

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

FEDERAL TRADE COMMISSION,
STATES OF ILLINOIS, KANSAS,
MINNESOTA, and NORTH CAROLINA,

Plaintiffs,

v.

AFFILIATE STRATEGIES, INC., *et al.*

Defendants.

Case No. 5:09-CV-04104-JAR-KGS

**ORDER FOR PERMANENT
INJUNCTION AS TO DEFENDANT
MEGGIE CHAPMAN**

THIS CAUSE came before the Court upon the Plaintiffs' Federal Trade Commission ("FTC" or "Commission") and the States of Illinois, Kansas, Minnesota, and North Carolina ("Plaintiffs") claim against Defendant Meggie Chapman. Following a bench trial on the merits on August 22-23, 2011, the Court issued Findings of Fact and Conclusions of Law in favor of Plaintiffs and against Meggie Chapman on September 16, 2011 (Docket No. 422). Based upon the Court's Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties hereto pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
2. Venue is proper in the District of Kansas as to all parties subject to this Order.
3. The activities of Defendant Chapman are in or affecting commerce, as defined in the FTC

Act, 15 U.S.C. § 44.

4. The Second Amended Complaint states a claim upon which relief may be granted against Defendant Chapman under the Telemarketing Sales Rule, 16 C.F.R. Part 310.
5. Defendant Chapman has violated the Telemarketing Sales Rule, 16 C.F.R. §310.3(b) as alleged in Count V against Defendant Chapman contained in Plaintiffs' Second Amended Complaint.
6. Entry of this Order for Permanent Injunction ("Order") is in the public interest. It is also appropriate in light of Defendant Chapman's violation of the Telemarketing Sales Rule, 16 C.F.R. §310.3(b).

DEFINITIONS

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

1. "**Asset**" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, reserve funds, and cash, wherever located.
2. "**Assisting others**" includes, but is not limited to, 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 promotional material; (3) providing names of, or assisting in the generation of, potential customers; (4) performing promotional or marketing services of any kind; or (5) providing fulfillment services.

3. **“Clear and conspicuous”** statement, or a statement presented “clearly and conspicuously” means:
- a. in print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears;
 - b. in oral communications, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;
 - c. in communications made through an electronic medium (including but not limited to television, video, radio, and interactive media, including but not limited to the Internet, online services, and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means in which the communication is presented. In any communication disseminated by means of an interactive electronic medium, including but not limited to software, the Internet, or online services, a disclosure must be unavoidable and presented prior to the consumer incurring any financial obligation. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for an ordinary consumer to read and comprehend it; and
 - d. regardless of the medium used to disseminate it, the message shall be in

understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

4. **“Defendant”** refers to Meggie Chapman.
5. **“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, Internet sites, WebPages, Websites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and other data compilations from which information can be obtained and translated. A draft or non-identical copy is a separate document within the meaning of the term.
6. **“Money-Making Opportunity”** means any good or service represented to enable consumers or to assist consumers to earn income, or to obtain grants, monetary assistance, scholarships, employment, or business opportunities.
7. **“Negative Option Feature”** means, in an offer or agreement to sell or provide any product or service, a provision under which the consumer’s silence or failure to take an affirmative action to reject products or services or to cancel the agreement is interpreted by the seller or provider as acceptance of the offer. Offers or agreements with Negative Option Features include, but are not limited to: (i) free or introductory price trial offers

in which the consumer receives a product or service for free or at a nominal or introductory price for an initial period and will incur an obligation to pay or pay a greater amount for the product or service if he or she does not take affirmative action to cancel, reject, or return the product or service before the end of that period; (ii) continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and (iii) automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.

8. **“Plaintiffs”** means the Federal Trade Commission, and the States of Kansas, Minnesota, North Carolina, and Illinois.
9. **“Receiver”** means Larry E. Cook.
10. **“Receivership Defendants”** means Affiliate Strategies, Inc., Landmark Publishing Group, LLC (d/b/a G.F. Institute and Grant Funding Institute), Grant Writers Institute, LLC, Answer Customers, LLC, and Apex Holdings International, LLC.
11. **“Representatives”** shall have the same scope as Federal Rule of Civil Procedure 65(d)(2), and means Defendant's officers, agents, servants, employees, and attorneys, and any other person or entity in active concert or participation with them who receives actual notice of this Order by personal service or otherwise.
12. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call, whether or not covered by the Telemarketing Sales Rule.

13. **“Telemarketing Sales Rule”** means the FTC Rule entitled “Telemarketing Sales Rule,”
16 C.F.R. Part 310.

ORDER

I.

BAN ON PROVISION OF MONEY-MAKING OPPORTUNITIES TO INDIVIDUALS

IT IS THEREFORE ORDERED that Defendant, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, is hereby permanently restrained and enjoined from:

- A. Engaging or participating in advertising, promoting, telemarketing, offering for sale, selling or distributing to individuals any Money-Making Opportunities; and
- B. Assisting others engaged in advertising, promoting, telemarketing, offering for sale, selling or distributing to individuals any Money-Making Opportunities.

II.

PROHIBITION ON VIOLATION OF THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendant whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, is hereby permanently restrained and enjoined from:

- A. Engaging in or assisting others in engaging in violations of the Telemarketing Sales Rule by, including but not limited to:
 - 1. misrepresenting, directly or by implication, in the sale of goods or services any material information about the goods or services being sold;

2. failing to disclose truthfully and in a clear and conspicuous manner, before a customer pays for goods or services offered, material information related to the offer;
 3. making a false or misleading statement to induce any person to pay for goods or services; and
- B. If the Commission amends the Telemarketing Sales Rule, in whole or part, failing to comply fully and completely with all applicable requirements of the amended Rule, on and after the effective date of any such amended Rule.

III.

PROHIBITED REPRESENTATIONS

IT IS FURTHER ORDERED, to the extent not already prohibited by Section I above, that Defendant and her Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, specifically including but not limited to any Money-Making Opportunities, are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- B. The total costs to purchase, receive, or use, and the quantity of, the good or service;

- C. Any material restriction, limitation, or condition to purchase, receive, or use the good or service;
- D. Any material term, condition, or limitation, of any offer with a Negative Option Feature; and
- E. Any material aspect of the performance, efficacy, nature, or characteristics of the good or service.

IV.

SUBSTANTIATION

IT IS FURTHER ORDERED that Defendant and her Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any good or service, in or affecting commerce are hereby permanently restrained and enjoined from making, or assisting others in making, any representation, in any manner, expressly or by implication, including through the use of endorsements, about the performance or efficacy of the product or service unless the representation is true, non-misleading, and, at the time the representation is made, Defendant possesses and relies upon competent and reliable evidence that substantiates the representation.

V.

CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant and her Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which was obtained from any defendant to this action prior to entry of this Order in connection with the marketing and sale of grant-related goods and services; and
- B. Failing to dispose of such customer information in all forms in Defendant's possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purposes of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) business days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, which are true

and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
2. having their representatives pose as consumers and suppliers to Defendant, their 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. Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present. *Provided, however,* that 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 obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this

Order may be monitored:

- A. For a period of eight (8) years from the date of entry of this Order, Defendant shall notify the Commission of the following:
1. Any changes in her residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 2. Any changes in her employment status (including self-employment), and any change in her ownership of more than one percent of any business entity within ten (10) days of the date of such change. Such notice shall include the name and address of each business that she is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of her duties and responsibilities in connection with the business or employment; and
 3. Any changes in her name or use of any aliases or fictitious names within ten (10) days of the date of such change;
- B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of eight (8) years, Defendant shall provide a written report to the Commission, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which she has complied and is complying with this Order. This report shall include, but not be limited to:
1. Defendant's then-current residence address, mailing addresses, and telephone numbers;
 2. Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business

that the Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of the individual Defendant's duties and responsibilities in connection with the business or employment;

3. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
 4. Any other changes required to be reported under Subsection A of this Section.
- C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against Defendant within fourteen (14) days of filing.
- D. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
RE: *FTC v. Affiliate Strategies et al.*, *FTC case no. X090073*

Provided that, in lieu of overnight courier, Defendant may send such reports or notifications by first-class mail, but only if Defendant contemporaneously sends an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov.

- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant.

VIII.

RECORDKEEPING

IT IS FURTHER ORDERED that, for a period of eleven (11) years from the date of entry of this Order, in connection with the sale of any Money-Making Opportunity, Defendant, for any business for which she is the majority owner or directly or indirectly controls, 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. Personnel 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. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and

“Acknowledgment of Receipt of Order” and all reports submitted to the Commission pursuant to the Section titled “Compliance Reporting.”

IX.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant shall deliver copies of the Order as directed below:

- A. Defendant as control person: For any business that Defendant controls, directly or indirectly, or in which she has a majority ownership interest, Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in the sale of any Money-Making Opportunity; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled “Compliance Reporting.” For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled “Compliance Reporting,” delivery shall be at least ten (10) days prior to the change in structure.
- B. Defendant as employee or non-control person: For any business where Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, she must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

- C. Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

X.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI.

SEVERABILITY

IT IS FURTHER ORDERED that if any provision in this Order is determined to be void or unenforceable as to any Defendant, then as to that Defendant that provision shall be deemed severable from the remaining provisions of this Order, which shall remain in full force and effect.

XII.

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.

Dated: September 26, 2011

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE