

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MILLENNIUM INDUSTRIES, INC.,
a corporation, d/b/a PREMIER
CONSUMER SERVICES and

ANTHONY V. DEANGELIS,
individually and as an officer and
director of the corporation,

Defendants.

Case No. 01-1932-PHX-MHM

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

Plaintiff, the Federal Trade Commission ("FTC"), commenced this action by filing 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, charging the defendants Millennium Industries, Inc. ("Millennium") d/b/a Premier Consumer Services and Anthony V. DeAngelis with engaging in deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.

Plaintiff, through its counsel, and defendants Millennium and Anthony V. DeAngelis, by and through their counsel, have agreed to the entry of this Final Judgment and Order by this Court in order

to resolve all matters in dispute in this action. The Commission and the defendants have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without the defendants admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

Being fully advised in the premises and acting upon the joint motion of the parties, the Commission, Millennium, and Anthony V. DeAngelis, to enter this Final Judgment and Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and all parties hereto;
2. The complaint states a claim upon which relief may be granted against the defendants under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b and the Telemarketing Sales Rule;
3. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. §§ 53(b) and 57b;
4. The activities of defendants are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Entry of this Final Judgment and Order is in the public interest; and
6. Defendants have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order.

DEFINITIONS

For the purpose of this Stipulated Final Judgment and Order, the following definitions shall apply:

1. "Plaintiff," "Commission," or "FTC" means the Federal Trade Commission.
2. "Defendants" means Millennium Industries, Inc. and Anthony V. DeAngelis, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries or affiliates, and those persons 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, unless specified otherwise.
3. "Assets" means all real and personal property of any defendant, or held for the benefit of any defendant, 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, and all cash, wherever located.
4. "Credit Card Loss Protection Services" means services provided for a fee which hold consumers harmless for any unauthorized charges on their credit card accounts.
5. "Telemarketing" shall mean any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or

receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, 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* that the term “telemarketing” shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited. *Provided further*, that for the purposes of Paragraph II(C), the definition of telemarketing shall be consistent with 16 C.F.R. § 310.2.

6. “Assisting others” means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints;

(2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.
7. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

ORDER

I. BAN ON SALE OF CREDIT CARD LOSS PROTECTION SERVICES

IT IS THEREFORE ORDERED that defendants Millennium Industries, Inc. and Anthony V. DeAngelis, and their successors, assigns, directors, officers, agents, servants, employees, attorneys, and all other 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, subsidiary, division, or other device are hereby permanently restrained and enjoined from engaging or participating in the advertising, promotion, offering for sale, or sale of credit card loss protection services.

II. INJUNCTION AGAINST MISREPRESENTATIONS

A. IT IS FURTHER ORDERED that defendants Millennium Industries, Inc. and Anthony V. DeAngelis, and their successors, assigns, directors, officers, agents, servants, employees, attorneys, and all other 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, subsidiary, division, or other device in connection with the advertising, promotion, offering for sale, or sale of credit card loss protection services, are hereby permanently restrained and enjoined from:

1. Misrepresenting, expressly or by implication, that defendants are affiliated with, or are calling from or on behalf of, a credit card issuing institution; and
2. Misrepresenting, expressly or by implication, that if consumers do not purchase

defendants' credit card loss protection services, consumers will be held fully liable for any unauthorized charges made to their credit card accounts;

B. IT IS FURTHER ORDERED that, with respect to the advertising, promotion, offering for sale, or sale of any good or service, defendants Millennium Industries, Inc. and Anthony V. DeAngelis, and their successors, assigns, directors, officers, agents, servants, employees, attorneys, and all other 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, subsidiary, division, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase defendants' products or services; and

C. IT IS FURTHER ORDERED that defendants Millennium Industries, Inc. and Anthony V. DeAngelis, and their successors, assigns, directors, officers, agents, servants, employees, attorneys, and all other 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, subsidiary, division, or other device, are hereby permanently restrained and enjoined from violating or assisting others in violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:

(1) misrepresenting that if consumers do not purchase defendants' credit card loss protection services, consumers can be held fully liable for any unauthorized charges

made to their credit card accounts; (2) misrepresenting that defendants are affiliated with, or are calling from or on behalf of, a credit card issuing institution; and (3) failing to disclose promptly and in a clear and conspicuous manner that the purpose of defendants' telephone calls to consumers is to sell goods and services.

III. MONETARY RELIEF

IT IS FURTHER ORDERED that defendants Millennium Industries, Inc. and Anthony V. DeAngelis shall be jointly and severally liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund, in the amount of ONE MILLION DOLLARS (\$1,000,000.00). Provided, however, that this judgment shall be suspended until further order of the Court pursuant to Paragraph V of this Order.

IV. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that defendants Millennium Industries, Inc. and Anthony V. DeAngelis are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person that purchased credit card loss protection services at any time prior to the date this Order is entered. Provided, however, that defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

V. FINANCIAL STATEMENTS

A. IT IS FURTHER ORDERED that the Commission's agreement to and the Court's approval of this Order are expressly premised upon the truthfulness, accuracy, and

completeness of the financial statements and information provided by defendants Millennium Industries, Inc. and Anthony V. DeAngelis to counsel for the Commission on or about November 6, 2001, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

B. IT IS FURTHER ORDERED that if the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Order for the sole purpose of allowing the Commission to modify the monetary liability of the defendants. If the Court finds that any defendant(s) failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against such defendant(s), in favor of the Commission, in the amount of ONE MILLION DOLLARS (\$1,000,000.00), which the defendants and the Commission stipulate is the amount of consumer injury caused by the defendants, as set forth in Paragraph III 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. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Order. Solely for the purposes of reopening or enforcing this Paragraph, defendants

waive any right to contest any of the allegations set forth in the Complaint filed in this matter.

