

PUBLIC STATEMENT OF CHAIRMAN PITOFSKY
COMMISSIONERS ANTHONY AND THOMPSON
TRI-STATE ADVERTISING UNLIMITED, INC., ET AL.

We disagree with Commissioner's Swindle's partial dissent in which he states that the ban in Part II.B of the order is overbroad because it may be construed to cover the solicitation of charitable donations. That provision prohibits defendants from "engaging or participating . . . in the offering for sale, sale, marketing or distribution of any advertising, listing, or sponsorship in any publication or program." Under the facts, such relief is reasonably related to the challenged law violations.

As alleged, defendants falsely contacted consumers claiming that they had previously approved placing an advertisement in a civic-minded publication (e.g., "Hugs not Drugs," "Forgotten Veterans") and owed money for it. They also misrepresented that payment for an ad in the publications constituted a donation. Invoices and collection efforts followed. No publications existed. The elderly and small businesses were often targeted by defendants. Needless to say, this is an egregious fraud.

As we stated in another recent settlement involving similar misrepresentations in connection with ostensibly charitable solicitations, the Commission is "mindful in imposing bans that they may prohibit truthful, non-deceptive speech. For example, one who has engaged in fraudulent telemarketing, theoretically, could engage in legitimate telemarketing."¹ Whether particular relief is appropriate turns on the facts of each case. We find the relief agreed to in the Stipulated Final Judgment and Order both appropriate and warranted under these facts.

¹ Public Statement of Chairman Pitofsky, Commissioners Anthony and Thompson in T.E.M.M. Marketing, Inc. Civil No. 1:98CV0300 (N.D. Ind. Ft. Wayne Div.) (final order entered May 18, 1999).