



## **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and over Defendant Susan B. Germek. Venue is proper in the Northern District of Illinois under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

2. The Complaint states a claim upon which relief may be granted against Defendant Susan B. Germek under 15 U.S.C. §§ 45(a), 53(b) and 57b, and Sections 435.1(a)(1), 435.1(b)(1) and 435.1(c) of the Commission's Mail and Telephone Order Merchandise Rule, 16 C.F.R. §§ 435.1(a)(1), 435.1(b)(1), and 435.1(c).

3. The Commission has the authority under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, to seek the relief it has requested.

4. The activities of Defendant Susan B. Germek in the Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. Defendant Susan B. Germek admits the factual allegations in the Complaint but has not admitted liability for the charges in the Complaint.

6. Defendant Susan B. Germek waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant Germek also waives any claim that she 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. Each settling party shall bear its own costs and attorneys' fees.

7. Entry of this Order is in the public interest.

## **DEFINITIONS**

1. "Defendant" means Susan B. Germek.

2. "Document" is synonymous in meaning and equal in scope to the term, as defined 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 this term.

3. An "Internet auction Web site" is an online forum that facilitates communications between would-be buyers and sellers of merchandise. Sellers use the Internet auction Web site to advertise the merchandise they seek to sell. Auctions are conducted on the Internet auction Web site with would-be buyers sending bids through electronic mail to the web site. Buyers "win" by submitting the highest bid before the auction concludes. At the conclusion of the auction, buyers and sellers typically communicate with each other via electronic mail about the terms of payment and delivery. Once the terms are agreed upon, the buyer sends the payment to the seller, usually in the form of a personal check or money order, and the seller ships the merchandise to the buyer.

## **ORDER**

### **I. BAN ON PARTICIPATING IN INTERNET AUCTIONS**

**IT IS THEREFORE ORDERED** that Defendant Susan B. Germek, and each of her agents, servants or employees, and those persons in active concert or participation with her who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, is hereby permanently restrained and enjoined from engaging or participating in Internet auction Web sites.

### **II. BAN ON MISREPRESENTATIONS**

**IT IS FURTHER ORDERED** that, in connection with the sale or offering for sale of any goods or services via the Internet, Defendant is hereby restrained and enjoined from:

A. Making, or assisting others in making, either expressly or by implication, orally or in writing, any false or misleading statement or representation, including but not limited to the following:

1. Defendant has in her possession or under her control goods or services available to be purchased;
2. Defendant will ship goods or provide services, within a reasonable time period, upon receipt of payment for those goods or services;
3. Defendant has shipped goods upon receipt of payment for those goods;

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

1. Soliciting orders for the purchase of goods via the Internet 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 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 Defendant the option to accept a delay or cancel the order upon Defendant's discovery that she is unable to ship within the stated time period or within thirty days if no period was stated, as required by 16 C.F.R. § 435.1(b)(1);
3. Failing to deem an order canceled and provide a refund, where Defendant has failed to give a delay or cancellation option as required by 16 C.F.R. § 435.1(c);

C. Using any fictitious, false, or assumed title or name, other than her own proper name, or otherwise misrepresenting her true identity in the course of business dealings or in publicly filed documents.

### **III. BAN ON MISAPPROPRIATION OF CONSUMERS' PERSONAL INFORMATION**

**IT IS FURTHER ORDERED** that in connection with the advertising, promotion, offering for sale of goods or services in commerce, Defendant, and any agent, servant, employee, salesperson, affiliate, successor, and any other person or entity in active concert or participation

with Defendant who receives actual notice of this Order, is hereby restrained and enjoined from using consumers' personal information without their authorization.

#### **IV. PROHIBITION AGAINST DISTRIBUTION OF CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that Defendant, and her officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with her who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other information of any person who submitted information in conjunction with Defendant's business practices, *provided, however*, that Defendant may disclose such information to a law enforcement agency, to Plaintiff, or as required by any law, regulation, or court order.

