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CLERK, US DISTRICT COURT
MIDDLE DISTRICT FLORIDA
ORLANDO, FL

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE BROADCAST TEAM, INC., ROBERT J. TUTTLE and MARK S. EDWARDS,

Defendants.

Case No. 6:05-cv-1920-Orl-22JGG

STIPULATED JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), has commenced this action by filing the complaint herein, and Defendants have been served with the summons and the complaint. The parties, represented by the attorneys whose names appear hereafter, have agreed to settlement of this action without additional adjudication of any issue of fact or law, and without Defendants' admitting liability for any of the violations alleged in the complaint.

THEREFORE, on the joint motion of the parties, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a).

2. Venue is proper as to all parties in this District.

3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The complaint states a claim upon which relief may be granted against Defendants, under Sections 5(a), 5(m)(1)(A), and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), and 53(b).

5. Defendants have entered into this Stipulated Judgment and Order for Permanent Injunction ("Order") freely and without coercion. The undersigned Individual Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. Defendants have agreed to the entry of this Stipulated Judgment and Order for Permanent Injunction to avoid the uncertainty and additional expense of litigating this matter through trial. Defendants admit the allegations of the complaint insofar as it alleges that this Court has subject matter jurisdiction and personal jurisdiction, and agree that facts alleged in the complaint may be taken as true for the purpose of enforcement proceedings. Defendants' agreement to this Order shall not otherwise be deemed an admission of wrongdoing by the Defendants or an admission of any allegation in the complaint.

7. Defendants hereby waive all rights to appeal or otherwise challenge or contest the validity of this Order.

8. Defendants have agreed that this Order does not entitle Defendants to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C.

§ 2412, as amended, and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

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

DEFINITIONS

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

1. "Defendants" means the Corporate Defendant and the Individual Defendants. The "Corporate Defendant" is The Broadcast Team, Inc. ("TBT"), a for-profit Florida corporation with its principal place of business at 9 Sunshine Boulevard, Ormond Beach, Florida. The "Individual Defendants" are Robert J. Tuttle, the chief executive officer and a director of TBT, and Mark S. Edwards, the president and a director of TBT.

2. "Asset" means any legal or equitable interest in, or right or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

3. "Charitable contribution" means any donation or gift of money or any other thing of value. Charitable contribution does not include any donation or gift of money or other thing of value to promote the success of a political party, committee or campaign.

4. "Customer" means any person who is or may be required to pay for goods or services offered through telemarketing.

5. "Donor" means any person solicited to make a charitable contribution.

6. "National Do Not Call Registry" means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

7. "Outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. All such calls are "outbound telephone calls," even if the telemarketer does not ultimately connect them to a sales representative, or does not deliver a recorded message to induce a purchase or to solicit a charitable contribution.

8. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

9. "Representatives" means Defendants' successors, assigns, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

10. "Seller" means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the Federal Trade Commission.

11. "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

12. "Telemarketing Sales Rule" or "Rule" means the FTC Rule entitled "Telemarketing Sales Rule," 16 C.F.R. § 310, attached hereto as Appendix A.

13. "Telemarketing" means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which contains a written

description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

ORDER

I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES

IT IS ORDERED that, in connection with telemarketing, and subject to Paragraph II below, Defendants and their Representatives are hereby permanently restrained and enjoined from engaging in, or causing other persons to engage in, or assisting other persons to engage in, violations of the Telemarketing Sales Rule, including but not limited to:

A. Delivering recorded messages to persons who answer an outbound telephone call, disconnecting an outbound telephone call when a person answers without connecting the call to a sales representative, or otherwise failing to connect an outbound telephone call answered by a person to a sales representative within two (2) seconds of the person's completed greeting, *provided, however,* that outbound telephone calls that deliver recorded messages do not violate this provision if the following four (4) conditions are met:

1. Defendants and their Representatives employ technology that ensures that no more than three (3) percent of all calls answered by a person are not connected

to a sales representative within two (2) seconds of the person's completed greeting, measured per day per calling campaign;

2. Defendants and their Representatives, for each telemarketing call placed, allow the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

3. Whenever a sales representative is not available to speak with the individual who answers the call within two (2) seconds after the individual's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed; and

4. Defendants and their Representatives retain records, in accordance with 16 C.F.R. § 310.5 (b)-(d), establishing compliance with the preceding three conditions.

B. Initiating any outbound telephone call to a person's telephone number on the National Do Not Call Registry, unless the telephone call is:

1. a solicitation to induce charitable contributions;

2. to a business;

3. to a person who has expressly consented to receive outbound telemarketing calls from the seller on whose behalf the call is made and Defendants can prove that (a) the person's consent is recorded in a written agreement that clearly evidences such person's authorization that calls made by or on behalf of the seller may be placed to that person, and (b) such agreement

includes the telephone number to which the calls may be placed and the signature of that person; or

4. to a person who has not stated that he or she does not wish to receive outbound telephone calls from the seller on whose behalf the call is made and Defendants can prove that the person (a) purchased, rented, or leased the seller's goods or services, or engaged in a financial transaction with the seller, within the eighteen (18) months immediately preceding the date of the telephone call; or (b) submitted an inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

C. Initiating any outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers within that area code that are on the National Do Not Call Registry, unless the telephone call is:

1. a solicitation to induce charitable contributions;

2. to businesses, or

3. on behalf of a seller who initiates, or causes others to initiate, telephone calls solely to persons that satisfy the conditions in Subparagraphs I.B.3 and I.B.4 of this Order, and does not access the National Do Not Call Registry for any other purpose.

II. CHANGES TO THE TELEMARKETING SALES RULE AND ITS ENFORCEMENT

The requirements in Paragraph I of this Order are subject to the following conditions:

A. Changes to the Telemarketing Sales Rule. If the Commission promulgates rules that, in whole or part, modify or supersede the Telemarketing Sales Rule, then, on and after the effective date of any such rules, (1) Defendants and their Representatives shall comply fully and completely with all applicable requirements of such rules and (2) telephone calls that are permitted by such rules do not constitute a violation of this Order if Defendants and their Representatives satisfy all the applicable requirements of such rules.

B. Enforcement Policies Concerning the Telemarketing Sales Rule. Conduct otherwise prohibited by this Order shall not be considered a violation of this Order *if*:

1. The conduct is permitted (a) under the Commission's November 17, 2004, announcement that it would forbear from bringing any enforcement action for violation of the Telemarketing Sales Rule's call abandonment prohibition, 16 C.F.R. § 310.4(b)(1)(iv), in relation to prerecorded telemarketing calls placed to consumers with an established business relationship, subject to certain "safe harbor" requirements specified in the proposed rule announcement, 69 Fed. Reg. 67,287, 67,290 (Nov. 17, 2004), or (2) under any other announcement by the Commission adopting a policy to forebear bringing enforcement actions with respect to the conduct prohibited by the Telemarketing Sales Rule; *and if*

2. The pertinent enforcement policy is in effect when the conduct occurs; *and if*

3. Defendants and their Representatives satisfy all the applicable requirements of the pertinent enforcement policy.

III. CIVIL PENALTY AND CONDITIONAL SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of two million eight hundred thousand dollars ($2,800,000) is hereby awarded against Defendants, jointly and severally, as a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A). Upon payment to the Treasurer of the United States of the amount provided in Subparagraph III.B of this Order, the remainder of the civil penalty judgment shall be suspended subject to the conditions set forth in Subparagraph III.C of this Order.

B. Prior to or concurrently with Defendants' execution of this Order, Defendants shall transfer one million dollars ($1,000,000) as payment for the civil penalty judgment, to their attorney, who shall hold the entire sum for no purpose other than payment to the Treasurer of the United States after entry of this Order by the Court. Within five (5) days of receipt of notice of the entry of this Order, Defendants' attorney shall transfer such civil penalty payment in the form of a wire transfer or certified or cashier's check made payable to the Treasurer of the United States. The check or written confirmation of the wire transfer shall be delivered to: Director, Office of Consumer Litigation, U.S. Department of Justice Civil Division, P.O. Box 386, Washington, DC 20044. The cover letter accompanying the check shall include the title of this litigation and a reference to DJ #102-3331. The check or wire transfer payment made pursuant to this paragraph shall be credited against the civil penalty judgment.

C. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of Defendants' financial statements signed under penalties of perjury on November 2, 2006, by Mr. Tuttle, and on November 3, 2006, by Mr. Edwards and by James

Skow on behalf of The Broadcast Team, Inc., as supplemented under penalties of perjury on December 21, 2006, by Mr. Skow on behalf of The Broadcast Team, Inc., and on December 22, 2006, by Mr. Tuttle and by Mr. Edwards; each financial statement was accompanied by supporting documents. These sworn financial statements and supporting documents include material information upon which Plaintiff relied in negotiating and agreeing to this Order. If, upon motion by Plaintiff, this Court finds that Defendants have failed to disclose any material asset or materially misstated the value of any asset in the financial statements and related documents described above, or have made any other material misstatement or omission in the financial statements and related documents described above, then the Court shall lift the suspension of the judgment and require payment of civil penalty in the full amount of the judgment less the sum of all amounts paid to the Treasurer of the United States pursuant to Subparagraph III.B of this Order. *Provided, however*, that in all other respects this Order shall remain in full force and effect, unless otherwise ordered by the Court.

D. In accordance with 31 U.S.C. § 7701, Defendants are hereby required to furnish to Plaintiff and the FTC their respective taxpayer identifying numbers (social security numbers or employer identification numbers). Such numbers may be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

E. Other than as Defendants have already admitted in their Second Amended Answer and Counterclaims, and other than as to the Court's jurisdiction over the subject matter and defendants, the facts as alleged in the complaint filed in this action shall be taken as true solely for the purpose of an action to enforce the judgment, including but not limited to a nondischargeability complaint in any bankruptcy proceeding.

F. If proceedings are instituted to lift the suspension imposed by this Paragraph, such proceedings are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Plaintiff may initiate to enforce this Order.

IV. DISMISSAL OF APPEAL IN RELATED CASE

Within 10 days of receipt of notice of the entry of this Order, defendant The Broadcast Team, Inc., shall dismiss with prejudice its appeal in The Broadcast Team, Inc. v. FTC, No. 06-13520 (11th Cir. notice of appeal filed June 15, 2006).

V. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that for a period of five (5) years from the date of entry of this Order, each Defendant, and their successors and assigns, shall maintain and make available to the Plaintiff or Commission, within fourteen (14) days of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this Order.

VI. DISTRIBUTION OF ORDER BY DEFENDANTS AND ACKNOWLEDGMENTS OF RECEIPT

IT IS FURTHER ORDERED that each Defendant, and their successors and assigns, shall within thirty (30) days of the entry of this Order, provide a copy of this Order with Appendix A to all of their owners, principals, members, officers, and directors, as well as managers, agents, servants, employees, and attorneys having decision-making authority with respect to the subject matter of this Order; secure from each such person a signed statement acknowledging receipt of a copy of this Order; and shall, within ten (10) days of complying with this Paragraph, file an affidavit with the Court and serve the Commission, by mailing a copy thereof, to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Ave., N.W., Washington, D.C. 20001, setting forth the fact and manner of their compliance, including the name and title of each person to whom a copy of the Order has been provided.

VII. NOTIFICATION OF BUSINESS CHANGES

IT IS FURTHER ORDERED that the Corporate Defendant, and its successors and assigns, shall notify the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Ave., N.W., Washington, D.C. 20001, at least thirty (30) days prior to any change in such Defendant's business, including, but not limited to, merger, incorporation, dissolution, assignment, and sale, which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change, which may affect the Corporate Defendant's obligations under this Order.

VIII. NOTIFICATION OF INDIVIDUALS' AFFILIATIONS

IT IS FURTHER ORDERED that each Individual Defendant shall, for a period of five (5) years from the date of entry of this Order, notify the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Ave., N.W., Washington, D.C. 20001, within thirty (30) days of his affiliation with a new business or employment whose activities include telemarketing, or of his affiliation with a new business or employment in which his duties and responsibilities involve telemarketing.

IX. COMMUNICATION WITH DEFENDANTS

IT IS FURTHER ORDERED that for the purposes of compliance reporting, if undersigned counsel no longer represents a Defendant, Plaintiff and the Commission are authorized to communicate directly with such Defendant.

X. FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XI. SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

XII. RETENTION OF JURISDICTION

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

XIII. COMPLETE SETTLEMENT

The parties, by their respective counsel, hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.

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

SO ORDERED this 2nd day of February, 2007.

Anne C. Conway

ANNE C. CONWAY
UNITED STATES DISTRICT JUDGE

We hereby consent to entry of the above judgment.

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Dated: January 26, 2007

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FOR DEFENDANTS THE BROADCAST TEAM, INC., ROBERT J. TUTTLE and MARK S. EDWARDS

Dated: December 22, 2006

Robert J. Tuttle, individually and on behalf of The Broadcast Team, Inc.

Dated: December 22, 2006

Mark S. Edwards, individually and on behalf of The Broadcast Team, Inc.

Dated: December 22, 2006

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