

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOHN STEFANCHIK, individually and as an officer and director of Beringer Corporation,

SCOTT B. CHRISTENSEN, individually and as an officer and director of Atlas Marketing, Inc.,

BERINGER CORPORATION, dba The Stefanchik Organization, a Washington corporation, and

ATLAS MARKETING, INC., also dba The Stefanchik Organization, a Nevada Corporation,

Defendants.

CIVIL ACTION NO.: CV04-1852RSM

**AMENDED PRELIMINARY  
INJUNCTION AND ORDER FOR  
OTHER EQUITABLE RELIEF AS TO  
DEFENDANTS JOHN STEFANCHIK  
AND THE BERINGER  
CORPORATION**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), has filed a Complaint for permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging defendants John Stefanchik, Scott B. Christensen, Beringer Corporation, and Atlas Marketing, Inc., doing business collectively as “The Stefanchik Organization,” with deceptive acts and practices in connection with the direct mail and

1 Internet marketing and telemarketing of course materials, in-person workshops, videotapes, audio  
2 tapes and other products and services that purport to teach consumers how to make money  
3 brokering, purchasing, and/or reselling privately held mortgages or promissory notes that are  
4 secured by real property. The Commission's Complaint alleges that these defendants' deceptive  
5 acts and practices violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a),  
6 and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR" or "Rule"),  
7 16 C.F.R. Part 310, as amended.

8 The Commission also has filed a Motion for a Preliminary Injunction and Other Equitable  
9 Relief ("Motion") against defendants John Stefanchik, Scott B. Christensen, Beringer  
10 Corporation, and Atlas Marketing, Inc., seeking preliminary relief in connection with the acts and  
11 practices alleged in the Complaint. Since then, defendants Scott B. Christensen and Atlas  
12 Marketing, Inc., stipulated to a preliminary injunction, which the Court entered on October 20,  
13 2004, and a hearing was held on December 9, 2004, to determine whether a preliminary injunction  
14 should be entered against the remaining defendants, John Stefanchik and Beringer Corporation  
15 (hereinafter "Defendants").

16 The Court, being advised in the premises, finds as follows:

## 18 FINDINGS

19 1. This is an action by the Commission instituted under Sections 13(b) and 19 of the  
20 FTC Act, 15 U.S.C. §§ 53(b) and 57b. Pursuant to this section, the Commission has the authority  
21 to seek the relief contained herein.

22 2. The Commission's Complaint states claims upon which relief may be granted  
23 against Defendants under Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act  
24 ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Telemarketing and Consumer Fraud  
25 and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*

26 3. This Court has jurisdiction over the subject matter of this case and all parties  
27 hereto. Venue in the Western District of Washington is proper.

1           4.       The acts and practices of the Defendants are in or affecting commerce, as defined  
2 in Section 4 of the FTC Act, 15 U.S.C. § 44.

3           5.       This Court has the authority to grant a preliminary injunction and other  
4 appropriate relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) and Rule 65 of the  
5 Federal Rules of Civil Procedure. FTC v. Gem Merch. Corp., 87 F.3d 466, 468-69 (11<sup>th</sup> Cir.  
6 1996); FTC v. World Travel Vacation Brokers, Inc., 861 F.2d 1020, 1025-26 (7<sup>th</sup> Cir. 1988).

7           6.       Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the issuance of such  
8 preliminary relief upon a proper showing that, weighing the equities and considering the  
9 Commission’s likelihood of ultimate success, such action would be in the public interest.

10          7.       Section 5(a) of the FTC Act prohibits deceptive acts and practices in or affecting  
11 commerce. To be deceptive, an act or practice must be one that is likely to mislead consumers  
12 acting reasonably under the circumstances, and is material. FTC v. Pantron I Corp., 33 F.3d  
13 1088, 1095 (9<sup>th</sup> Cir. 1994), *citing* Cliffdale Assocs., Inc., 103 F.T.C. 110, 164-65 (1984).

14          8.       The Telemarketing Sales Rule prohibits telemarketers and sellers from  
15 misrepresenting directly or by implication, any material aspect of the performance, efficacy, nature  
16 or central characteristics of goods or services that are the subject of a sales offer,  
17 16 C.F.R. §310.3(a)(2)(iii), and from making a false or misleading statement to induce any person  
18 to pay for goods and services, 16 C.F.R. §310.3(a)(4).

19          9.       Defendants are “sellers” or “telemarketers” engaged in “telemarketing” as those  
20 terms are defined in the Telemarketing Sales Rule. 16 C.F.R. § 310.2(cc).