#### **V. MONETARY RELIEF**

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered against Defendant Susan B. Germek in the amount of forty one thousand one hundred eighty six dollars and ninety four cents (\$41,186.94); *provided, however*, that this judgment shall be suspended (1) subject to the liquidation and disposition of the assets as set forth in Subsection B of this Section; and (2) as long as the Court makes no finding, as provided in Section VI of this Order, that Defendant has materially misrepresented or omitted the nature, existence or value of any asset;

B. Defendant shall forever waive, release, discharge and disclaim all right, title and interest in the money contained in the following bank accounts, and all rights to this money shall be assigned and transferred to the Commission:

- Savings account number 100410232 with the George Washington Savings Bank in Oak Lawn, Illinois held in the name of Susan Germek (approximately \$1,030.29);

- Passbook savings account number 6100028 with the United Trust Bank in Bridgeview, Illinois held in the name of Angela M. Sink (approximately \$1,534.58);
- Checking account number 302115212 with Archer Bank in Chicago, Illinois held in the name of Angela Sink (approximately \$3,108.31);
- Account angie134679@aol.com with PayPal held in the name of Angela Sink (approximately \$40.41).

C. Any and all funds paid pursuant to Subsections A and B of this Section shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Subsection;

D. Defendant is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission her Social Security numbers and/or taxpayer identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order;

E. Defendant further agrees that the facts as alleged in the Complaint shall be taken as true in the event of any subsequent litigation to enforce this Order or to collect amounts due pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding; and

F. The judgment entered and all funds paid pursuant to this Section constitutes equitable monetary relief, solely remedial in nature, and is not a fine, penalty, punitive assessment or forfeiture.

## **VI. RIGHT TO REOPEN: ACCURACY OF FINANCIAL STATEMENTS**

**IT IS FURTHER ORDERED** that, within five (5) business days after entry of this Order, Defendant shall submit to the Commission two truthful sworn statements, in the forms shown in Appendix A and B hereto, that shall acknowledge receipt of this Order and shall reaffirm and attest to the truthfulness, accuracy and completeness of the financial statement submitted to the Commission by Defendant Susan Germek dated May 20, 2003.

The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of such financial statement. If, upon motion by the Commission, the Court finds that the financial statement contains any material misrepresentation or omission, the suspended judgment entered in Subsection A of Section V of this Order shall become immediately due and payable by Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance; *provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including but not limited to contempt proceedings, or any other proceedings that the Commission or the United States may initiate to enforce this Order. For purposes of this Section, Defendant waives any right to contest any of the allegations in the Complaint.

## **VII. LIFTING OF THE ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze against the assets of Defendant ordered by the Court on April 16, 2003, and extended thereafter, shall be extinguished upon execution of Section V and submission of the sworn statement required by Section VI of this Order, as entered by the Court, and thereupon shall be lifted permanently.

### **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 Order, Defendant shall:

A. Provide a copy of this 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, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where: (1) the Defendant is the majority owner of the business or directly or indirectly manages or controls the business and (2) where the business involves the advertising, marketing, sale or offering for sale of any good or service via the Internet; and

B. 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 required in Subsection A of this Section.

### **IX. MONITORING BY DEFENDANT**

**IT IS FURTHER ORDERED** that, in connection with any business where the Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the advertising, marketing, sale or offering for sale of any good or service via the Internet, the Defendant is 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 Sections I-IV of this Stipulated Order;

B. Failing to investigate promptly and fully any consumer complaint received by any business to which this Section applies; and



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

#### **X. RECORD KEEPING**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, in connection with any business where the Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the advertising, marketing, sale or offering for sale of any good or service via the Internet, Defendant is 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, telephone 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 refund requests; and

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

## **XI. COMPLIANCE REPORTING BY DEFENDANT**

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

A. For a period of five (5) years from the date of entry of this Order, Defendant shall notify the Commission of the following:

