

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE TALBOTS, INC.,

Defendant.

Case No. 1:10-cv-10698-RWZ

**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 Defendant has waived service of the summons and the complaint. The parties, represented by the attorneys whose names appear hereafter, have agreed to settlement of this action without adjudication of any issue of fact or law and without Defendant 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), 56(a), and 57b.
2. Venue is proper in this District.

3. The activities of Defendant 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 Defendant, under Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b.

5. Defendant has entered into this Stipulated Judgment and Order for Permanent Injunction ("Order") freely and without coercion. Defendant further acknowledges that it has read the provisions of this Order and is prepared to abide by them.

6. Defendant's agreement to this Order shall not be construed as an admission by Defendant or a finding by the Court that Defendant has violated any federal law or regulation, including the Telemarketing Sales Rule, 16 C.F.R. Part 310.

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

8. Defendant has agreed that this Order does not entitle Defendant to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendant further waives 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. "Asset" and "Assets" mean any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined

in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. **“Charitable contribution”** means any donation or gift of money or any other thing of value.

3. **“Do Not Call request”** means a statement by a person that he or she does not wish to receive telephone calls by an entity concerning a good or service.

4. **“Entity-specific Do Not Call list”** means a list of telephone numbers created to comply with Do Not Call requests.

5. **“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.

6. **“Person”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

7. **“Representatives”** means Defendant's successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise.

8. **“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 Commission.

9. **“Telemarketer”** means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

10. **“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.

11. **“Telemarketing Sales Rule”** or **“Rule”** means the FTC Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. § 310, attached hereto as APPENDIX A or as may be hereafter amended.

## ORDER

### **I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

**IT IS ORDERED** that, in connection with telemarketing, Defendant and its Representatives are hereby permanently restrained and enjoined from engaging in, causing other persons to engage in, or assisting other persons to engage in, violations of the Telemarketing Sales Rule, including, but not limited to, initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in 16 C.F.R. § 310.4(b)(4)(iii), unless the seller or telemarketer:

- A. allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and
- B. within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by 16 C.F.R. § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:
- (1) in the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:
    - (a) automatically add the number called to the seller's entity-specific Do Not Call list;
    - (b) once invoked, immediately disconnect the call;
    - (c) be available for use at any time during the message; and
  - (2) in the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll free-number to assert a Do Not Call request pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:
    - (a) automatically adds the number called to the seller's entity-specific Do Not Call list;
    - (b) immediately thereafter disconnects the call; and

(c) is accessible at any time throughout the duration of the telemarketing campaign; and

C. Complies with all other requirements of the Telemarketing Sales Rule and other applicable federal and state laws.

*Provided, however,* if the Commission promulgates rules that, in whole or part, modify or supersede the Telemarketing Sales Rule, on or after the effective date of any such rules, Defendant shall comply fully and completely with all applicable requirements of such rules and telephone calls that are permitted by such rules do not constitute a violation of this Order if Defendant satisfies all the applicable requirements of such rules.

## II. CIVIL PENALTY

**IT IS FURTHER ORDERED** that judgment in the amount of one hundred twelve thousand dollars (\$112,000) is hereby entered against Defendant 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).

A. Prior to or concurrently with their execution of this Order, Defendant shall turn over the full amount of the civil penalty to its 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, Defendant's attorney shall transfer the civil penalty payment in the form of a wire transfer payable to the Treasurer of the United States. 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 written confirmation shall include the title of this litigation and a reference to DJ# 102-3596.

B. In the event of default on the payment required to be made by this Paragraph, the entire unpaid civil penalty, together with interest computed under 28 U.S.C. § 1961 -- accrued from the date of default until the date of payment -- shall be immediately due and payable. Defendant agrees that, in such event, the facts as alleged in the complaint filed in this action shall be taken as true in any subsequent litigation filed by Plaintiff or the Commission to enforce their rights pursuant to this Order, including, but not limited to, a non-dischargeability complaint in any subsequent bankruptcy proceeding.

C. Defendant shall cooperate fully with Plaintiff and the Commission and their agents in all attempts to collect the amount due pursuant to this Paragraph if Defendant fails to pay fully the amount due at the time specified herein. In such an event, Defendant agrees to provide Plaintiff and the Commission with its federal and state tax returns for the preceding two years, and to complete new standard-form financial disclosure forms fully and accurately within ten (10) business days of receiving a request from Plaintiff or the Commission to do so. Defendant further authorizes Plaintiff and the Commission to verify all information provided on its financial disclosure form with all appropriate third parties, including, but not limited to, financial institutions.

D. In accordance with 31 U.S.C. § 7701, Defendant is hereby required, unless it has done so already, to furnish to Plaintiff and the Commission its taxpayer identifying number(s) (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government.

