

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

<p>FEDERAL TRADE COMMISSION,</p> <p>Plaintiff,</p> <p>v.</p> <p>AMERICAN INDUSTRIAL ENTERPRISES, LLC, et al.,</p> <p>Defendants.</p>	<p>Case No. 16-cv-281-GLR</p> <p>Judge George L. Russell III</p>
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**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF BETWEEN PLAINTIFF FEDERAL TRADE COMMISSION AND
DEFENDANT JOHN THARRINGTON**

Plaintiff, Federal Trade Commission (FTC or Commission), filed its **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF** (Doc. 1, Complaint) pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act, 15 U.S.C. §§ 53(b) and 57b. The Complaint alleges, among other things, that the Defendants, including Defendant John Tharrington, violated Section 5 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Sales Rule, 16 C.F.R. Part 310, and the Unordered Merchandise Statute, 39 U.S.C. § 3009. The Commission and Defendant John Tharrington (Defendant Tharrington) now stipulate to the entry of this **STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF BETWEEN PLAINTIFF FEDERAL TRADE COMMISSION AND**

DEFENDANT JOHN THARRINGTON (Order) to resolve all matters in dispute between them in this action.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this action.
2. The Complaint alleges, among other things, that the Defendants, including Defendant Tharrington, engaged in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, engaged in deceptive and abusive acts or practices in violation of the Telemarketing Sales Rule, 16 C.F.R. Part 310, and engaged in unfair trade practices in violation of the Unordered Merchandise Statute, 39 U.S.C. § 3009.
3. Defendant Tharrington neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant Tharrington admits the facts necessary to establish jurisdiction.
4. Defendant Tharrington waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney fees. Defendant Tharrington waives and releases any claims that he may have against the Commission, the Receiver, and their agents that relate to this action.
5. Defendant Tharrington and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For purposes of this Order, the following definitions apply:

A. **“Clear(ly) and Conspicuous(ly),”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. “Telemarketing” means any 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 a telephone call, whether or not covered by the Telemarketing Sales Rule.

I. BAN ON TELEMARKETING NONDURABLE OFFICE AND CLEANING SUPPLIES

IT IS FURTHER ORDERED that Defendant Tharrington is permanently restrained and enjoined from participating or assisting others (including assisting others as an officer, director, employee, administrator, consultant, contractor, or manager) in telemarketing nondurable office or cleaning supplies, including but not limited to light bulbs and cleaner, whether directly or through an intermediary.

II. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendant Tharrington, his officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or

offering for sale any good or service, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting (including assisting others as an officer, director, employee, administrator, consultant, contractor, or manager), expressly or by implication:

- A. That Defendant Tharrington or any entity with which he is associated has previously done business with consumers;
- B. That Defendant Tharrington or any entity with which he is associated will only send a free sample or free product catalog;
- C. That consumers ordered the goods that were shipped or billed to the consumers by Defendant Tharrington or any entity with which he is associated, or
- D. Any other fact that is likely to affect a purchaser's decision.

III. PROHIBITION ON TELEMARKETING VIOLATIONS

IT IS FURTHER ORDERED that Defendant Tharrington, his officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the telemarketing of any good or service, are permanently restrained and enjoined from:

- A. Making or assisting others in making (including assisting others as an officer, director, employee, administrator, consultant, contractor, or manager), directly or by implication, a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution, including but not limited to a false or misleading statement:
 - 1. that Defendant Tharrington or any entity with which he is associated has previously done business with consumers;

2. that Defendant Tharrington or any entity with which he is associated will only send a free sample or free product catalog;
 3. that consumers ordered the goods that were shipped or billed to the consumers by Defendant Tharrington or any entity with which he is associated; or
 4. of any other kind that is likely to affect a purchaser's or donor's decision;
- B. Failing or assisting others in failing (including assisting others as an officer, director, employee, administrator, consultant, contractor, or manager), in connection with the telemarketing of any good or service, to disclose truthfully, promptly, and in a clear and conspicuous manner that the purpose of a call is to sell goods or services;
- C. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, a copy of which is attached.

IV. INJUNCTION CONCERNING UNORDERED MERCHANDISE

IT IS FURTHER ORDERED that Defendant Tharrington, his officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from the following:

- A. Sending or assisting others in sending (including assisting others as an officer, director, employee, administrator, consultant, contractor, or manager) any merchandise without the prior expressed request or consent of the recipient unless such merchandise is clearly and conspicuously marked as a free sample and has attached to it a clear and conspicuous statement that the recipient may treat the merchandise as a gift and may retain, use, discard, or dispose of it in any manner without any obligation whatsoever to the sender; or

B. Sending or assisting others in sending (including assisting others as an officer, director, employee, administrator, consultant, contractor, or manager) any communication, including, but not limited to, bills, invoices, reminders, letters, notices, or dunning communications, that in any manner seek to obtain payment for any merchandise shipped without the prior expressed request or consent of the recipient.

V. EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of six million two hundred thirteen thousand two hundred eighty dollars and 56 cents (\$6,213,280.56) is entered in favor of the Commission against Defendant Tharrington as equitable monetary relief;
- B. The judgment is suspended subject to the Subsections below;
- C. The Commission's agreement to the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Tharrington's sworn financial statements and related documents (collectively, financial attestations) submitted to the Commission, namely, the Financial Statement of Defendant Tharrington, signed on February 5, 2016, including the attachments;
- D. The suspension of the judgment will be lifted as to Defendant Tharrington if, upon motion by the Commission, the Court finds that he failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial attestations identified above;

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Defendant Tharrington in the amount specified in Subsection A, above (which the parties stipulate only for purposes of this Section represents the consumer injury from the conduct alleged in the Complaint), less any payment previously made pursuant to this Section or by any other Defendant in this action, plus interest computed from the date of entry of this Order.

VI. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. Defendant Tharrington relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets;
- B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case;
- C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes;
- D. Defendant Tharrington acknowledges that his Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which he previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701;

E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the unlawful practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendant Tharrington has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

F. Upon entry of this Order, the asset freeze is dissolved as to Defendant Tharrington.

VII. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Tharrington, his officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendant Tharrington must provide it, in the form prescribed by the Commission, within fourteen (14) days;

B. 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), that any Defendant in this action obtained prior to entry of this Order; and

C. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Commission.

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 law, regulation, or court order.

VIII. COOPERATION

IT IS FURTHER ORDERED that Defendant Tharrington must fully cooperate with representatives of the Commission and the Receiver (Marion Hecht) in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendant Tharrington must provide truthful and complete information, evidence, and testimony. Defendant Tharrington must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission or Receiver representative may reasonably request upon seven (7) days written notice, or other reasonable notice, at such places and times as a Commission or Receiver representative may designate, without the service of a subpoena.

IX. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Tharrington obtain acknowledgments of receipt of this Order:

- A. Defendant Tharrington, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury;
- B. For twenty (20) years after entry of this Order, Defendant Tharrington, for any business that he, individually or collectively with any other Defendant in this action, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities;
- C. From each individual or entity to which Defendant Tharrington delivered a copy of this Order, he must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

X. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant Tharrington shall make timely submissions to the Commission:

- A. One hundred eighty (180) days after entry of this Order, Defendant Tharrington must submit a compliance report, sworn under penalty of perjury. Defendant Tharrington must:

1. identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences, he uses, either personally or for business;
 2. identify all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest;
 3. describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;
 4. identify the primary physical, postal, and email address and the telephone number, as designated points of contact, which representatives of the Commission may use to communicate with him;
 5. identify all of his businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 6. describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant in this action (which Defendant Tharrington must describe if he knows or should know due to his own involvement);
 7. describe in detail whether and how Defendant Tharrington is in compliance with each Section of this Order; and
 8. provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;
- B. For twenty (20) years after entry of this Order, Defendant Tharrington must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. his name, including aliases or fictitious name, or residence address;
 2. his title or role in any business activity, including any business for which Defendant Tharrington performs services whether as an employee or otherwise and any entity in which Defendant Tharrington has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity;
 3. any designated point of contact;
 4. the structure of any entity that Defendant Tharrington has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of any entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order;
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within fourteen (14) days of its filing;
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature;
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

The subject line must begin: FTC v. American Industrial Enterprises, LLC (Defendant Tharrington), X16-0025.

XI. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant Tharrington must create certain records for twenty (20) years after entry of the Order, and retain each such record for five (5) years.

Specifically, Defendant Tharrington, for any business that he, individually or collectively with any other Defendant in this action, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; disciplinary actions taken, if any; and (if applicable) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, any response, and the identity of the person responding on behalf of Defendant Tharrington's business;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. A copy of all unique scripts or instructions provided to telemarketers.

XII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Tharrington's compliance with this Order, including the financial attestations upon which the judgment was suspended:

- A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, Defendant Tharrington must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69;
- B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendant Tharrington. Defendant Tharrington must permit representatives of the Commission to interview any employee or other person affiliated with him who has agreed to such an interview. The person interviewed may have counsel present;
- C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant Tharrington or any individual or entity affiliated with him, without the necessity of identification or prior notice. Nothing in this Order limits 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;
- D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Defendant Tharrington, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this order.

SO ORDERED this 22ND day of December, 20 16



George L. Russell III
United States District Judge

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SO STIPULATED AND AGREED:

FOR PLAINTIFF



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(Colo. Bar #15094)

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