

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BARGAINS & DEALS MAGAZINE, LLC, a
Washington Limited Liability Company, also doing
business as BARGAINS & DEALS WHOLESALE,
and

MICHAEL P. CASEY, individually and as the
owner of Bargains & Deals Magazine, LLC, and as
an officer or director of Keith's Wholesale,

Defendants.

CIVIL ACTION NO. C01-1610P

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION**

Plaintiff Federal Trade Commission ("Commission" or "FTC"), pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), has filed a Complaint for injunctive and other relief, charging defendants with violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Federal Trade Commission Trade Regulation Rule entitled "Mail or Telephone Order Merchandise Rule" ("the Rule" or "MTOR"), 16 C.F.R. Part 435. The parties have

1 agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Order”) by
2 this Court to resolve all matters in dispute between them arising from the Complaint in this action.

3 **NOW, THEREFORE**, plaintiff Federal Trade Commission and defendants Bargains & Deals
4 Magazine, LLC, dba Bargains & Deals Wholesale, and Michael P. Casey, having requested the Court
5 to enter this Order,

6 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

7 **FINDINGS**

- 8 1. This Court has jurisdiction over the subject matter of this and the parties consenting
9 hereto.
- 10 2. Venue in the Western District of Washington is proper under 15 U.S.C. § 53(b) and
11 28 U.S.C. § 1391(b).
- 12 3. The activities of defendants are in or affecting commerce, as defined in Section 4 of the
13 FTC Act, 15 U.S.C. § 44.
- 14 4. The complaint states a claim upon which relief may be granted against all defendants
15 under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and
16 57b, and the MTOR, 16 C.F.R. Part 435.
- 17 5. This Order does not constitute, and shall not be interpreted to constitute, either an
18 admission by defendants or a finding by the Court that defendants have engaged in any
19 violations of the FTC Act or the MTOR, 16 C.F.R. Part 435.
- 20 6. Defendants waive all rights to seek judicial review of, or otherwise challenge or contest
21 the validity of, this Order.
- 22 7. Defendants waive any rights that may arise under the Equal Access to Justice Act, 28
23 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
- 24 8. Entry of this Order is in the public interest.

25 **ORDER**

26 **Definitions**

- 27 (1) **“Person”** means any individual, group, unincorporated association, limited or general
28 partnership, corporation or other business entity.

1 (2) **“Consumer”** and **“Customer”** includes any person, as defined above.

2 (3) **“Defendants”** means Bargains & Deals Magazine, LLC, also d/b/a Bargains & Deals
3 Wholesale, and Michael P. Casey, and each of them, by whatever names each might be
4 known, as well as their successors, assigns, officers, agents, directors, servants, employees,
5 salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, all other
6 persons or entities directly or indirectly under their control or under common control with them,
7 and all other persons or entities in active concert or participation with them who receive actual
8 notice of this Order by personal service or otherwise, whether acting directly or through any
9 corporation, subsidiary, division or other device.

10 (4) **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal
11 Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs,
12 audio and video recordings, computer records, and other data compilations from which
13 information can be obtained and translated, if necessary, through detection devices into
14 reasonably usable form. A draft or non-identical copy is a separate document within the
15 meaning of the term.

16 (5) **“Employment”** includes the performance of services as an employee, consultant or
17 independent contractor; and **“Employers”** includes any individual or entity for whom
18 defendant Michael P. Casey performs services as an employee, consultant or independent
19 contractor.

20 I. PROHIBITED BUSINESS ACTIVITIES

21 **IT IS THEREFORE ORDERED** that defendants are hereby permanently restrained and
22 enjoined from:

23 A. In connection with the sale or offering for sale of any product or service, making
24 misrepresentations or assisting others in making misrepresentations, either orally or in writing, expressly
25 or by implication, concerning any material fact, including, but not limited to, the following:

- 26 1. Defendants have in their possession or under their control goods or services
27 available to be purchased;

2. Defendants will ship goods or provide services, within a reasonable time period or within a specified time period, upon receipt of payment for those goods or services;
3. Defendants have shipped goods upon receipt of payment for those goods;
4. Goods that defendants offer for sale or sell are in new condition; and
5. Goods that defendants offer for sale or sell have designer or famous brand names; and

B. Violating or assisting others in violating any provision of the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435, including, but not limited to:

1. Soliciting orders for the purchase of goods without a reasonable basis for believing that they can ship the goods within the time stated in the solicitation or, if no time is stated, within thirty (30) days of the solicitation, as required by 16 C.F.R. § 435.1(a)(1);
2. Failing to give consumers who have ordered goods from defendants the option to accept a delay or cancel the order upon defendants' discovery that they are unable to ship within the stated time period or within thirty (30) days if no period was stated, as required by 16 C.F.R. § 435.1(b)(1); and
3. Failing to deem an order canceled and make a prompt refund, as required by 16 C.F.R. § 435.1(c), where defendants have not timely shipped merchandise and have failed to give a delay or cancellation option.

II. MONITORING BY DEFENDANTS OF EMPLOYEES

IT IS FURTHER ORDERED that defendants, in connection with any business where: (1) any defendant is a majority owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged in, or assists others in engaging in, the offering for sale or sale of any product or service over the Internet, 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 I of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with

1 customers, and shall also include, at a minimum, the following: (1) Adequately monitoring the oral
2 representations made by persons engaged in sales or other customer service functions; (2) establishing
3 a procedure for receiving and responding to customer complaints; and (3) maintaining a record of the
4 number and nature of customer complaints regarding transactions in which each employee or
5 independent contractor is involved; *provided* that this Paragraph does not authorize or require any
6 defendant to take any steps that violate any federal, state or local law;

7 B. Failing to investigate promptly and fully any customer complaint received by any
8 business to which this Paragraph applies; and

9 C. Failing to take corrective action with respect to any sales person whom any defendant
10 determines is not complying with this Order, which may include training, disciplining, and/or terminating
11 such sales person.

12 III. MONITORING BY DEFENDANTS OF SUPPLIERS

13 **IT IS FURTHER ORDERED** that defendants, in connection with any business where: (1)
14 any defendant is a majority owner of the business or directly or indirectly manages or controls the
15 business; and (2) the business is engaged in, or assists others in engaging in, the offering for sale or sale
16 of any product or service over the Internet, are hereby permanently restrained and enjoined from:

17 A. Failing to take reasonable steps to monitor and ensure that all suppliers engaged in
18 fulfilling orders for defendants' customers are able to fulfill orders of the type, quality, and in the
19 condition represented to customers by defendants;

20 B. Failing to take reasonable steps to monitor and ensure that all suppliers engaged in
21 fulfilling orders for defendants' customers are able to fulfill orders in a timely fashion. Such steps shall
22 include, at a minimum, establishing a procedure for ensuring that suppliers ship merchandise to
23 defendants' customers within the time represented by defendants or, if no specific time is represented
24 by defendants, within thirty (30) days of defendants' receipt of payment from consumers; and

25 C. Failing to take corrective action with respect to any supplier whom any defendant
26 determines: (1) is not shipping merchandise within the time represented to customers by defendants or
27 within thirty (30) days of defendants' receipt of payment from consumers; or (2) is not shipping
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1 merchandise of the type, quality, and in the condition represented to customers by defendants. Such
2 action may include terminating such suppliers.

3 **IV. CONSUMER REDRESS**

4 **IT IS FURTHER ORDERED** that:

5 A. Defendants shall pay to the FTC consumer redress in the amount of \$15,000.00, for
6 which they are jointly and severally liable, within ten (10) days of the entry of this Order. Payment shall
7 be made to the FTC by certified check or other guaranteed funds payable to and delivered to the FTC,
8 or by wire transfer in accord with directions provided by the FTC;

9 B. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by
10 the Commission or its agent to be used for equitable relief, including but not limited to consumer redress
11 and any attendant expenses for the administration of any redress fund. In the event that direct redress
12 to consumers is wholly or partially impracticable or funds remain after redress is completed, the
13 Commission may apply any remaining funds for such other equitable relief (including consumer
14 information remedies) as it determines to be reasonably related to the defendants' practices alleged in
15 the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as
16 disgorgement. The Commission shall have full and sole discretion to:

- 17 1. Determine the criteria for participation by individual claimants in any consumer
18 redress program implemented pursuant to this Order;
- 19 2. Determine the manner and timing of any notices to be given to consumers
20 regarding the existence and terms of such programs; and
- 21 3. Delegate any and all tasks connected with such redress program to any
22 individual, partnerships, or corporations; and pay reasonable fees, salaries, and
23 expenses incurred thereby from the payments made pursuant to this Order;

24 C. Defendants expressly waive their rights to litigate the issue of disgorgement. Defendants
25 acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to the
26 Commission for purposes of settlement between plaintiff and defendants;

27 D. In the event that defendants default on the \$15,000.00 payment set forth in Paragraph
28 IV.A, the amount of \$15,000.00, less the sum of payments made pursuant to Paragraph IV.A, shall

1 become immediately due and payable by defendants, and interest computed at the rate prescribed
2 under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance; and

3 E. No portion of this Judgment for equitable relief shall be deemed a fine, penalty or
4 punitive assessment, or forfeiture. Defendants shall have no right to challenge the Commission's choice
5 of remedies under this Paragraph.

6 **V. RIGHT TO REOPEN**

7 **IT IS FURTHER ORDERED** that by agreeing to this Order, defendants reaffirm and attest
8 to the truthfulness, accuracy, and completeness of the financial statements dated October 24, 2001
9 (designated the "Financial Statements"). The Commission's agreement to this Order is expressly
10 premised upon the truthfulness, accuracy, and completeness of the defendants' financial condition as
11 represented in the Financial Statements referenced above, which contain material information upon
12 which the Commission relied in negotiating and agreeing to the terms of this Order, including the
13 monetary redress provided for by this Order. If, upon motion by the Commission, this Court finds that
14 any defendant failed to disclose any material asset, materially misrepresented the value of any asset, or
15 made any other material misrepresentation in or omission in the above-referenced Financial Statements
16 and information, the Court shall enter judgment against such defendant, in favor of the Commission, in
17 the amount of \$68,600.00, immediately due and payable, less any payment already made. *Provided,*
18 *however,* that in all other respects, this Order shall remain in full force and effect unless otherwise
19 ordered by this Court; and *provided further,* that proceedings instituted under this Paragraph are in
20 addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including
21 any other proceedings the Commission may initiate to enforce this Order. For purposes of this
22 Paragraph V, each defendant waives any right to contest any of the allegations in the original complaint
23 filed in this matter.

24 **VI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

25 **IT IS FURTHER ORDERED** that within five (5) business days after receipt of this Order as
26 entered by the Court, defendant Michael P. Casey shall submit to the Commission a truthful sworn and
27 notarized statement, in the form shown on Appendix A, that shall acknowledge receipt of this Final
28 Order as entered.

1 **VII. COMPLIANCE REPORTING BY DEFENDANTS**

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

4 A. For a period of three (3) years from the date of entry of this Order, defendants shall
5 notify the Commission of the following:

6 1. Any changes in the individual defendant's residence and the defendants' mailing
7 addresses and telephone numbers, within ten (10) days of the date of such change;

8 2. Any changes in the individual defendant's employment status (including self-
9 employment) within ten (10) days of such change, where such employment relates to or
10 involves the offering for sale or sale of any product or service over the Internet. Such
11 notice shall include the name, mailing and physical location addresses, and telephone
12 number of each such business that the defendant is affiliated with or employed by, a
13 statement of the nature of the business, and a statement of the duties and responsibilities
14 in connection with the business or employment;

15 3. Any proposed change in the structure of the corporate defendant or any
16 business entity engaged in the offering for sale or sale of any product or service over the
17 Internet that is owned or controlled by defendant Michael P. Casey, such as creation,
18 incorporation, dissolution, assignment, sale, merger, creation or dissolution of
19 subsidiaries or any other change that may affect compliance obligations arising out of
20 this Order, ten (10) days prior to the effective date of any proposed change; *provided,*
21 *however,* that with respect to any proposed change in a business entity of which either
22 defendant learns less than ten (10) days prior to the date such action is to take place,
23 the defendant shall notify the Commission as soon as is practicable after learning of such
24 proposed change;

25 B. One hundred eighty (180) days after the date of entry of this Order, defendants shall
26 provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner
27 and form in which they have complied and are complying with this Order. This report shall include but
28 not be limited to:

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1. The individual defendant’s current residential address and telephone number;
2. Identification of the individual defendant’s current employer, the employer’s mailing and physical location addresses and telephone numbers, a description of the business activities of each such employer, and defendants’ title and responsibilities for each employer;
3. A copy of each acknowledgment of receipt of this Order obtained by the defendants pursuant to Paragraph XI; and
4. A statement describing the manner in which the defendants have complied and are complying with this Order;

C. Upon written request by a representative of the Commission, defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days’ notice with respect to any conduct subject to this Order;

D. For the purposes of this Order, each defendant shall, unless otherwise directed by the Commission's authorized representatives, make all communications to the Commission to:
Federal Trade Commission

1 915 2nd Avenue, Room 2896
2 Seattle, WA 98174

3 Re: FTC v. Bargains & Deal Magazine, LLC, et al.

4 E. For purposes of compliance reporting required by this Paragraph, the Commission is
5 authorized to communicate directly with defendants.

