

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	Civil Action No.:
v.	)	
	)	
CREATIVE PUBLISHING	)	
INTERNATIONAL, INC.,	)	
a corporation,	)	
Defendant.	)	

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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; Defendant has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to the settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendants admitting liability for any of the matters alleged in the Complaint;

NOW, THEREFORE, upon stipulation of Plaintiff and Defendant, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the Defendant under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b.
3. Entry of this order is in the public interest.

## DEFINITIONS

4. “Negative Option Plan” shall have the meaning set forth in Section 425.1(c)(1) of the FTC’s Trade Regulation Rule entitled “Use of Prenotification Negative Option Plans” (“the Negative Option Rule”), 16 C.F.R. Part 425, which is: “a contractual plan or arrangement under which a seller periodically sends to Subscribers an Announcement which identifies merchandise (other than annual supplements to previously acquired merchandise) it proposes to send to Subscribers to such plan, and the Subscribers thereafter receive and are billed for the merchandise identified in each such Announcement, unless by a date or within a time specified by the seller with respect to each such Announcement the Subscribers, in conformity with the provisions of such plan, instruct the seller not to send the identified merchandise.”

5. “Direct Preview Program” shall mean the Negative Option Plans operated by the defendant that offer books to consumers for a 14-day free trial period.

6. “Subscriber” shall have the meaning set forth in Section 425.1(c)(2) of the Negative Option Rule, which is: “any person who has agreed to receive the benefits of, and assume the obligations entailed in, membership in any Negative Option Plan and whose membership in such Negative Option Plan has been approved and accepted by the seller.”

7. “Contract-complete Subscriber” shall have the meaning set forth in Section 425.1(c)(3) of the Negative Option Rule, which is: “a Subscriber who has purchased the minimum quantity of merchandise required by the terms of membership in a Negative Option Plan.”

8. “Selection” shall have the meaning set forth in Section 425.1(c)(5) of the Negative Option Rule, which is: “the merchandise identified by a seller under any Negative Option Plan as the merchandise which the Subscriber will receive and be billed for, unless by the date, or within

the period specified by the seller, the Subscriber instructs the seller not to send such merchandise.”

9. “Announcement” shall have the meaning set forth in Section 425.1(c)(6) of the Negative Option Rule, which is: “any material sent by a seller using a Negative Option Plan in which the Selection is identified and offered to Subscribers.”

10. “Form” shall have the meaning set forth in Section 425.1(c)(7) of the Negative Option Rule, which is: “any form which the Subscriber returns to the seller to instruct the seller not to send the Selection.”

11. “Continuity Program” shall mean any plan, arrangement, or system pursuant to which a consumer receives periodic shipments of products or the provision of services without prior notification by the seller before each shipment or service period, regardless of any trial or approval period allowing the consumer to return or be reimbursed for the product or service.

12. “Free to Pay Conversion Offer” shall mean any offer by the Defendant to provide free products or services or a free trial period of products or services to consumers where, as a result of accepting the free products or services or the free trial period of products or services, consumers are enrolled in a Negative Option Plan or a Continuity Program, or are otherwise subsequently required to contact the Defendant to avoid receiving additional products or services and incurring any financial obligation for such additional products or services.

#### CIVIL PENALTY

13. Defendant Creative Publishing International, Inc., its successors and assigns, shall pay to Plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of \$200,000.

14. Defendant shall make the payment required by Paragraph 13 within five (5) days of the date of entry of this Consent Decree by electronic fund transfer in accordance with the instructions provided by: The Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 for appropriate disposition.

15. In the event of any default in payment, which default continues for ten days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

#### CESSATION OF COLLECTION EFFORTS AND CONSUMER NOTIFICATION

16. Defendant, its successors and assigns, shall cease all collection efforts for all books that were shipped to consumers when they failed to return to the Defendant rejection Forms that were in use from July 1, 1997 through June 20, 1999.

17. Defendant, its successors and assigns, shall send a notice, by March 31, 2001 at the latest, to all consumers who are members of the defendant's Direct Preview Programs and whose accounts were established from July 1, 1997 through June 20, 1999, disclosing all material terms and conditions required to be disclosed by this Consent Decree.

#### INJUNCTION

##### **Business Activities Prohibited Pursuant to The Negative Option Rule**

18. Defendant, its successors and assigns, and its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined

from ever violating, directly or through any corporation, subsidiary, division or other device, any provision of the Negative Option Rule or as the Rule may hereafter be amended. A copy of this Rule is attached hereto as “Appendix A” and incorporated herein as if fully set forth verbatim.

Defendant is enjoined from violating the Negative Option Rule, including, but not limited to, the following:

- A. Failing to disclose clearly and conspicuously in any advertisement containing or accompanying any device or material that a prospective Subscriber utilizes to request acceptance or enrollment in a Negative Option Plan, all material terms of membership in Defendant’s Negative Option Plan, as required by Section 425.1(a)(1) of the Negative Option Rule. Such material terms include, but are not limited to:
  - i. That aspect of the plan under which the Subscriber must notify the seller, in the manner provided for by the seller, if he does not wish to purchase the Selection;
  - ii. Any obligation assumed by the subscriber to purchase a minimum quantity of merchandise;
  - iii. The right of a Contract-complete Subscriber to cancel his membership at any time;
  - iv. Whether billing charges will include an amount for postage and handling;

- v. A disclosure indicating that the Subscriber will be provided with at least ten (10) days in which to mail any Form, contained in or accompanying an Announcement identifying the Selection, to the seller;
  - vi. A disclosure that the seller will credit the return of any selections sent to a subscriber, and guarantee to the Postal Service or the subscriber postage to return such selections to the seller when the announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form to the seller; and
  - vii. The frequency with which the Announcements and Forms will be sent to the Subscriber and the maximum number of Announcements and Forms which will be sent to him during a 12-month period.
- B. Failing to mail to consumers, within the time specified by Section 425.1 (a)(3) of the Negative Option Rule, a Form, contained in or accompanying an Announcement, clearly and conspicuously disclosing that the Subscriber will receive the Selection identified in the Announcement unless he instructs the seller that he does not want the Selection; and designating a procedure by which the Form may be used for the purpose of enabling the Subscriber to so instruct the seller; and specifying either the return date or the mailing date.

**Business Activities Prohibited Pursuant to  
The Telemarketing Sales Rule**

19. Defendant, its successors and assigns, and its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who

receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from ever violating, directly or through any corporation, subsidiary, division or other device, any provision of the Federal Trade Commission's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310, or as it may hereafter be amended, including, but not limited to, failing to disclose, in a clear and conspicuous manner, before a customer pays for products or services offered, all material restrictions, limitations, or conditions to purchase, receive, or use the products or services that are the subject of the sales offer, as required by Section 310.3(a)(1)(ii) of the Telemarketing Sales Rule. A copy of this Rule is attached hereto as "Appendix B" and incorporated herein as if fully set forth verbatim.

#### **Other Prohibited Business Activities**

20. Defendants, their successors and assigns, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from:

- A. Making any representation, in any manner, expressly or by implication, in connection with the offering to consumers of any Free to Pay Conversion Offer, including, but not limited to, that consumers will incur no risks or obligations, unless, at the time of making such representation, all material terms and conditions of the Free to Pay Conversion Offer are clearly and conspicuously disclosed, including:
  - i. if true, that consumers who accept a Free to Pay Conversion Offer may receive subsequent offers or additional products or services that require

consumers to contact the Defendant to avoid receiving additional products or services and incurring any financial obligation for such additional products or services;

- ii. if true, that the Defendant automatically enrolls consumers in a Negative Option Plan or a Continuity Program, if consumers make an initial purchase or accept free products or services or products or services for a free trial period;
- iii. if true, that consumers who accept a Free to Pay Conversion Offer must pay for shipping and handling to return the products that the Defendant offers for free or for a free trial period as part of the Free to Pay Conversion Offer, or that consumers can obtain return labels from the Defendant to return such products; and
- iv. at least one reasonable means consumers may effectively use to prevent the shipment of additional products, the provision of additional services, or any financial obligation for additional products or services.

B. Misrepresenting any material term or condition of any Free to Pay Conversion Offer.

C. Selling or distributing or causing to be sold or distributed products or services by means of a Continuity Program without first obtaining the consent of consumers to participate in a Continuity Program before any shipment of products or provision of services is made. Prior to obtaining consumers' consent, Defendant shall disclose clearly and conspicuously in all promotional materials and solicitations,

including, but not limited to, direct mail solicitations, magazine cover wraps, or inbound and outbound telemarketing calls, all material terms and conditions of the Continuity Program, including, but not limited to:

- i. the fact that periodic shipments of products or the periodic provision or the continuation of services will occur without further action by consumers;
- ii. a description of each good or the type of good to be included in each shipment or a description of the services that will be performed or continued;
- iii. the approximate interval between each shipment or service period;
- iv. the cost or range of costs for each shipment or service period, including whether consumers must pay for shipping and handling;
- v. the minimum number of purchases or minimum service period required by the Defendant, if any;
- vi. all material terms and conditions of a guarantee, refund or return policy if any representation is made about such a policy, or, if the Defendant has a policy of not making refunds or accepting returns, a statement that this is the Defendant's policy; and
- vii. a description of the terms, conditions, and procedures under which consumers may cancel further shipments or discontinue a service.

D. Shipping merchandise to consumers without obtaining their prior express consent to receive products, as required by Section (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a), or as the Statute may hereafter be amended;

provided that, if the Defendant requires that consumers contact the Defendant to reject products, the shipping of such products when consumers fail to contact the Defendant will not constitute a violation of this Order, if the Defendant has clearly and conspicuously disclosed to consumers that they must contact the Defendant to reject the products and consumers have given their prior, express consent to this procedure; and

- E. Mailing bills or any dunning communications to any recipient of products shipped in violation of the foregoing Paragraph 20.D.

#### RECORD KEEPING

21. For a period of three (3) years from the date of entry of this Consent Decree, Defendant, its successors and assigns, shall maintain and make available to the Federal Trade Commission, within thirty (30) days of the date of receipt of a written request, business records demonstrating compliance with the terms and provisions of this Consent Decree, including, but not limited to:

- A. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; provided that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for (3) years after the last date of dissemination by the Defendant, its successors and assigns, of any such materials;
- B. Records evidencing consumers' affirmative consent, received by the seller before any shipment of products or provision of services is made, to participate in or join any Continuity Program or Negative Option Plan;

- C. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of products or services sold, revenues generated, and the disbursement of such revenues;
- D. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of products or services purchased, and description of products or services purchased, for all consumers to whom such business has sold, invoiced or shipped any products or services; and
- E. Records that reflect, for every written consumer complaint or refund request, whether received directly or indirectly or through any third party:
  - i. the consumer's name, address, telephone number and the dollar amount paid by the consumer;
  - ii. the written complaint or refund request, if any, and the date of the complaint or refund request;
  - iii. 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;
  - iv. each response and the date of the response;
  - v. any final resolution and the date of the resolution; and
  - vi. in the event of a denial of a refund request, the reason for the denial.

PERSONS AFFECTED; CONTINUING JURISDICTION

22. Defendant, its successors and assigns, shall, within thirty (30) days of the entry of this Consent Decree, provide a copy of this Consent Decree, the Negative Option Rule, the

Telemarketing Sales Rule, the Statement of Basis and Purpose for these Rules, and the Unordered Merchandise Statute to each of its officers and to all supervisory or managerial agents, servants, employees and attorneys who are engaged in the marketing or sale of Defendant's books, publications, or any other product, through the use of Negative Option Plans, Continuity Programs, or Free to Pay Conversion Offers, secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree and all other materials listed above, and shall, within ten (10) days of complying with this Paragraph, file an affidavit with the Court and serve the Federal Trade Commission, by mailing a copy thereof, to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580 (or by hand delivery to Fourth Floor, 601 Pennsylvania Ave., N.W., Washington, D.C. 20004), setting forth the fact and manner of their compliance, including the name and title of each person to whom a copy of the Consent Decree and other materials have been provided.

23. Defendant, its successors and assigns, shall notify the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, at least thirty (30) days prior to any change in Defendant's business including, but not limited to, merger, incorporation, dissolution, assignment, 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 judgment. *Provided, however,* that with respect to any proposed change in the corporation about which the Defendant learns less than 30 days prior to the date such action is to take place, the Defendant

shall notify the Commission's Associate Director for Enforcement as soon as practicable after obtaining such knowledge.

24. Defendant is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission its taxpayer identifying numbers (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.

25. This Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree 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 Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

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

Dated: \_\_\_\_\_, 2001.

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United States District Judge

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

DATED:

FOR THE UNITED STATES OF AMERICA:

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FOR THE FEDERAL TRADE COMMISSION

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