21          10.       The FTC has demonstrated a likelihood of success on the merits under Section  
22 5(a) of the FTC Act and under the TSR. As demonstrated by the excerpts taken from  
23 Defendants’ direct mail pieces, Internet web site, telemarketing scripts, and sworn consumer  
24 declarations, the Defendants have claimed that consumers who purchase Defendants’ products or  
25 services will quickly make large amounts of money in their spare time by learning and using the  
26 methods taught therein, and that Defendants’ personal coaching service is staffed by persons  
27 substantially experienced in the paper business who are readily available by telephone to assist  
28 consumers in finding and completing paper transactions. As demonstrated by the declarations of

1 consumers and Manoj Hastak, Ph.D., and the results of the survey Dr. Hastak has conducted of  
2 Defendants' purchasers, these claims are likely to be false and/or unsubstantiated and in violation  
3 of both Section 5(a) of the FTC Act and the TSR.

4 11. Weighing the equities and considering the FTC's likelihood of success, entry of  
5 this Preliminary Injunction and Order for Other Equitable Relief ("Order") is in the public interest.

## 6 7 **DEFINITIONS**

8 1. "**Defendants**" means John Stefanchik and Beringer Corporation, doing business  
9 collectively with the other defendants in this action as "The Stefanchik Organization," and each of  
10 them, by whatever names each might be known, as well as their successors and assigns, whether  
11 acting directly or through any corporation, subsidiary, division or other device.

12 2. "**Assisting others**" means knowingly providing any of the following goods or  
13 services to another entity: (1) performing customer service functions, including, but not limited to,  
14 receiving or responding to consumer complaints; (2) formulating or providing, or arranging for  
15 the formulation or provision of, any telephone sales script or any other marketing material; (3)  
16 providing names of, or assisting in the generation of, potential customers; (4) providing the  
17 fulfillment services for the marketing or sale of any product or service; or (5) performing  
18 marketing services of any kind.

19 3. "**Document**" is synonymous in meaning and equal in scope to the usage of the  
20 term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,  
21 photographs, audio and video recordings, computer records, and other data compilations from  
22 which information can be obtained and translated, if necessary, through detection devices into  
23 reasonably usable form. A draft or non-identical copy is a separate document within the meaning  
24 of the term.

25 4. "**Paper Business**" means the business of finding, brokering, creating, purchasing,  
26 and/or selling privately held mortgages or promissory notes that are secured by real property.

27 5. "**Person**" means any individual, group, unincorporated association, limited or  
28 general partnership, corporation or other business entity.



1 G. In connection with telemarketing, as defined in the Telemarketing Sales Rule,  
2 violating or assisting others to violate any provision of the Rule, including, but not limited to:

- 3 1. Misrepresenting, directly or by implication, any material aspect of the  
4 performance, efficacy, nature, or central characteristics of goods or  
5 services that are the subject of the sales offer, in violation of Section  
6 310.3(a)(2)(iii) of the Rule, 16 C.F.R. § 310.3(a)(2)(iii); and
- 7 2. Making a false or misleading statement to induce any person to pay for any  
8 good or service in violation of Section 310.3(a)(4) of the Rule, 16 C.F.R.  
9 § 310.3(a)(4).

## 10 11 **II. NOTICE OF CORPORATE OR PERSONAL ASSET TRANSACTIONS**

12 **IT IS FURTHER ORDERED** that Defendants and their officers, agents, directors,  
13 employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns, and  
14 all other persons or entities in active concert or participation with any of them who receive actual  
15 notice of this Order by personal service or otherwise, including by facsimile, are hereby restrained  
16 and enjoined from any transfer of any money or tangible or intangible assets or any expenditure  
17 with a value of over ten thousand dollars (\$10,000.00) from the date of entry of this Order,  
18 without disclosing to the Commission, at least five (5) business days prior to the transfer or  
19 expenditure, the purpose and recipient of such transfer or expenditure. The funds, property, and  
20 assets affected by this Part shall include both existing assets and assets acquired after the date of  
21 entry of this Order, including, without limitation, those acquired by loan or gift.

## 22 23 **III. PROHIBITED DISCLOSURE OF CONSUMER LISTS**

24 **IT IS FURTHER ORDERED** that Defendants and their officers, agents, directors,  
25 employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns, and  
26 all other persons or entities in active concert or participation with any of them who receive actual  
27 notice of this Order by personal service or otherwise, including by facsimile, are hereby restrained  
28 and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address,

1 telephone number, credit card number, bank account number, e-mail address, or other identifying  
2 information of any person who has paid any money to any Defendant in connection with  
3 promoting, offering for sale, selling, or participating in the sale of, directly or indirectly, any target  
4 product or service. *Provided*, however, that Defendants may disclose such identifying  
5 information to a law enforcement agency or as required by any law, regulation, or court order.  
6

#### 7 **IV. RECORD KEEPING/BUSINESS OPERATIONS**

8 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents, directors,  
9 employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns, and  
10 all other persons or entities in active concert or participation with any of them who receive actual  
11 notice of this Order by personal service or otherwise, including by facsimile, in connection with  
12 the advertising, promotion, marketing, offering for sale, or sale of any target product or service,  
13 are hereby restrained and enjoined from:

14 A. Failing to create and maintain documents that, in reasonable detail, accurately,  
15 fairly, and completely reflect the Defendants' incomes, disbursements, transactions, and use of  
16 money, beginning as of the date of entry of this Order;

17 B. Failing to make and keep books, records, accounts, bank statements, current  
18 accountants' reports, general ledgers, general journals, cash receipt ledgers, cash disbursement  
19 ledgers and source documents, documents indicating title to real or personal property, and any  
20 other documents or electronic data which, in reasonable detail, accurately and fairly reflect the  
21 transactions and dispositions of the assets of defendants;

22 C. Destroying, mutilating, concealing, altering, transferring, or otherwise disposing  
23 of, in any manner, any books, records, tapes, discs, accounting data, checks (fronts and backs),  
24 correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking  
25 records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or  
26 other documents of any kind, including information stored in computer-maintained form, in their  
27 possession, custody or control, and other documents or records of any kind that relate to the  
28 business practices or finances of the Defendants;

1 D. Failing to maintain complete records of any consumer complaints and disputes,  
2 whether coming from the consumer or any intermediary, such as a government agency or Better  
3 Business Bureau, and any responses made to those complaints or disputes; and

4 E. Creating, operating or exercising any control over any business entity, including  
5 any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without  
6 first providing the Commission with a written statement disclosing: (1) the name of the business  
7 entity; (2) the address and telephone number of the business entity; (3) the names of the business  
8 entity's officers, directors, principals, managers, and employees; and (4) a detailed description of  
9 the business entity's intended activities.

10  
11 **V. MONITORING COMPLIANCE OF SALES PERSONNEL**

12 **IT IS FURTHER ORDERED** that Defendants, in connection with any business where  
13 (1) a Defendant is the majority owner of the business or directly or indirectly manages or controls  
14 the business, and (2) the business is engaged in telemarketing or marketing or assisting others  
15 engaged in telemarketing or marketing of the target product or service, or seminar or other tool  
16 purported to teach consumers how to succeed in the paper business, are hereby restrained and  
17 enjoined from:

18 A. Failing to take reasonable steps sufficient to monitor and ensure that all employees  
19 and independent contractors engaged in sales or other customer service functions comply with  
20 Part I of this Order. Such steps shall include reviewing telemarketing scripts, adequate  
21 monitoring of sales presentations or other calls with customers and, shall also include, at a  
22 minimum, the following: (1) listening to the oral representations made by persons engaged in sales  
23 or other customer service functions; (2) establishing a procedure for receiving and responding to  
24 consumer complaints; and (3) ascertaining the number and nature of consumer complaints  
25 regarding transactions in which each employee or independent contractor is involved; *provided*  
26 that this Part does not authorize or require the Defendants to take any steps that violate any  
27 federal, state, or local laws;

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

3 C. Failing to take corrective action with respect to any sales person whom Defendants  
4 determine is not complying with this Order, which may include training, disciplining, and/or  
5 terminating such sales person.

6  
7 **VI. DISTRIBUTION OF ORDER BY DEFENDANTS**

8 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this  
9 Order to each affiliate, partner, subsidiary, division, sales entity, successor, assign, officer,  
10 director, employee, independent contractor, agent, attorney, fulfillment house, call center, and  
11 representative of the Defendants, and within ten (10) calendar days following service of this Order  
12 by the Commission, shall serve upon Nadine Samter, Esq., 915 Second Avenue, Suite 2896,  
13 Seattle, WA 98174, an affidavit identifying the names, titles, addresses, and telephone numbers of  
14 the persons and entities that Defendants have served with a copy of this Order in compliance with  
15 this provision.

16  
17 **VII. SERVICE OF THIS ORDER BY PLAINTIFF**

18 **IT IS FURTHER ORDERED** that copies of this Order may be served by facsimile  
19 transmission, personal or overnight delivery, or U.S. Mail, by agents and employees of the  
20 Commission or any state or federal law enforcement agency, on (1) the Defendants, or (2) any  
21 other person or entity that may be subject to any provision of this Order. Service upon any  
22 branch or office of any entity shall effect service upon the entire entity.

23  
24 **VIII. RETENTION OF JURISDICTION**

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