### **III. ACCURACY OF FINANCIAL INFORMATION**

IT IS FURTHER ORDERED that Plaintiff's and the Commission's agreement to this Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information filed by Defendant in SEC Form 10-Q, Quarterly Report for the quarterly period ended Oct. 31, 2009 (Dec. 10, 2009) and in response to the Commission's civil investigative demand. If, upon motion by the Plaintiff, this Court finds that any of Defendant's financial statements failed to disclose any material asset or materially misstate the value of any asset, the Plaintiff may request that this Order be reopened for the purpose of requiring additional civil penalties from Defendant; provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by this Court; and provided further, that proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies available by law. Solely for the purposes of reopening or enforcing this Paragraph, Defendant waives any right to contest any of the allegations set forth in the complaint filed in this matter.



#### IV. RECORD KEEPING PROVISIONS

**IT IS FURTHER ORDERED** that for a period of five (5) years from the date of entry of this Order, Defendant, and its successors and assigns, shall maintain and make available to the Plaintiff or Commission, within seven (7) days of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this Order.

#### V. DISTRIBUTION OF ORDER BY DEFENDANT AND ACKNOWLEDGMENTS OF RECEIPT

**IT IS FURTHER ORDERED** that Defendant, and its successors and assigns, shall within thirty (30) days of the entry of this Order, provide a copy of this Order including **APPENDIX A** to its Chief Executive Officer, Chief Operating Officer and Chief Marketing Officer, all of its officers, managers, agents, employees, servants, and attorneys having decision-making authority with respect to the subject matter of this Order (including but not limited to the Senior Vice President, Direct Marketing and Customer Service; Director, Database and Customer Relationship Marketing and Manager, Customer Relationship Marketing), and any contractors engaged in telemarketing activities on its behalf; 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 sending a copy thereof, by overnight courier to:

Associate Director for Enforcement  
Federal Trade Commission  
601 New Jersey Avenue, NW,  
Washington, D.C. 20580  
Attn: *United States v. The Talbots, Inc.*

setting forth the fact and manner of its compliance, including the name and title of each person to whom a copy of the Order has been provided. *Provided that*, in lieu of overnight courier,

Defendants may serve the commission with the affidavit by first-class mail, but only if Defendants contemporaneously send an electronic version thereof to the Commission at: DEBrief@ftc.gov.

#### **VI. NOTIFICATION OF BUSINESS CHANGES**

**IT IS FURTHER ORDERED** that Defendant, and its successors and assigns, shall notify the Associate Director for Enforcement, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, D.C. 20580, Attn: *United States v. The Talbots, Inc.*, at least thirty (30) days prior to any change in 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 Defendant's obligations under this Order.

#### **VII. 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.

#### **VIII. 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.

#### **IX. 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.

**X. 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 Defendant, pursuant to all the terms and conditions recited above.

SO ORDERED this 27<sup>th</sup> day of April, 2010.

  
UNITED STATES DISTRICT JUDGE

FOR THE FEDERAL TRADE  
COMMISSION:

LOIS C. GREISMAN  
Associate Director for Marketing Practices  
FEDERAL TRADE COMMISSION

MICHAEL TANKERSLEY  
Attorney  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
PHONE: 202-326-2991

FOR THE PLAINTIFF:  
FOR THE UNITED STATES OF AMERICA


TONY WEST  
Assistant Attorney General  
Civil Division  
U.S. DEPARTMENT OF JUSTICE

CARMEN M. ORTIZ  
United States Attorney

/s Christine Wichers  
CHRISTINE WICHERS  
Assistant U.S. Attorney  
District of Massachusetts  
John Joseph Moakley Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
PHONE: 617-748-3100  
Email: [Christine.Wichers@usdoj.gov](mailto:Christine.Wichers@usdoj.gov)

EUGENE M. THIROLF  
Director  
Civil Division  
Office of Consumer Litigation

KENNETH L. JOST  
Deputy Director  
Office of Consumer Litigation

  
DANIEL K. CRANE-HIRSCH  
Trial Attorney  
Office of Consumer Litigation  
U.S. Department of Justice  
P.O. Box 386  
Washington, D.C. 20044  
PHONE: 202-616-8242  
FAX: 202-514-8742  
[Daniel.Crane-Hirsch@usdoj.gov](mailto:Daniel.Crane-Hirsch@usdoj.gov)

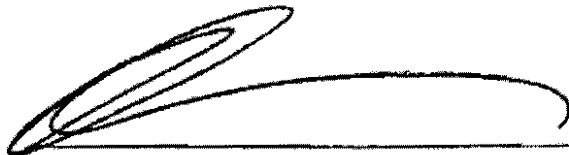
FOR DEFENDANT:



for The Talbots, Inc.

BY: Bruce Prescott

ITS: Senior Vice President, Direct Marketing & Customer Service



**David W. Bertoni**

Brann & Isaacson

184 Main Street

Lewiston, Maine 04243-3070

Phone (207) 786-3566

[dbertoni@brannlaw.com](mailto:dbertoni@brannlaw.com)

Attorney for Defendant The Talbots, Inc.