VI. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that defendants Millennium Industries, Inc. and Anthony V. DeAngelis, in connection with any business where such defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in telemarketing or assisting others engaged in telemarketing, are hereby permanently restrained and enjoined from:

- A.** Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraph II of this Final Judgment and Order. Such steps shall include adequate monitoring of sales presentations or other calls with consumers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;
- B.** Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and
- C.** Failing to take adequate corrective action with respect to any employee or independent contractor who, as determined by any defendant, is not complying with this Final

Judgment and Order. Corrective action may include training, disciplining, and/or terminating such employee or independent contractor.

VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, within five (5) business days after receipt by defendants of this Final Judgment and Order as entered by the Court, defendants shall submit to plaintiff a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Final Judgment and Order.

VIII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Judgment and Order, defendants Millennium Industries, Inc. and Anthony V. DeAngelis shall:

- A. Provide a copy of this Final Judgment and Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, immediately upon employing or retaining any such persons for any business where:
 - 1. such defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where
 - 2. the business is engaged in telemarketing or assisting others engaged in telemarketing.
- B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the plaintiff, the original signed and dated

acknowledgments of the receipt of copies of this Final Judgment and Order, as required in Subsection A.

IX. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Judgment and Order, defendants Millennium Industries, Inc. and Anthony V. DeAngelis, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment and Order by personal service or otherwise, in connection with any business where such defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in telemarketing or assisting others engaged in telemarketing, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that 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;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaint and refund requests (whether received directly, indirectly or through any

third party) and any responses to those complaints or requests; and

- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

X. COMPLIANCE REPORTING BY DEFENDANTS

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

- A. For a period of five (5) years from the date of entry of this Final Judgment and Order, defendants shall notify the plaintiff of the following:
 1. Any changes in defendants' business or residence addresses, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;
 2. Any changes in the individual defendant's employment status (including self-employment) within thirty (30) days of such change. Such notice shall include the name and address of each business that such defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of said individual defendant's duties and responsibilities in connection with the business or employment; and
 3. Any proposed change in the structure of the corporate defendant, or of any business entity owned or controlled by defendant Anthony V. DeAngelis, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Final Judgment and Order, thirty (30) days prior

to the effective date of any proposed change;

- B.** One hundred eighty (180) days after the date of entry of this Final Judgment and Order, defendants shall provide a written report to the plaintiff, sworn to under penalty of perjury, setting forth in detail the manner and form in which the defendants have complied and are complying with this Final Judgment and Order. This report shall include but not be limited to:
1. Defendant Anthony V. DeAngelis' current residence address and telephone number;
 2. Defendant Anthony V. DeAngelis' current employment, business addresses and telephone numbers, a description of the business activities of such employer, and the defendant's title and responsibilities for such employer;
 3. A copy of each acknowledgment of receipt of this Final Judgment and Order obtained by defendants pursuant to Section VIII; and
 4. A statement describing the manner in which defendants have complied and are complying with the injunctive and other provisions of Section II of this Final Judgment and Order.
- C.** Upon written request by a representative of the plaintiff, defendants shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' notice with respect to any conduct subject to this Final Judgment and Order;
- D.** For the purposes of this Final Judgment and Order, defendants shall, unless otherwise directed by the FTC's authorized representatives, mail all written notifications to the

FTC to:

Regional Director
Southwest Region
1999 Bryan Street, Suite 2150
Dallas, Texas 75201

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- E.** For the purposes of this Section, “employment” includes the performance of services as an employee, consultant, or independent contractor; and “employers” includes any individual or entity for whom defendant Anthony V. DeAngelis performs services as an employee, consultant, or independent contractor; and
- F.** For purposes of the compliance reporting required by this Section, the plaintiff is authorized to communicate directly with defendant Anthony V. DeAngelis.

XI. PLAINTIFF’S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that plaintiff is authorized to monitor defendants’ compliance with this Final Judgment and Order by all lawful means, including but not limited to the following means:

- A.** Plaintiff 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 defendants’ compliance with any provision of this Final Judgment and Order;
- B.** Plaintiff is authorized to use representatives posing as consumers and suppliers to

defendants, defendants' employees, or any other entity managed or controlled in whole or in part by defendants without the necessity of identification or prior notice; and

- C. Nothing in this Final Judgment and 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 defendants have violated any provision of this Final Judgment and Order, Section 5 of the FTC Act, 15 U.S.C. § 45 or the Telemarketing Sales Rule, 16 C.F.R. Part 310.

XII. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Judgment and Order, for the purpose of further determining compliance with this Final Judgment and Order, defendants Millennium Industries, Inc. and Anthony V. DeAngelis shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

- A. Access during normal business hours to any office, or facility storing documents, of the defendants or of any business where
1. such defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where
 2. the business is engaged in telemarketing or assisting others engaged in telemarketing.

In providing such access, defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Judgment

and Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Final Judgment and 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 Subsection (A) applies, concerning matters relating to compliance with the terms of this Final Judgment and 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 defendants' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Judgment and Order.

XIII. ATTORNEYS' FEES

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

XIV. LIFT OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of defendants' assets, imposed in the Preliminary Injunction entered in this proceeding, shall be lifted upon the entry of this Final Judgment and Order.

XV. CONTINUING JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED.

Dated this _____ day of _____, 2002.

MARY H. MURGUIA
UNITED STATES DISTRICT JUDGE

Approved as to Form and Content:

PLAINTIFF

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Federal Trade Commission

DEFENDANTS

Millennium Industries, Inc.
by Anthony V. DeAngelis, President

Anthony V. DeAngelis
individually and as an officer of
Millennium Industries, Inc.

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