- (1) Any changes in any of the Defendant's residence, mailing address, or telephone numbers, within ten (10) days of the date of such change;
- (2) Any changes in any Defendant's employment status (including self-employment) within ten (10) 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 the Defendant's duties and responsibilities in connection with the business or employment; and
- (3) Any proposed change in the structure of any business entity owned or controlled by any Defendant, such as the creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that could affect compliance obligations arising out of this Stipulated 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 Order, Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which that Defendant has complied and is complying with this Order. This report shall include, but not be limited to:

- (1) Defendant's current residence address and telephone number;

- (2) Defendant's current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant's titles and responsibilities for each employer;
- (3) A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Section VIII; and
- (4) A statement describing the manner in which Defendant has complied and is complying with Sections I-V of this Stipulated Order;

C. Upon written request by a representative of the Commission, Defendant shall submit additional written reports (under oath, if requested) and shall respond to any reasonable request to produce documents with respect to any conduct subject to this Order, within thirty (30) days from the date the request was received;

D. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Federal Trade Commission  
Midwest Region, Regional Director  
55 East Monroe Street, Suite 1860  
Chicago, Illinois 60603  
Re: FTC v. Thompson, et al.;

E. For the purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom any Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendant, unless represented by counsel.

## **XII. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

**IT IS FURTHER ORDERED** that the Commission is authorized to monitor Defendant's compliance with this Stipulated 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 any Defendant, any Defendant's employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

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 Stipulated Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

## **XIII. ACCESS TO BUSINESS PREMISES**

**IT IS FURTHER ORDERED** that, for a period of five (5) 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 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 any business in which Defendant is the majority owner or directly or indirectly manages or controls the business, and where the business involves the advertising, marketing, sale, or offering for sale of any good or service via the Internet. In providing such access, Defendant shall permit representatives of the Commission to inspect and

copy all documents relevant to any matter contained in this Stipulated Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Stipulated 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 subparagraph A of this Section XIII applies, concerning matters relating to compliance with the terms of this Order. The persons interviewed may have counsel present.

**XIV. RETENTION OF JURISDICTION**

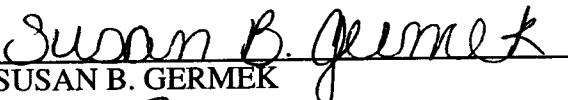
**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction over this matter for all purposes.

The parties agree and stipulate to entry of the foregoing Stipulated Order, which shall constitute a final judgment in this action.

Dated: 8/6/03

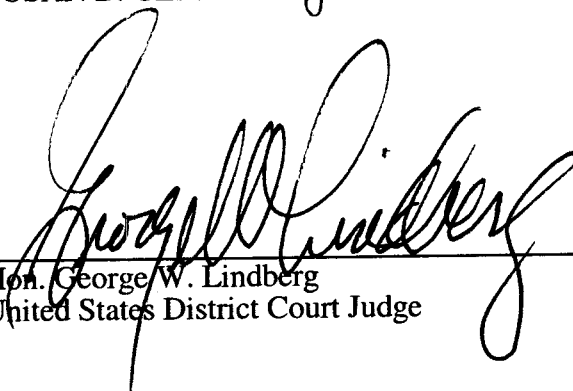
  
STEVEN M. WERNIKOFF  
Attorney for Federal Trade Commission

Dated: 5/29/03

  
SUSAN B. GERMEK

**IT IS SO ORDERED.**

Dated: AUG 13 2003

  
Hon. George W. Lindberg  
United States District Court Judge



APPENDIX B

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JAMES D. THOMPSON and  
SUSAN B. GERMEK,

Defendants.

Case No. 03 C 2541

Judge George W. Lindberg

Magistrate Judge Morton Denlow

**AFFIDAVIT OF SUSAN B. GERMEK**

I, Susan B. Germek, being duly sworn, hereby state and affirm as follows:

1. My name is Susan B. Germek. My current residence address is \_\_\_\_\_ . I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in *FTC v. Thompson, et al.*, Case No. 03 C 2541 (N.D. Ill. 2003).

3. On \_\_\_\_\_, I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress which was signed by the Honorable George W. Lindberg, 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 \_\_\_\_\_ .

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: