

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Midway Industries Limited Liability Company,
et al.

Defendants.

Case No. JFM 14-CV-2312

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND JUDGMENT
AGAINST DEFENDANT ALAN M. LANDSMAN**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief, subsequently amended as its First Amended Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and the Unordered Merchandise Statute, 39 U.S.C. § 3009. The Commission and Defendant Alan M. Landsman stipulate to the entry of this Stipulated Final Order for Permanent Injunction and Judgment Against Defendant Alan M. Landsman (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.

2. The Complaint charges that the Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, the Unordered Merchandise Statute, 39 U.S.C. § 3009, and in unfair trade practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), by deceiving victims into paying for unordered and overpriced light bulbs and cleaning supplies.

3. Only for purposes of this action, Defendant Landsman admits the facts necessary to establish jurisdiction.

4. Defendant Landsman 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.

5. Defendant Landsman waives and releases any claims that he may have against the Commission, the Receiver and their agents that relate to this action. Defendant Landsman and the Commission agree that this Order resolves all allegations in the Complaint as between them.

6. Defendant Landsman and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

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

- A. **"Person"** means a natural person, an organization or other legal entity, including but not limited to a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

- B. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.
- C. **“Corporate Defendants”** means Defendants Midway Industries Limited Liability Company, Commercial Industries LLC, National LLC, State Power & Lighting LLC, Standard Industries LLC, Essex Industries, LLC, Johnson Distributing Limited Liability Company, Hansen Supply LLC, Environmental Industries, LLC, Mid Atlantic Industries LLC, Midway Management, LLC, and B & E Industries, LLC and their successors and assigns.
- D. **“Individual Defendants”** means Defendants Eric A. Epstein, Brian K. Wallen, Andrew J. Stafford, Alan M. Landsman, and Brandon D. Riggs.
- E. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.
- F. **“Unordered merchandise”** means merchandise mailed or otherwise sent without the prior expressed request or consent of the recipient.

ORDER

I. PERMANENT BAN

IT IS ORDERED that Alan M. Landsman is permanently restrained and enjoined from telemarketing or assisting in the telemarketing of nondurable office or cleaning supplies including light bulbs.

II. PROHIBITED MISREPRESENTATIONS

IT IS FURTHER ORDERED that Alan M. Landsman, his 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 telemarketing, advertising, marketing, promoting, or offering for sale of any goods or services, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting expressly or by implication:

- A. that a consumer ordered goods or services that were to be shipped or billed to the consumer;
- B. that they have previously done business with the consumer;
- C. that they would send only a free sample, free gift, or free product catalog;
- D. any material terms regarding the total cost to purchase, receive, or use, and the quantity of, any goods or services that are subject to a sales offer;
- E. any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services offered; or
- F. any material aspect of the performance, efficacy, nature, characteristics, benefits, or qualities of the goods and services offered.

III. PROHIBITIONS RELATING TO TELEMARKETING SALES AND UNORDERED MERCHANDISE

IT IS FURTHER ORDERED that Alan M. Landsman, his 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 sale of

any goods or services, are hereby permanently restrained and enjoined from:

- A. in connection with any telemarketing call, failing to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call that the purpose of the call is to sell goods;
- B. in connection with any telemarketing call, making any false or misleading statement, directly or by implication, to induce any person to pay for goods or services;
- C. sending unordered merchandise unless such merchandise is clearly and conspicuously marked as a free sample;
- D. sending any bill or dunning communication relating to unordered merchandise;
- E. violating the Telemarketing Sales Rule, 16 C.F.R. Part 310 (annexed hereto as Attachment A); or
- F. violating the Unordered Merchandise Statute, 39 U.S.C. § 3009 (annexed hereto as Attachment B).

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Forty-four million, three thousand, six hundred eighty Dollars (\$44,003,680) is entered in favor of the Commission against Alan M. Landsman jointly and severally.
- B. Alan M. Landsman is ordered to pay to the Commission Fourteen thousand, seven hundred and seventy dollars (\$14,770.00) which, as Alan M. Landsman stipulates, his

undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission. Upon such payment and all asset transfers described in Subsection C, below, the remainder of the judgment is suspended, subject to the Subsections below.

C. Alan M. Landsman is ordered to transfer to the custody of the Receiver a 2002 BMW motorcycle, model F650GS.

D. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Alan M. Landsman's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Alan M. Landsman signed on July 16, 2015, including the attachments; and

2. additional documentation provided by Alan M. Landsman, through counsel, on August 20, 2015, September 2, 2015, September 23, 2015, October 26, 2015, and November 3, 2015.

E. The suspension of the judgment will be lifted as to Alan M. Landsman if, upon motion by the Commission, the Court finds that Alan M. Landsman failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

F. If the suspension of the judgment is lifted, the judgment becomes immediately due as to

Alan M. Landsman in the amount specified in Subsection A above which the parties stipulate only for purposes of this Section represents the consumer injury or disgorgement amount alleged in the Complaint, less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

V. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. Alan M. Landsman 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. Alan M. Landsman relinquishes all legal and equitable right, title, and interest in all assets in the custody of, or subject to the custody of, the Receiver, and may not seek to assert any interest in any such 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. Alan M. Landsman acknowledges that his taxpayer identification number (social security number), which Alan M. Landsman 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 Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement.

Alan M. Landsman has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

F. If Alan M. Landsman is in default on any obligations under this Section or the Monetary Judgment Section, then the judgment amount, minus any payments previously made pursuant to this Section or the Monetary Judgment Section, becomes immediately due.

G. If Alan M. Landsman fails to pay fully the amount due at the time specified, he must cooperate fully with the Commission and their representatives in all attempts to collect the judgment. In such an event, Alan M. Landsman agrees to provide federal and state tax returns for the preceding 2 years, and to complete new financial disclosure forms fully and accurately within 10 business days of receiving a request from the Commission. Alan M. Landsman further authorizes the Commission to verify all information provided on his financial disclosure forms with all appropriate third parties, including financial institutions.

H. The Commission may request any tax-related information, including amended tax returns and any other filings, that Alan M. Landsman has the authority to release. Within 14 days of receipt of a written request from a representative of the Commission, Alan M. Landsman must take all necessary steps (such as filing a completed IRS Form 4506 or 8821) to cause the Internal Revenue Service or other tax authority to provide the information directly to the Commission.

VI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Alan M. Landsman, his agents, employees, attorneys, and other persons who are in active concert or participation with any of them 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. Alan M. Landsman represents that, if he has any such redress information, he has provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Alan M. Landsman must provide it, in the form prescribed by the Commission, within 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 obtained prior to entry of this Order in connection with the telemarketing, marketing, advertising, or sale of nondurable office and cleaning supplies, including light bulbs; and
- C. failing to destroy such customer information in all forms in their possession, custody, or

control within 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.

VII. COOPERATION

IT IS FURTHER ORDERED that Alan M. Landsman must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Alan M. Landsman must provide truthful and complete information, evidence, and testimony. Alan M. Landsman must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena. This Section does not preclude Alan M. Landsman from invoking any Fifth Amendment privilege against self-incrimination.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Alan M. Landsman obtain acknowledgments of receipt of this Order:

- A. Within 7 days of entry of this Order, Alan M. Landsman must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 10 years after entry of this Order, Alan M. Landsman, for any business that

he, individually or collectively with any other Defendants, 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 telemarketing, causing merchandise to be sent to customers, or causing bills or dunning communications for merchandise to be sent to customers; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 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 Alan M. Landsman delivered a copy of this Order, he must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Alan M. Landsman make timely submissions to the Commission:

A. One year after entry of this Order, Alan M. Landsman must submit a compliance report, sworn under penalty of perjury:

1. Alan M. Landsman must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with him; (b) identify all of Alan M. Landsman's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) 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 (which Alan M. Landsman must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Alan M. Landsman is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Alan M. Landsman must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which Alan M. Landsman performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail Alan M. Landsman's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years after entry of this Order, Alan M. Landsman must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Alan M. Landsman must report any change in: (a) any designated point of contact; or (b) the structure of any entity that Alan M. Landsman 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 the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Alan M. Landsman must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Alan M. Landsman performs services whether as an employee

or otherwise and any entity in which Alan M. Landsman has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Alan M. Landsman must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against him within 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. Alan M. Landsman*, Matter No. X140044.

X. RECORDKEEPING

IT IS FURTHER ORDERED that Alan M. Landsman must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Alan M. Landsman for any business that he, individually or collectively with any other Defendants, 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; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests pertaining to telemarketing practices or allegations of sending or billing for unordered merchandise, whether received directly or indirectly, such as through a third party, and any response;
- 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 each unique script used in any telemarketing plan, program, or campaign.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Alan M. Landsman's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, Alan M. Landsman 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 Alan M. Landsman. Alan M. Landsman 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 Alan M. Landsman 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 Alan M. Landsman, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XII. 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 ^{6th} ~~7th~~ day of ~~June~~ June, 2015.

[Signature]
UNITED STATES DISTRICT JUDGE

BY _____ DEPUTY

CLEARING OFFICE
AT BALTIMORE

2016 APR 22 PM 12:00

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BY _____ DEPUTY