6 **VIII. RECORD KEEPING**

7 **IT IS FURTHER ORDERED** that for a period of six (6) years from the date of entry of this
8 Order, in connection with any business where: (1) any defendant is the majority owner of the business
9 or directly or indirectly manages or controls the business; and (2) the business is engaged in, or assists
10 others who are engaged in, the offering for sale or sale of any product or service over the Internet,
11 defendants and their agents, employees, officers, corporations, successors, and assigns, and those
12 persons in active concert or participation with them who receive actual notice of this Order by personal
13 service or otherwise, are hereby restrained and enjoined from failing to create and retain the following
14 records:

15 A. Accounting records that reflect the cost of goods or services sold, revenues generated,
16 and the disbursement of such revenues;

17 B. Personnel records accurately reflecting: the name, address, and telephone number of
18 each person employed in any capacity by such business, including as an independent contractor; that
19 person's job title or position; the date upon which the person commenced work; and the date and
20 reason for the person's termination, if applicable;

21 C. Customer files containing the names, addresses, telephone numbers, dollar amounts
22 paid, quantity of items or services purchases, and description of items or services purchased, to the
23 extent such information is obtained in the ordinary course of business;

24 D. Complaint and refund requests (whether received directly, indirectly or through any
25 third party) and any responses to those complaints or requests; and

26 E. Copies of all sales scripts, training materials, advertisements, or other marketing
27 materials, including copies of all Internet web sites used for marketing products or services offered.

28 **IX. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

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

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

9 **XI. REQUIRED DISTRIBUTION OF ORDER BY DEFENDANTS**

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

12 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of
13 receipt of same from, each officer or director, each individual serving in a management capacity, all
14 personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether
15 designated as employees, consultants, independent contractors or otherwise, immediately upon
16 employing or retaining any such persons, for any business where: (1) any defendant is the majority
17 owner of the business or directly or indirectly manages or controls the business; and (2) the business is
18 engaged in or assists others who are in engaged in, the offering for sale or sale of any product or service
19 over the Internet; and

20 B. Maintain for a period of three (3) years after creation, and upon reasonable notice,
21 make available to representatives of the Commission, the original signed and dated acknowledgments
22 of the receipt of copies of this Order, as required by Paragraph XI.A. of this Order.

23 **XII. RETENTION OF JURISDICTION**

24 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for the
25 purpose of enabling any of the parties to this Order to apply to the Court at any time for such further
26 orders or directives as may be necessary or appropriate for the interpretation or modification of this
27 Order, for the enforcement of compliance therewith or the punishment of violations thereof.

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APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,
Plaintiff,

CIVIL ACTION NO. C01-1610P

v.

BARGAINS & DEALS MAGAZINE, LLC, a
Washington Limited Liability Company, also doing
business as BARGAINS & DEALS WHOLESALE and
KEITH'S WHOLESALE, and

AFFIDAVIT OF DEFENDANT

MICHAEL P. CASEY, individually and as the owner of
Bargains & Deals Magazine, LLC,

Defendants.

Michael P. Casey, being duly sworn, hereby states and affirms as follows:

1. My name is Michael P. Casey. My current residence address is
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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 a defendant in FTC v. Bargains & Deals Magazine, LLC., et al. (United States District Court for the Western District of Washington).

1 3. On _____, 2002, I received a copy of the Stipulated Final Judgment
2 and Order for Permanent Injunction, which was signed by the Honorable Marsha J. Pechman and entered by
3 the Court on _____[date of entry of the Order]. A true and
4 correct copy of the Order I received is appended to this Affidavit. The parties acknowledge that the Federal
5 Trade Commission is bound by the provisions of Section 21 of the Federal Trade Commission Act, 15 U.S.C.
6 § 57b-2, regarding the confidentiality of documentary materials.

7 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
8 correct. Executed on _____, 2002, at
9 _____[city, state].

10
11 SWORN BEFORE ME at _____,)
12 _____, U.S.A., this ____ day of _____)
13 _____, 200__)
14 _____)
15 _____)

MICHAEL P. CASEY

16 A Notary Public in and for the
17 State of _____, U.S.A.

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19 My Commission expires: _____
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