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SC-8071

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION,	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
MICHAEL P. MCGOWAN,	:	
AMNA MEDICAL PRODUCTS CORPORATION	:	
and INDUSTRIAL CHEMICAL CORPORATION,	:	
	:	
	:	
Defendants.	:	Hon. Alfred Wolin
	:	
	:	Civil Action 96-3227

STIPULATED FINAL JUDGMENT

Plaintiff, the Federal Trade Commission ("FTC"), filed its complaint pursuant to sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 et seq., charging defendants with violations of section 5(a) of

the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310. On July 1, 1996, 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 July 18, 1996.

NOW, the FTC, by and through its counsel, and Defendants Michael P. McGowan, Amna Medical Products Corporation, and Industrial Chemical Corporation, having agreed to the entry of this Stipulated Final Judgment to resolve all matters of dispute between them in this action without trial or adjudication of any issue of law or fact, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

DEFINITIONS

1. "Defendants" means Amna Medical Products Corporation ("Amna"), also d/b/a Med-Amna, Med-Amna First Aide, Med-Amna First Aide Care and Amna Medical, and Industrial Chemical Corporation ("Industrial"), also d/b/a Industrial Chemical, Inc., their officers, directors, agents, servants, employees, and attorneys, and Michael P. McGowan, individually and as an officer of Amna and Industrial and also d/b/a Michael McGovern, Michael

Mangrane, National Safety, National Safety Supply and National Safety & Supply, all successors and assigns, jointly and severally, and all other persons or entities in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise.

2. "Telemarketing" means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.

3. "Unordered merchandise" includes goods that are shipped or billed to a consumer in either of the following ways:

(a) without a prior sales agreement identifying the type, quantity (including number of items per box or case, if sold by the box or case), size, brand name, and total price (including any shipping, handling, insurance, or other cost) of goods shipped; or

(b) with a sales agreement entered after defendants have made any misrepresentation prohibited by paragraph I of this Judgment.

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

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties.

2. The complaint states a claim upon which relief may be granted against defendants under sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, the Telemarketing Act, 15 U.S.C. § 6101 et seq., and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.

3. The acts and practices of defendants as alleged in this case are in or affecting commerce, as "commerce" is defined in section 4 of the FTC Act, 15 U.S.C. § 44.

4. Entry of this Judgment is in the public interest.

5. Venue is proper in the United States District Court for the District of New Jersey.

6. This action and the relief ordered herein are in addition to, and not in lieu of, other remedies as may be provided by law to any party or parties other than the FTC, including both civil and criminal remedies.

7. The parties agree that this Order shall be construed as solely remedial in nature, and shall not be construed as the payment of a fine, penalty, punitive assessment or forfeiture.

8. The parties agree that this stipulation shall be submitted to the Court once fully executed, and shall be binding upon approval by the Court.

9. Defendants waive all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED, in connection with the advertising, offering for sale, sale, or distribution of any goods, that defendants are hereby permanently restrained and enjoined from:

A. making any express or implied representation of material fact that is false or misleading, including, but not limited to, any misrepresentation:

1. that consumers requested or placed orders for defendants' goods or services;
2. that consumers' employees whose names appear on defendants' invoices ordered the goods or services described on such invoices;
3. that defendants shipped goods or provided services to consumers with the consumers' prior consent and/or shipped goods or provided services described in defendants' invoices;
4. that prior or existing business relationships or accounts exist between the consumers and the defendants;

5. that such accounts are past due or that consumers are obligated to pay defendants for goods or services or on accounts; and

6. that defendants will refer consumers' accounts to collection agencies if they fail to pay defendants;

B. shipping, or causing to be shipped, any unordered good to any consumer;

C. requesting, demanding or accepting payment from any consumer for any shipment of unordered good, including, but not limited to, invoicing, billing or collecting any bill;

D. in connection with the telemarketing of nondurable office supplies and services, using threats or intimidation, including false threats of litigation or outside collection, if the consumer does not pay;

E. in any outbound telephone call, failing to disclose the identity of the seller, the nature of the goods and/or services and that the purpose of the call is to sell goods; and from

F. using any alias, pen name, pseudonym or otherwise misrepresenting their true identities.

II.

CONSUMER REDRESS

IT IS FURTHER ORDERED that

A. judgment is entered against Defendants Amna Medical Products corporation and Industrial Chemical Corporation in the amount of \$5,914.67 (five thousand, nine hundred fourteen dollars and sixty-seven cents).

Immediately upon entry of this order, the court-appointed receiver for said defendants shall deliver to the Commission a certified check for the full amount of this judgment.

Said check shall be in full satisfaction of the monetary claims alleged or that could have been alleged by the Commission in its complaint against said defendants; and

B. judgment is entered against Defendant Michael P. McGowan in the amount of \$317,170.67 (three hundred seventeen thousand, one hundred seventy dollars and sixty-seven cents); provided, however, that this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Paragraph VIII of this Order.

III.

IT IS FURTHER ORDERED that:

A. Funds transferred to the Commission pursuant to Paragraph II of this Order shall fully satisfy all monetary claims asserted by the Commission in the Complaint filed herein and shall be used to provide redress to purchasers of Defendants' goods 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. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

IV.

BANS AS TO DEFENDANT MICHAEL P. MCGOWAN

IT IS FURTHER ORDERED that Defendant Michael P. McGowan is hereby permanently restrained and enjoined from

A. 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 goods by means of telemarketing; and from

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

V.

NOTICES TO FTC

IT IS FURTHER ORDERED that, for a period of five years commencing with the date of entry of this Judgment, Defendants shall notify in writing the Cleveland Regional Office of the Federal Trade Commission, Regional Director, 668 Euclid Avenue Suite 520-A, Cleveland Ohio 44114, of:

A. any change in Defendant McGowan's employment status, within ten 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 McGowan's duties and responsibilities in connection with the business; and

B. any proposed change in the structure of any business entity owned or controlled by Defendant McGowan, 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 days prior to the effective date of any proposed change.

VI.

FTC REVIEW OF BUSINESS PRACTICES

IT IS FURTHER ORDERED that, for a period of five years commencing with the date of entry of this Judgment, for purposes of determining or securing compliance with this Judgment, in connection with Amna Medical Products Corporation or Industrial Chemical Corporation, or any other business owned or controlled in whole or in part by Defendant McGowan, or any business in which Defendant McGowan participates or engages in, Defendant McGowan shall, upon written notice:

A. permit representatives of the FTC, within five 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 McGowan and the person to be interviewed and without restraint or interference from Defendant McGowan, at a location reasonably convenient to the person to be interviewed, Defendant McGowan, and the FTC. Such officers, directors, or employees may have counsel present;

B. produce documents requested by the FTC within five business days of receipt of such request;

C. permit representatives of the FTC to depose any officers, directors, or employees of any such business within ten business days of receipt of such request; and

D. permit representatives of the FTC, within five 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 McGowan's control.

VII.

LIFTING OF ASSET FREEZE AND RECEIVERSHIP

IT IS FURTHER ORDERED that the freeze of defendants' assets and appointment of receiver, as ordered in paragraph III of the Temporary Restraining Order first entered in this matter on July 1, 1996, and continued by stipulation of the parties, shall be lifted upon payment by the receiver of the redress set forth in Paragraph II above.

IT IS FURTHER ORDERED that the temporary receiver shall compensate himself in the amount of \$1,000 for his services rendered since the Court's order of November 27, 1996 approving his compensation, in full and complete payment for his services as receiver.

VIII.

RIGHT TO REOPEN

The FTC's agreement to this Judgment is expressly premised upon the truthfulness, accuracy, and completeness of financial statements previously executed and submitted to the FTC on or about July 16, 1996 and on the deposition testimony of defendants regarding those statements given on October 24, 1996, which contain material information upon which the FTC has relied in negotiating and agreeing to the terms of this Judgment.

A finding of material misrepresentation or omission as to the financial statement or deposition testimony of defendant McGowan will render immediately due and payable the entire amount of the suspended judgment herein entered against him, provided that the Federal Trade Commission will not seek an amount in excess of said judgment, and provided further that in all other respects this Judgment shall remain in full force and effect unless otherwise ordered by this Court.

IT IS FURTHER ORDERED THAT proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including but not limited to any other proceedings the FTC may initiate to enforce this Judgment. In the event of any

motion brought under this paragraph, this Judgment shall be reopened for the limited purposes set forth above.

For purposes of this Paragraph, and any subsequent proceedings to enforce payment, including but not limited to a nondischargeability complaint filed in a bankruptcy proceeding, each defendant waives any right to contest any of the allegations of the Commission's complaint.

IX.

DISTRIBUTION TO DESIGNATED INDIVIDUALS

IT IS FURTHER ORDERED that, for a period of five years from the date of entry of this Judgment, defendants shall:

A. immediately provide a copy of this Judgment to, and obtain a signed and dated acknowledgment of receipt of the same from, 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 McGowan that engages in the advertising, offering for sale, sale, or distribution of any goods, and to each officer, director, and managing agent of any company or other business entity that engages in the advertising, offering for sale, sale, or distribution of any goods at which Defendant McGowan is employed; 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.

XI.

COSTS AND ATTORNEY FEES

Each party to this Judgment hereby agrees to bear its own costs and attorney fees incurred in connection with this action; provided, however, in the event the FTC initiates proceedings to enforce any provision of this Judgment and provided further this Court determines that defendants have violated any term or provision of this Judgment, defendants shall pay the costs and attorney fees incurred by the FTC in connection with such proceedings.

XII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the 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.

XIII.

WAIVER OF CLAIMS

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 the FTC, the receiver, or their employees, agents, or representatives.

SO ORDERED, this _____ day of _____, 1996.

Hon. Alfred Wolin
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 THE FEDERAL TRADE COMMISSION:

VIRGINIA A. DAVIDSON, ESQ.
Federal Trade Commission
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VAD-4473

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SC-8071

FOR THE RECEIVER:

ERIC TUNIS, ESQ.
19 Hutton Avenue
West Orange, NJ 07052

FOR THE DEFENDANTS:

Amna Medical Products Corporation
and Industrial Chemical Corporation

By: MICHAEL P. MCGOWAN
President

MICHAEL P. MCGOWAN
Individually