

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Calvin P. Schmidt, individually, and doing business as DKS Enterprises, DS Productions, DES Enterprises, www.mkt-america.com, and www.mkt-usa.com. Schmidt promoted Mega\$Nets and MegaResource, two high tech versions of traditional chain or pyramid marketing programs, on web sites he operated, and in unsolicited e-mail messages he created and sent via the Internet on his behalf and on the behalf of others. He also created and hosted web sites for participants in Mega\$Nets and MegaResource programs.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns allegations about Schmidt's promotion and dissemination of two chain or pyramid marketing programs over the Internet. The Commission has issued a proposed draft complaint that sets forth the allegations to be resolved by the proposed administrative consent order. The draft complaint alleges that respondent Schmidt misrepresented that all or virtually all consumers who participate in the Mega\$Nets and MegaResource programs earn substantial amounts of money. The draft complaint also alleges that respondent Schmidt did not possess a reasonable basis that substantiated these earnings claims at the time he made those representations. In addition, the draft complaint alleges that respondent Schmidt, by creating and designing for others web sites promoting the Mega\$Nets and MegaResource programs, hosting these web sites, and composing and sending unsolicited electronic mail messages to consumers directing them to these web sites, violated the law by providing the "means and instrumentalities" to others to make unsubstantiated and false earnings claims.

The proposed administrative consent order, published for comment with this notice, contains prohibitions designed to prevent respondent from engaging in similar acts and practices in the future. Section I of the proposed consent prohibits Mr. Schmidt from participating in or assisting in any manner or capacity whatsoever in any prohibited marketing program, as defined in the order. The definition of "prohibited marketing program" is similar to the definition in the settlement of *FTC v. Nia Cano, et al.*, Civil No. 97-7947-CAS (AJWx), and includes any pyramid sales scheme, ponzi scheme, and chain marketing scheme. Sections IIA of the proposed order requires the respondent to have substantiation when, in connection with any marketing plan or program or sale of good or service, he makes representations regarding material facts, including the income, profits, or sales volume achieved by participants in any marketing program or purchasers of any good or service. Section IIB requires the respondent to make certain affirmative disclosures when, in connection with any marketing plan or program, he makes any representations regarding earnings, profits, or sales volume.

Sections III, IV, V, and VI require the respondent to maintain copies of certain business records; to provide copies of the order to all of his current and future employees; to notify the Commission of any change in employment or corporate structure that might affect compliance with the order; and to file compliance reports with the Commission. Section VII is a "sunset" provision that terminates the order twenty years after it is issued or after a complaint is filed in federal district court.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.