

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEDERAL TRADE COMMISSION, Plaintiff,

v.

SOUTHWEST MARKETING CONCEPTS, INC., a corporation d/b/a *The Journal and The Journal - The Voice of Law Enforcement* and

**STEPHEN T. INMON, individually and as an officer of the corporation,
Defendants.**

CIVIL ACTION NO.H-97-1070

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

Plaintiff, the Federal Trade Commission ("Commission"), filed its complaint pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging Defendants, Southwest Marketing Concepts, Inc. and Stephen T. Inmon, with violations of Section 5 of the FTC Act, 15 U.S.C. § 45. On April 1, 1997, this Court granted the Commission's Motion for a Temporary Restraining Order with Asset Freeze, Appointment of a Temporary Receiver, and Other Equitable Relief, and ordered Defendants to show cause why a preliminary injunction should not issue against them. Following an evidentiary hearing, the Court granted a preliminary injunction on April 16, 1997.

Defendants and the Commission have agreed to entry of a Final Judgment and Order for Permanent Injunction and Monetary Relief ("Final Judgment") by this Court in order to resolve all matters in dispute in this action. Defendants, while not admitting liability, have consented to the entry of the Final Judgment without trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and the Defendants, having requested the Court to enter this Final Judgment, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

A. This Court has jurisdiction of the subject matter of this action and has jurisdiction of each of the Defendants. Venue in the Southern District of Texas is proper, and the Complaint states a claim upon which relief may be granted against Defendants under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b);

B. The activities of the Defendants are in or affecting commerce as defined in 15 U.S.C. § 44;

C. Defendants, while not admitting any of the allegations of wrongdoing set forth in the Complaint, offer no opposition to the entry of this Final Judgment;

D. Each of the Defendants has waived all rights to seek appellate review or otherwise challenge or contest the validity of this Final Judgment; and

E. Entry of this Final Judgment is in the public interest.

DEFINITIONS

For purposes of this Final Judgment, the following definitions shall apply:

A. "Defendants" means Southwest Marketing Concepts, Inc., and Stephen T. Inmon and their officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

B. "Document" is synonymous in meaning and equal in scope to the usage of the term in Rule 34(a), Federal Rules of Civil Procedure, and includes writings, drawings, graphs, charts, internet sites, 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.

C. "Person" means a natural person, group, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

D. A Telemarketing activity@ means a plan, program, or campaign that is conducted to induce the purchase of any product or service or the giving of any donation or other payment by use of one or more telephones.

I.

IT IS THEREFORE ORDERED that:

A. Defendants, in connection with the offering for sale, sale, distribution, promotion, marketing, or sponsorship of any publication or advertising in any publication, or the collection of payment therefor, are hereby restrained and enjoined from:

1. Making, or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation, including but not limited to:

a. Any misrepresentation concerning the distribution of any publication, the cost of any publication or the advertising in any publication, or the utilization of the proceeds from the sale of any publication or the advertising in any publication;

b. Any misrepresentation concerning any person's obligation to make payment for any publication or the advertising in any publication; and

c. Any misrepresentation concerning Defendants' affiliation with a governmental, charitable, or civic organization or its members; and

2. Failing to include, in a clear and conspicuous manner, in each oral or written communication by Defendants to each potential or current customer or advertiser prior to closing a sale, the following affirmative disclosure, if such is the case:

[Name of publication] is a for-profit company that does not target or serve any particular locale and is not affiliated with any charitable, governmental, law enforcement or other non-profit organization or agency. Payments are not a donation or contribution to any such organization or agency.

B. Defendants, in connection with any solicitation or collection of any donation or other payment purported to benefit any charitable purpose, including any governmental or civic organization, personnel, or program, are hereby restrained and enjoined from making, or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation, including but not limited to:

1. Any misrepresentation concerning Defendants' affiliation with a governmental, charitable, or civic organization or its members; and
2. Any misrepresentation concerning any person's obligation to make any donation or payment.

C. Defendants, in connection with any telemarketing activity, are hereby restrained and enjoined from making, or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation concerning any fact material to a consumer's decision to purchase any product or service or to make a charitable donation.

II.

IT IS FURTHER ORDERED that judgment is hereby entered against Defendants in the amount of FORTY THOUSAND DOLLARS (\$40,000) as disgorgement, which shall be deposited into the United States Treasury. Defendants are jointly and severally responsible for paying this judgment. This payment shall be made in the following manner:

A. Prior to or concurrently with the execution of this Final Judgment, the Defendants shall transfer FIFTEEN THOUSAND DOLLARS (\$15,000) to their attorney, who shall hold it in escrow until the entry of this Final Judgment. Within ten (10) days of the date of entry of this Final Judgment, the Defendants' attorney shall transfer the escrowed amount in the form of a wire transfer to an account designated by the Commission or of certified or cashier's check made payable to the Federal Trade Commission, or such agent as the Commission may direct, in its sole discretion. Such check shall be delivered to the Regional Director, Dallas Regional Office, Federal Trade Commission, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201;

B. The Defendants shall pay the remaining TWENTY-FIVE THOUSAND DOLLARS (\$25,000) in the form of wire transfers to an account designated by the Commission or of

certified or cashier's checks made payable to the Federal Trade Commission, in four equal installments of SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$6,250), the first such payment to be made on the first day of the sixth month following the date of entry of this Final Judgment, and subsequent payments to be made on the first day of every sixth month thereafter, until all four payments are made. All checks shall be delivered to the Regional Director, Dallas Regional Office, Federal Trade Commission, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201;

C. Time is of the essence for the payment specified above. In the event that the Defendants, or any of them, do not fulfill, or only partially fulfill, the payment obligations set forth in this Paragraph, they shall be immediately liable for payment of the entire amount due, together with interest, as computed under 28 U.S.C. § 1961, less any payments already made. Notwithstanding any other provision of this Final Judgment, the Defendants agree that, if they fail to meet the payment obligation set forth in this Paragraph, the facts as alleged in the Complaint filed with this case shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Judgment, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding;

D. In order to secure the payment of Defendants' indebtedness to the Commission, within seven (7) days of the entry of this Final Judgment, Defendants shall cause to be transferred to the Commission a security interest in the property described in Appendix A, which property has been valued by an independent appraisal to have a value of fifty thousand dollars (\$50,000) or more in excess of all other perfected security interests, as security for the payments required to be made by Defendants under this Paragraph. The Defendants shall furnish to counsel for the Commission an executed statement sufficient to perfect the filing and recording of the security interest in the property described in Appendix A under the appropriate state laws. The FTC will release this security interest upon receipt of all payments required by this Paragraph; and

E. The Defendants are hereby required, in accordance with 31 U.S.C. §7701, to furnish to the Federal Trade Commission their respective taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

III.

IT IS FURTHER ORDERED that, for a period of five years from the date of entry of this Final Judgment, Defendant Southwest Marketing Concepts, Inc., and Defendant Stephen T. Inmon, in connection with any business where he is the majority owner of the business or otherwise directly or indirectly manages or controls the business, and the business activities are within the scope of Paragraph I above, are hereby restrained and enjoined from failing to create, and from failing to retain for a period of five years following the date of such creation, unless otherwise specified:

A. Copies of all brochures, telemarketing scripts, and promotional materials;

B. Records accurately reflecting the name, address, and telephone number of each person employed in any capacity, including as an independent contractor; that person's job title or

position; the date upon which that person commenced work; and the date of that person's termination; and

C. Records containing the names, addresses, telephone numbers, and dollar amounts paid, for all persons to whom the business entity has sold, invoiced, or shipped any products or services, or from whom money or other items of value were received.

IV.

IT IS FURTHER ORDERED that, for a period of five years from the date of entry of this Final Judgment, each of the Defendants shall:

A. Provide a copy of this Final Judgment to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director and each individual serving in a management capacity for Defendant Southwest Marketing Concepts, Inc. or any business where (1) Defendant Stephen T. Inmon is the majority owner of the business or otherwise directly or indirectly manages or controls the business, and (2) the business activities are within the scope of Paragraph I above;

B. Provide a copy of this Final Judgment to, and obtain a signed and dated acknowledgment of receipt of same from, all personnel involved in responding to customer complaints or inquiries and all sales and collection personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining such persons, for Defendant Southwest Marketing Concepts, Inc. or any business where (1) Defendant Stephen T. Inmon is the majority owner of the business or otherwise directly or indirectly manages or controls the business, and (2) the business activities are within the scope of Paragraph I above; provided, however, that in order to be in compliance with this Paragraph, Defendants shall not be required to provide Paragraph II through Paragraph X of this Final Judgment to such personnel; and

C. Maintain, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Final Judgment, as required in the preceding Sections of this Paragraph.

V.

IT IS FURTHER ORDERED that for a period of five years from the date of entry of this Final Judgment, for purposes of determining or securing compliance with this Final Judgment, each of the Defendants shall permit representatives of the Commission, within five business days of receipt of written notice from the Commission:

A. Access during normal office hours to any office or facility storing documents of Defendant Southwest Marketing Concepts, Inc. or any business where (1) Defendant Stephen T. Inmon is the majority owner or otherwise directly or indirectly manages or controls the business, and (2) the business activities are within the scope of Paragraph I above. 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

B. To interview the officers, directors, and employees of any business entity to which this Paragraph applies relating to compliance with the terms of this Final Judgment. Any such person interviewed may have counsel present.

C. Nothing in this Final Judgment shall limit the Commission's lawful use of compulsory process.

VI.

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

A The corporate Defendant, its successors and assigns, shall notify the Commission at least thirty days prior to any change in the business of Defendant Southwest Marketing Concepts, Inc., including, but not limited to, any merger, incorporation, dissolution, assignment, sale which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change which may affect compliance obligations arising under this Final Judgment. In the event that a successor emerges, assignment occurs, or a subsidiary is created, such notice shall include, but is not limited to, evidence that:

1. Defendants have informed the proposed successor, assign, or subsidiary that this Final Judgment is binding upon such successors, assigns, and subsidiaries; and
2. Defendants have delivered a copy of this Final Judgment to such proposed successors, assigns, or subsidiaries;

B. Individual Defendant Stephen T. Inmon, during the five years subsequent to the date of entry of this Final Judgment, shall notify the Commission in writing within thirty days of any changes in his residence address; and

C. Individual Defendant Stephen T. Inmon, during the ten years subsequent to the date of entry of this Final Judgment, shall notify the Commission in writing within thirty days of each of the following events:

1. The discontinuance of his present affiliation with the corporate Defendant; or
2. His employment or affiliation with any new business or employer that is engaged in activities that are within the scope of Paragraph I above. Each notice of such employment or affiliation shall include his new business address, business telephone number, the name and nature of the new business or employer, his ownership interest in the business, and a detailed description of his duties and responsibilities in such business or employment. For the purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employer" includes any individual or entity for whom Defendant performs services as an employee, consultant, or independent contractor; and

D. For the purposes of this Final Judgment, all written notifications to the Commission shall be mailed to:

Regional Director
Dallas Regional Office
Federal Trade Commission
1999 Bryan Street, Suite 2150
Dallas, Texas 75201

Re: FTC v. Southwest Marketing Concepts, Inc., et al., Civil Action No. H-97-1070
(S.D. Tex.)

VII.

IT IS FURTHER ORDERED that the freeze of the Defendants' assets, imposed in the Preliminary Injunction entered in this proceeding, to the extent not previously released by any separate Order of this Court, shall be lifted upon the entry of this Final Judgment.

VIII.

IT IS FURTHER ORDERED that the Court's approval of this Final Judgment is expressly premised upon the truthfulness, accuracy, and completeness of the financial statement and the attachments thereto provided to the Commission by the Defendants and signed by Stephen T. Inmon on April 20, 1998. If, upon motion by the Commission, this Court finds that the Defendants' financial statement either failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentations in, or omissions of, assets, the Commission may request that the Final Judgment herein be reopened for the purpose of requiring additional equitable monetary relief from the Defendants; provided, however, that in all other respects this Final Judgment shall remain in full force and effect unless otherwise ordered by this Court. In the event of any motion brought pursuant to this Paragraph, the Final Judgment shall be reopened for the limited purposes set forth above.

IX.

IT IS FURTHER ORDERED that each party shall bear its own costs and attorney's fees incurred in connection with this action.

X.

IT IS FURTHER ORDERED that Defendants shall, within one-hundred-eighty (180) days after the date of entry of this Final Judgment, file with the Commission a written compliance report setting forth in detail the manner and form in which they have complied with this Final Judgment.

XI.

IT IS FURTHER ORDERED that the Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Final Judgment or for the punishment of violations thereof.

SO ORDERED, this ____ day of _____, 1998.

Lee H. Rosenthal
United States District Judge

The parties hereby consent to the terms and conditions set forth above and consent to entry of this Final Judgment without further notice to the parties. The parties also stipulate that Defendants waive any claims they, or either of them, may have against the Commission or the FTC attorneys of record in this matter. Defendants waive any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

FOR PLAINTIFF:

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FOR DEFENDANTS:

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By Stephen T. Inmon, President

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