly filed documents.

IT IS FURTHER ORDERED that the freeze of defendant Michael Dewayne Dague's assets, as ordered in Part II of the Temporary Restraining Order first entered in this matter on April 8, 1997, and continued by stipulation of the parties, to the extent not previously released by any separate Order of this Court, shall be lifted upon entry of this Order.

IT IS FURTHER ORDERED that, for a period of four (4) years, commencing with the date of entry of this Judgment, defendant Michael Dewayne Dague shall notify in writing the Cleveland Regional Office of the Federal Trade Commission, Regional Director, Eaton Center--Suite 200, 1111 Superior Avenue, Cleveland, Ohio 44114, of:

1. any change in defendant's employment status, within ten (10) days of such change. Such notice shall include the name and address of each business that he is affiliated with or employed by, a statement of the nature of the business, and a statement of defendant's duties and responsibilities in connection with the business; and
2. any proposed change in the structure of any business entity owned or controlled by defendant, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other changes that may affect compliance obligations arising out of this Judgment, within thirty (30) days prior to the effective date of any proposed change.

IT IS FURTHER ORDERED that, for a period of four (4) years commencing with the date of entry of this Judgment, for purposes of determining or securing compliance with this Judgment, in connection with any other business owned or controlled in whole or in part by defendant Michael Dewayne Dague, defendant Dague shall, upon written notice:

1. permit representatives of plaintiff FTC, within five (5) business days of receipt of such request, to interview the officers, directors or employees of any such business, subject to the reasonable convenience of defendant and the person to be interviewed and without restraint or interference from defendant, at a location reasonably convenient to the person to be interviewed, defendant, and plaintiff FTC. Such officers, directors or employees may have counsel present;
2. produce documents requested by plaintiff FTC within five (5) business days of receipt of such request;
3. permit representatives of plaintiff FTC to depose any officers, directors or employees of any such business within ten (10) business days of receipt of such request; and
4. permit representatives of plaintiff FTC, within five (5) business days of receipt of such request, access during normal business hours to any office or facility in which documents and records are stored or held and to inspect and copy any such documents in defendant's control.

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Judgment, the defendant corporation shall:

1. immediately provide a copy of this Judgment to, and obtain a signed and dated acknowledgment of receipt of the same from, each officer, director, managing agent, employee or independent contractor; and
2. maintain, and upon reasonable notice make available to plaintiff FTC's representatives, the original and dated acknowledgments of the receipts required

by this paragraph.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling plaintiff FTC and defendants 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 Judgment, for the enforcement of compliance therewith, or the punishment of violations thereof.

Defendants waive all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, 110 Stat. 847, 863-64 (1996), and all rights to seek appellate review or otherwise challenge or contest the validity of this Judgment, or the temporary or preliminary orders entered in this proceeding, and further waive and release any claim they may have against plaintiff FTC, the receiver, or their employees, agents, or representatives.

SO ORDERED, this day of , 1998.

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 without further notice to them.

FOR PLAINTIFF

Federal Trade Commission:
BRINLEY H. WILLIAMS, Ohio Bar No. 0011793
An Attorney for Plaintiff
Federal Trade Commission
Eaton Center -- Suite 200
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Cleveland, Ohio 44114
(216) 263-3414 (Fax: 216-263-3426)

Date:

FOR DEFENDANTS

Image Sales & Consultants, Inc.,
Michael Dewayne Dague,
individually and as an
officer of said corporation:

MICHAEL DEWAYNE DAGUE,
individually and as an officer
of defendant corporation.

Date:

F. WALTER RIEBENACK, ESQ.

Date:

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Date: