

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
TechnoBrands, Inc.,)	
)	
Defendant.)	
)	

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND
SETTLEMENT OF CLAIMS FOR MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (the “FTC” or “Commission”), filed a complaint for a permanent injunction and other equitable relief against TechnoBrands, Inc. (“TBI”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging violations of Section 5 of the FTC Act, 15 U.S.C. § 45.

The Commission and Defendant have stipulated to the entry of the following Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief (“Order”) in settlement of the Commission’s complaint against Defendant. The Court, being duly advised in the premises, finds:

FINDINGS

1. This Court has jurisdiction of the subject matter of this action and of Defendant. Venue in the Eastern District of Virginia is proper.
2. The Complaint states a claim upon which relief can be granted, and the Commission has authority to seek the relief it has requested under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

3. The acts and practices of Defendant were or are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendant waives all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order. Defendant also waives any claim that it may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Defendant also waives service of a summons.
5. Each party shall bear its own costs and attorneys’ fees.
6. Defendant, without admitting or denying the allegations of wrongdoing set forth in the Commission’s Complaint, stipulates and agrees to entry of this Order under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).
7. Entry of this Order is in the public interest.

DEFINITIONS

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

1. “Defendant” means, unless otherwise specified, TechnoBrands, Inc., and its successors and assigns.
2. “Charge” means any amount charged or debited to a consumer’s credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.
3. “Buying service” means any arrangement whereby persons who agree to the arrangement (often called “members”) receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, credit card protection, home protection, legal services, and purported discounts on goods and services.

4. "Telemarketing" means any activity (including, but not limited to, initiating or receiving telephone calls; managing others who initiate or receive telephone calls; contracting or employing others who initiate or receive telephone calls; operating an enterprise that initiates or receives telephone calls; or owning an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, product, good, service, investment, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing; **provided, however,** that the term "telemarketing" shall not include (A) transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumer solicited, and the consumer is not required to pay or authorize payment until after such a presentation; or (B) the solicitation of sales through the mailing of a catalog, other direct mail piece, or general media advertisement that contains a complete description or illustration of the goods offered for sale and includes the business address of the seller, when the person making the solicitation does not solicit consumers by telephone but only receives calls initiated by consumers in response to the catalog, direct mail piece, or general media advertisement and during those calls takes orders for the offered goods only, without further solicitation. For purposes of this definition, the term "further solicitation" does not include providing the consumer with information about, or attempting to sell, any other good included in the same catalog, direct mail piece, or general media advertisement which prompted the consumer's call or in a substantially similar catalog, direct mail piece, or general media advertisement.
5. "Billing information" means any data that describes, constitutes or provides access to a billing

and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.

ORDER

CONDUCT PROHIBITIONS

I.

IT IS ORDERED that Defendant, and its officers, agents, employees, and attorneys, and all those 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 entity, corporation, subsidiary, division, or other device, in connection with (1) the advertising, promoting, marketing, offering for sale, sale, or distribution of any buying service and (2) telemarketing, in or affecting commerce, are hereby permanently restrained and enjoined from:

- A. Falsely representing that (1) a consumer will or will not be charged or billed for any goods or services; or (2) a consumer will not be charged or billed without the consumer's authorization;
- B. Making any representation that a consumer will receive a trial membership or an information kit, or that any goods or services are offered "free," "risk-free," with "no obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the goods or services, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer's authorization to be charged or billed for the offered goods or services or any other goods or services:
 - 1. Any obligation of the consumer associated with accepting the offered goods or

services (including but not limited to, the obligation to cancel or take other affirmative action to avoid incurring payment obligations), and the manner in which the consumer may cancel (including but not limited to the date by which a cancellation request may be submitted, and the fact that a telephone number or address to which a cancellation request may be directed will be included in membership materials); and

2. The amount and number of payments (if more than one) that will or may be required, and the circumstances under which additional payments may be required;

C. Making any representation that a consumer who accepts an offer for goods or services will receive an additional good or service for “free” or with “no obligation,” or as discounted or reduced in price, or words of similar import, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer’s authorization to be charged or billed for the goods or services with which the purportedly free or discounted goods or services are offered, all conditions, limitations and restrictions on the ability of the consumer to use any such purportedly free or discounted goods or services;

D. Failing to disclose, clearly and conspicuously, before obtaining the consumer’s express authorization to bill or charge the consumer for any such goods or services, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

1. The fact, if true, that the seller is a separate entity from or affiliated with the

telemarketer, and, if so, the name of the seller and the entity to which payment will be made;

2. The number of payments (if more than one), the date of the payment(s), the amount of the payment(s), and the total cost;
 3. The fact, if true, that the billing information Defendant already possesses, either because the consumer previously provided it to Defendant or the Defendant obtained it from another source, will be used to bill or charge the consumer;
 4. The terms of the seller's refund, cancellation, exchange, or repurchase policies;
 5. If the consumer will be automatically billed at the end of a trial period unless the consumer cancels: this fact, the length of the trial period, the manner in which a cancellation request may be submitted, the date by which a cancellation request must be received, and the fact that a telephone number or address to which a cancellation request may be directed will be included in membership materials;
and
 6. If the seller automatically ships goods to a consumer unless the consumer notifies the seller within a certain time not to ship the goods: this fact, the manner in which a notice not to ship may be submitted, the time period by which a notice not to ship must be received to avoid shipment, and the telephone number or address to which a notice not to ship may be directed;
- E. Submitting billing information for payment, transferring billing information to an affiliate or third party, or collecting or attempting to collect payment for goods or services, directly or through a third party, without the consumer's express verifiable authorization

to purchase the goods or services and the consumer's express verifiable authorization of the amount and manner of the billing or payment, both of which authorizations must be obtained at the time the offer or the agreement is made; **provided** that express authorization shall be deemed verifiable only if either of the following two means is employed:

1. Express written authorization by the consumer, which includes the consumer's signature (the term "signature" shall include an electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law); or
2. Express oral authorization that is tape recorded, along with the entire portion of the telephone call that relates to the goods and services that are the subject of the sales offer (and during which the consumer gave oral authorization) and made available upon request to the consumer, the consumer's bank, credit card company or other billing entity, and which evidences clearly the consumer's name, the consumer's authorization of payment for the goods and services that are the subject of the sales offer and the amount and manner of the billing or payment, and the consumer's receipt of all of the following information:
 - a. All of the disclosures set forth in Subpart I.D of this Order;
 - b. The consumer's specific billing information, including the name of the account and the account number, that will be used to collect payment for the goods or services that are the subject of the sales offer;
 - c. A telephone number for consumer inquiry that is answered during

normal business hours; and

- d. The date of the consumer's oral authorization; and
- F. Falsely representing, through, *inter alia*, mailings, email, billings, and charges, that a consumer purchased or agreed to purchase goods or services, or that a transaction has been authorized by a consumer.

II.

TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendant, and its officers, agents, employees, and attorneys, and all those 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 corporation, partnership, subsidiary, division, or other device, are permanently restrained and enjoined from failing to comply with any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as it is in effect now or as it may hereafter be amended.

III.

LIMITATIONS ON DISSEMINATION OR USE OF CONSUMERS' PERSONAL FINANCIAL INFORMATION (OPT-IN PROVISION)

IT IS FURTHER ORDERED that Defendant, and its officers, agents, employees, and attorneys, and all those 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 corporation, partnership, subsidiary, division, or other device, are permanently restrained and enjoined from providing or disclosing to any other person or entity, whether or not in exchange for payment or other consideration, any of the following consumer information:

- A. Billing information;
- B. Unique identifying information, such as social security number, date of birth, place of birth and mother's maiden name;
- C. Credit information;
- D. Income information; and
- E. Asset and liability information;

unless (1) Defendant has clearly and conspicuously disclosed to such consumer what information Defendant proposes to provide or disclose, the intended use of the information, and the person or entity to whom Defendant proposes to provide or disclose the information; and (2) the consumer has expressly authorized Defendant to provide or disclose such information; **provided** that this Part shall not apply to the disclosure of consumer information necessary to effectuate or administer a transaction that the consumer has expressly authorized; **provided further**, that Defendant may provide such consumer information to a law enforcement agency either voluntarily, or as required by any law, regulation, or court order.

IV.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered against Defendant TechnoBrands, Inc., in the amount of Four Million and Three Hundred Thousand Dollars (\$4,300,000).
- B. Based on defendant's audited financial statements for the fiscal years ending 2000, 1999, and 1998, with Report of Independent Auditors, and Income Statement and Balance Sheet as of January 31, 2001, payment of the foregoing judgment is waived

based upon the accuracy and completeness of the financial statements referenced above, except for the following:

1. No later than the date of entry of this Order, Defendant shall pay to the Commission Two Hundred Thousand Dollars (\$200,000), which payment shall be by wire transfer pursuant to instructions provided by the Commission; and
 2. Defendant shall turn over all distributions Defendant receives from any of the Debtors (i.e., Premier Membership Service, LLC, Triad Discount Buying Service, Inc., Member Service of America, LLC, and Orchid Associates, LLC) in Bankruptcy Case Nos. 00-35053-BKC-SHF through 00-35056-BKC-SHF (S.D. Fla.), within fifteen (15) days of the receipt of such monies, **provided** that, in the event any of the aforementioned bankruptcy proceedings are dismissed, Defendant shall turn over any other monies received from Ira Smolev, any entities affiliated with Ira Smolev or any of the Debtors, to satisfy the Defendant's proof of claims against any of the Debtors, within fifteen (15) days of the receipt of such monies.
- C. The funds received by the Commission pursuant to this Part be shall deposited into an account to be maintained by the Commission or its agent. At the sole discretion of the Commission, (1) such funds may be combined with funds paid to the Commission in other actions relating to the conduct of the Debtors, Ira Smolev, or any entities affiliated with Ira Smolev; and (2) such funds shall be (a) distributed as redress to consumers, (b) to the extent allowable by law, paid to state law enforcement agencies as reimbursement of their costs in connection with any joint investigation or litigation

related to or associated with the transactions or the occurrences that are the subject of the Complaint, or (c) paid to the U.S. Treasury as equitable disgorgement (if distribution as redress is deemed impractical). The Commission shall notify Defendant of its plan for the disbursement of funds. Defendant acknowledges and agrees that all money paid pursuant to this Order is irrevocably paid to the FTC for purposes of settlement between the parties. Defendant shall make no claim or demand for return of the funds, directly or indirectly, through counsel or otherwise, and in the event of bankruptcy of Defendant, Defendant acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

- D. Defendant TechnoBrands, Inc., is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission its taxpayer identification number, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.
- E. In the event of any default in payment, which default continues for ten (10) 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.
- F. For purposes of this Part IV only, and any subsequent proceedings in this cause, Defendant waives any right to contest any of the allegations of Plaintiff's Complaint.

V.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that, within five business days (5) after receipt by Defendant

of this Order as entered by the Court, Defendant TechnoBrands, Inc., shall submit to the Commission a truthful sworn statement, in the form shown on Attachment A, that shall acknowledge receipt of this Order.

VI.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendant shall:

- A. Deliver a copy of this Order to all current and future principal, officers, directors, and managers, and shall secure from each such person a signed and dated acknowledgment of receipt of the Order. Defendant shall deliver this Order to the above referenced personnel within thirty (30) days after the date of entry of this Order, and to any future above referenced personnel within thirty (30) days after the person assumes such position or responsibilities;
- B. Deliver a copy of Attachment B to all current and future employees, agents and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated acknowledgment of receipt of the Order. Defendant shall deliver this Order to current personnel within thirty (30) days after the date of entry of this Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities;
- C. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order or Attachment B, as required in

Subparts A and B of this Part.

VII.

RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendant, and its agents, employees, officers, and servants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with (1) the advertising, promoting, marketing, offering for sale, sale, or distribution of any buying service and (2) telemarketing, in or affecting commerce, are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

- A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;
- C. Records containing the names, addresses, phone numbers (if available), dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, for all consumers to whom such business has sold, invoiced or shipped any

goods or services;

D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:

1. The consumer's name, address, telephone number (if available) and the dollar amount paid by the consumer;
2. The written complaint or refund request, if any, and the date of the complaint or refund request;
3. 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;
4. Each response and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; **provided** that copies of all sales scripts, advertisements, or other marketing materials utilized shall be retained for (3) years after the last date of dissemination of any such materials.

VIII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. Defendant shall notify the Commission at least thirty (30) days prior to any change in

the corporation that may affect compliance obligations arising under this Order, including but not limited to, a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor corporation, the creation of dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address; **provided however**, that, with respect to any proposed change in the corporation about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge;

- B. Within sixty (60) days after the date of entry of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which Defendant has complied with this Order;
- C. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580;
- D. For purposes of the compliance reporting required by this Part, the Commission is authorized to communicate directly with Defendant through its chief executive officer, chief financial officer, and in-house counsel unless instructed otherwise by defendant's counsel.

IX.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendant's

compliance with this Order by all lawful means, including but not limited to the following means:

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's compliance with any provision of this Order;
- B. The Commission is authorized to use representatives posing as consumers and suppliers to Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice;
- C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

X.

ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendant shall permit representatives of the Commission, within seven (7) business days of receipt of written notice from the Commission:

- A. Access during normal business hours to any office, or facility storing documents, of any business in which Defendant is the majority owner of the business or directly or indirectly manages or controls the business. In providing such access, Defendant shall

permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

- B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subpart A of this Part applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present;

Provided that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XI.

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.

SO STIPULATED:

FOR THE PLAINTIFF

FOR THE DEFENDANT

JAMES REILLY DOLAN
LOUISE R. JUNG
Attorneys
Federal Trade Commission
600 Pennsylvania Ave., N.W.,
Washington, D.C. 20580
(202) 326-2989
(202) 326-2558 (facsimile)

CHARLES J. ANTON on behalf of
TECHNOBRANDS, INC.

W. JEFFREY EDWARDS
Hunton Williams
951 East Byrd Street
Richmond, Virginia 23219-4074
(804) 788-8200
Counsel for Defendant

GREGORY A. ASHE
VA Bar No. 39131
Federal Trade Commission
600 Pennsylvania Ave, NW, S-4302
Washington, DC 20580
(202) 326-3719
(202) 326-2558 (facsimile)

IT IS SO ORDERED

DATED: _____

UNITED STATES DISTRICT JUDGE
ATTACHMENT A
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

_____)	
FEDERAL TRADE COMMISSION,)	Civil Action No.
600 Pennsylvania Avenue, N.W.)	
Washington, DC 20580,)	AFFIDAVIT OF DEFENDANT
)	TECHNOBRANDS, INC.
Plaintiff,)	
)	
v.)	
)	
TechnoBrands, Inc.,)	
a Virginia corporation,)	
)	
Defendant.)	
_____)	

Charles J. Anton, being duly sworn, hereby states and affirms as follows:

1. My name is Charles J. Anton. My current residence address is

_____. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am President and CEO of TechnoBrands, Inc., the defendant in FTC v.

TechnoBrands, Inc. (United States District Court for the Eastern District of Virginia).

3. On _____, I received a copy of the Stipulated Final Order for Permanent

Injunction and Settlement of Claims for Monetary Relief, which
was signed by the Honorable

_____ and entered by the Court on _____. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, at _____.

Charles J. Anton
President and CEO of TechnoBrands, Inc.

State of _____, City of _____

Subscribed and sworn to before me
this _____ day of _____, 2001.

Notary Public
My Commission Expires:
