

IN THE MATTER OF

BUDGET MARKETING, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
ELECTRONIC FUND TRANSFER ACT, REGULATION E AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3698. Complaint, Dec. 13, 1996--Decision, Dec. 13, 1996

This consent order prohibits, among other things, an Iowa-based telemarketer of magazine subscriptions and 11 of its dealers from misrepresenting either that they are selling magazines or the cost and conditions of the subscriptions they are selling. The consent order also prohibits the respondents from: threatening and harassing consumers in order to collect payments; failing to honor offers that allow cancellation; and violating the Electronic Fund Transfer Act.

Appearances

For the Commission: *Joseph J. Koman.*

For the respondents: *John R. Mackaman, Dickinson, Mackaman, Tyler & Hagen, Des Moines. IA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Electronic Fund Transfer Act and Regulation E, its implementing Regulation, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Budget Marketing, Inc., a corporation, and Charles A. Eagle, individually; Dennis H. Gougion, individually; Dale T. Lenard, individually, and who has done business as Mega-Magazine Service, Colorado Dawn, and key Concept; Charles P. Donly, individually, and doing business as Budget Renewal Service; Roy Golden, individually, and doing business as American Marketing Service; Dave Keown, individually, and who has done business as Publishers Marketing; Richard Prochnow, individually, and doing business as Direct Sales International; John Harrison, individually, and who has done business as a telemarketer of magazine subscriptions; Dale Branson, individually, and doing business as Leisuer Day Marketing; Steven Johnson, individually, and who has done business as a telemarketer of magazine subscriptions; and William J. Stemple, Sr., individually, and doing business as Budget Marketing of Virginia; hereinafter

sometimes referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Budget Marketing, Inc., hereinafter Budget Marketing, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 1171 Seventh Avenue, in the city of Des Moines, State of Iowa.

Respondents Charles A. Eagle and Dennis H. Gougion have formulated, directed and controlled the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Messrs. Eagle and Gougion's office and principal place of business are the same as that of respondent Budget Marketing.

Budget Marketing is engaged in the sale, by subscription, of magazines and other publications, throughout the United States, through its own representatives and its franchises, dealer and independent contractor activities.

PAR. 2. Respondents Dale T. Lenard, individually, and who has done business as Mega-Magazine Service, Colorado Dawn, and key Concept, Colorado Springs, Colorado; Charles P. Donly, individually, and doing business as Budget Renewal Service, Minneapolis, Minnesota; Roy Golden, individually, and doing business as American Marketing Service, Des Moines, Iowa; Dave Keown, individually, and who has done business as Publishers Marketing, Arvada, Colorado; Richard Prochnow, individually, and doing business as Direct Sales International, Atlanta, Georgia; John Harrison, individually, and who has done business as a telemarketer of magazine subscriptions, Buffalo, New York; Dale Branson, individually, and doing business as Leisure Day Marketing, Tampa, Florida; Steven Johnson, individually and who has done business as a telemarketer of magazine subscriptions, Des Moines, Iowa; and William J. Stemple, Sr., individually, and doing business as Budget Marketing of Virginia, Virginia Beach, Virginia, are engaged or have been engaged in the sale, by subscriptions, or magazines and other publications and services to the consuming public.

The aforementioned respondents cooperate in carrying out the acts and practices hereinafter set forth.

PAR. 3. Respondents are now and have been engaged in the advertising, offering for sale, sale, or distribution of magazines and

other publications and of merchandise and services relating to such products, as well as of subscriptions to purchase such products, and in the collection or attempted collection of allegedly delinquent accounts for subscription or other contracts, in or affecting commerce.

The magazines and other publications which Budget Marketing, through its own representatives, as well as the above-named franchisees, dealers or individual contractors, sells nationwide, pursuant to subscription sales contracts include those published by national publishers of business and professional magazines and consumer magazines. All such products, whether magazines, books or any other printed matter, will hereinafter be referred to as "publications."

Subscriptions sales are made to consumers or members of the general public, hereinafter sometimes referred to as "customers," "subscribers" or "purchasers," pursuant to contracts which generally run from two to five years and, depending upon the number and type of publications selected by the customer, vary in price from approximately \$600 to \$1,000.

Budget Marketing's gross revenues derived from subscription sales of magazines and other publications through its own representatives, and its dealers, and independent contractors have averaged in excess of twenty (20) million dollars annually during the time period covered by this complaint.

PAR. 4. In the course and conduct of its business of selling publications pursuant to subscription contracts, as aforesaid, Budget Marketing has entered into agreements with numerous individuals located throughout the United States, including the parties named individually herein. Said individuals, referred to by respondents as "franchisees," "dealers," or independent contractors, through personnel variously designed as "telemarketers," "verifiers," "sales personnel," "closers," "solicitors," or otherwise hereinafter referred to as "representatives" have induced substantial numbers of customers to subscribe to national publications so offered for sale.

Respondents, through their said dealers and representatives, place into operation and, through various direct and indirect means and devices, control, direct, supervise, recommend and otherwise implement sales methods whereby members of the general public are contacted by mail (post cards) and telephone calls and are induced to enter into subscription agreements, which provide for the purchase of publications and payment therefor on an installment basis. Said

subscription contracts, among other things, make provisions for the listing of publications chosen by the purchaser; the period of delivery; and the terms and conditions for payment. Customers may pay for their subscriptions in monthly or bi-monthly installments via cash, credit card charge, or electronic fund transfer. This method of sale is referred to in the industry as "Paid-During-Service" (PDS).

The subscription order is thereafter returned by the representative to the dealer for processing. The dealer in turn forwards the contract and various forms, reports and other documents to respondent Budget Marketing for further processing.

Ultimately, the subscriber receives, if a monthly installment cash payment plan is selected, among other things, a book of coupons, prepared by respondent Budget Marketing, with instructions to detach and submit a single coupon with each monthly payment. Payments are made, as directed, either to the dealer or to the respondent Budget marketing depending upon whether or not the dealer is equipped to handle such deferred payments. If payment is made directly to Budget Marketing, it pays the dealer the amount due him or her, by credit or otherwise. If the dealer receives payment from the subscriber, he or she in turn remits to Budget Marketing the amount due it. In either event, respondent Budget Marketing receives and accepts the revenues from said sales of publications, either directly from the subscriber or indirectly from the dealer.

In the manner aforesaid, respondent Budget Marketing, directly or indirectly controls, furnishes the means, instrumentalities, services and facilities for, approves and accepts the pecuniary and other benefits flowing from the acts, practices and policies hereinafter set forth, of its respective dealers and representatives, hereinafter collectively referred to as respondent representatives.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 5. In the course and conduct of its subscription sales business, as aforesaid, respondent Budget Marketing causes, and has caused said publications, when sold, to be shipped from their places of business or sources of supply by mail to purchasers thereof located in the same and various states of the United States other than the state of origination and has transmitted and received and caused to be transmitted and received in the course of selling, delivering, and collecting payment for said publications among and between the several states of the United States, subscription orders, contracts, invoices, checks, collection notices and various other kinds of

commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of business in such products and commercial intercourse in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, as aforesaid, and for the purpose of inducing members of the general public to enter into subscription agreements, respondents, directly or through their representatives, utilize sales promotional materials or other means and instrumentalities furnished, approved or ratified by respondent Budget Marketing. In conjunction therewith, they have made certain oral and written statements and representations concerning the terms and conditions of said subscription contracts, their renewal or cancellation, special offers, the nature and purpose of the solicitation, and the identity of an organization purportedly involved in the solicitation. In the foregoing manner, respondents and their representatives have represented, directly or indirectly:

(a) That they are conducting or participating in *bona fide* sweepstakes, surveys, or contests.

(b) That publications or other products will be given free, or for the cost of mailing, handling, editing or printing of said publications, or at special or reduced prices.

PAR. 7. In truth and in fact:

(a) Respondents and their representatives were not conducting or participating in *bona fide* sweepstakes, surveys, or contests but, to the contrary, were engaged in inducing the general public to enter into subscription agreements.

(b) Publications or other products were not given free, nor solely for the cost of mailing, handling, editing, printing of said publications, nor at special or reduced prices. To the contrary, the subscription contracts provided for payment to cover respondents' regular or prevailing subscription contract prices.

Therefore, the statements and representations as set forth in paragraph six hereof were, and are, misleading and deceptive.

PAR. 8. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of and payment for said publications by the general public, respondents and

their representatives, directly or indirectly, have engaged in the following additional acts and practices:

(a) In a substantial number of instances, they have stated approximate costs of a subscription contract on a weekly basis, in conjunction with statements of typical subscription periods as, for example, a cost of a few dollars per week and a period of 60 months. Respondents and their representatives falsely and deceptively fail to disclose, in connection with such statements, the material fact that their contracts seldom, if ever, provide for weekly installment payments, or for payments spread over 60 months. In truth and in fact, the contracts require monthly installment payments of substantially higher amounts over a substantially shorter period of time than stated during such oral presentations.

(b) In a substantial number of instances, they have induced customers to enter into a subscription agreement by falsely and deceptively representing or implying that all publications covered by said contract will be delivered over the same period of time, such as 60 months. In truth and in fact, subscription periods for different publications covered by the same contract are frequently different.

(c) In a substantial number of instances, they have induced customers to enter into a subscription agreement by failing to fully inform the customers as to the following material facts: cost, name and number of issues of each publication; the total cost of the contract; the amount of the downpayment; the amount and due date of each payment and the total number of such payments.

(d) In their efforts to collect what respondents elect to treat as delinquent accounts of subscribers, they have, from time to time, resorted to telephone calls at unreasonable hours and other forms of harassment, including but not limited to those set forth below, by means of which they have unfairly, falsely and deceptively represented, directly or indirectly:

(1) That the general or public credit rating or standing of any such customer will be adversely affected unless payment is made.

(2) That the failure of a customer to remit money to respondents will result in the institution of legal action to affect payment. In truth and in fact, respondents seldom if ever take any action, including legal action, which adversely affects the general or public credit rating of such subscribers.

Therefore, respondents' statements, representations, acts and practices, and their failure to reveal material facts, as set forth herein were, and are, unfair, false, misleading, and deceptive acts and practices.

PAR. 9. In the course and conduct of their business, as described above, most of the respondents have, on numerous occasions, violated Section 1693e(a) of the Electronic Fund Transfer Act and Section 205.10(b) of Regulation E by failing to satisfy the requirement that preauthorized electronic fund transfers may be authorized by the consumer only in writing and not by a payee signing a written authorization on the consumer's behalf, with only an oral authorization from the consumer.

PAR. 10. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, and the Electronic Fund Transfer Act and Regulation E, its implementing regulation.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents

have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Budget Marketing, Inc. ("BMI") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 1171 Seventh Avenue, in the City of Des Moines, State of Iowa.

Respondents Charles A. Eagle and Dennis H. Gougion have formulated, directed and controlled the policies, acts and practices of said corporation and their address is the same as that of said corporation.

2. Respondent Dale T. Lenard is an individual who has done business as Mega-Magazine Service, Colorado Dawn, and Key Concept, who currently resides at 245 N. Rancho Santa Fe Road, Suite 205, in the city of San Marcos, State of California.

3. Respondent Charles P. Donly is an individual doing business as Budget Renewal Service, with his office and principal place of business located at 101 W. Burnsville Parkway, Suite #225, in the City of Burnsville, State of Minnesota.

4. Respondent Roy Golden is an individual doing business as American Marketing Services, with his office and principal place of business located at 4513 72nd, in the City of Des Moines, State of Iowa.

5. Respondent Dave Keown is an individual who had done business as Publishers Marketing, who currently resides at 7340 West 74th Place, in the City of Arvada, State of Colorado.

6. Respondent Richard Prochnow is an individual doing business as Direct Sales International, with his office and principal place of business located at 2550 Heritage Ct. NW, Suite #106 in the City of Atlanta, State of Georgia.

7. Respondent John Harrison is an individual who has done business as a telemarketer of magazine subscriptions, who currently resides at 6505 Metcalf, Suite #106, in the City of Shawnee Mission, State of Kansas.

8. Respondent Dale Branson is an individual doing business as Leisure Day Marketing, with his office and principal place of business located at 12101 N. 56th Street, #3, in the City of Temple Terrace, State of Florida.

9. Respondent Steven Johnson is an individual who has done business as a telemarketer of magazine subscriptions, who currently resides at 1609 Twana Drive, in the City of Des Moines, State of Iowa.

10. Respondent William J. Stemple, Sr., is an individual business as Budget Marketing of Virginia, with his office and principal place of business located at 240 Mustang Trail, Suite #6, in the City of Virginia Beach, State of Virginia.

ORDER

For the purpose of this order, the following definitions shall apply:

(a) "*Consumer*" shall mean a purchaser, subscriber, customer, or person being solicited;

(b) "*Paid-During-Service Plan*" ("*PDS Plan*") shall mean the offering for sale or sale of a combination of two or more publications to a consumer, for a term of more than one year, payment for which is to be made in three or more installments;

(c) "*Subscription order*" shall mean an arrangement made over the telephone with a consumer for the purchase of publication subscriptions pursuant to a paid-during-service plan in which the seller does not require the purchaser's signature to obtain the publication subscriptions.

(d) "*Service Company*" shall mean an organization other than the seller of subscription orders to whom notices of cancellation may be sent.

(e) "*Telemarketing*" means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of three or more telephones.

I.

It is ordered, That respondent Budget Marketing, Inc., a corporation, its successors and assigns, and its officers, and respondents Charles A. Eagle, individually; Dennis H. Gougion,

individually; Dale T. Lenard, individually, and who has done business as Mega-Magazine Service, Colorado Dawn, and Key Concept; Charles P. Donly, individually, and doing business as Budget Renewal Service; Roy Golden, individually, and doing business as American Marketing Service; Dave Keown, individually, and who has done business as Publishers Marketing; Richard Prochnow, individually, and doing business as Direct Sales International; John Harrison, individually; Dale Branson, individually, and doing business as Leisure Day Marketing; and Steven Johnson, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, licensee, dealer, independent contractor, or other device, in connection with, via telemarketing, the advertising, offering for sale, sale or distribution of magazines or any other publications or merchandise, or subscriptions to purchase any such products or services, or in the collection or attempted collection from any consumer of any delinquent contract or other account, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Failing to comply, in connection with any pre-authorized Electronic Fund Transfer in payment of any subscription order or payment for other products or services, with Section 205.10(b) of Regulation E, 12 CFR 205, which states:

Preauthorized electronic fund transfers from a consumer's account may be authorized by the consumer only in writing, and a copy of the authorization shall be provided to the consumer by the party that obtains the authorization from the consumer.

Respondents are also enjoined from failing to comply with the Official Commentary to 12 CFR 205.10, Question 10-18.6. If Regulation E is in the future amended or officially interpreted either by a contested-case final decision binding on the government (all rights of appeal having expired) by a court of the United States, or by the Federal Reserve Board, or by amendment of relevant portions of the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, defendants' compliance with such amendment or interpretation will not be deemed a violation of this order.

(b) Representing, directly or indirectly, that any representative or other person calling upon a customer or prospective customer for the purpose or with the result of inducing or securing a subscription to,

order for, or the purchase or agreement to purchase any products or services:

(i) Is conducting or participating in any survey, quiz or contest, or is engaged in any activity other than soliciting business; or otherwise misrepresenting, in any manner, the purpose of the call or solicitation;

(ii) Represents, or otherwise claims to be performing services for any educational, charitable, social or other organization, or any individual or firm other than one engaged in soliciting business; or otherwise misrepresenting, in any manner, the identity of the solicitor or of his firm and of the business they are engaged in;

(iii) Will give any product or service free or as a gift or without cost or charge, or that any product or service can be obtained free or as a gift or without cost or charge, in connection with the purchase of, or agreement to purchase, any product or service, unless the stated price of the product or service required to be purchased in order to obtain such free product or gift is the same or less than the customary and usual price at which such product or service has been sold separately from such free or gift item, and in the same combination if more than one item is required to be purchased, for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made;

(c) Failing, clearly, emphatically and unqualifiedly to reveal, at the outset of the initial and all subsequent contacts or solicitations of purchasers or prospective purchasers, whether directly or indirectly, or by telephone, by written or printed communication, or person-to-person, that the purpose of such contact or solicitation is to sell products or services as the case may be, which shall be identified with particularity at the commencement of each such contact or solicitation;

(d) Representing, directly or indirectly, that any price for any product or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost; or that any price is a special or reduced price unless it constitutes a significant reduction from an established selling price at which such product or service has been sold in substantial quantities by the seller in the same combination of items in the recent and regular course of its business; or otherwise misrepresenting, in any manner, the savings which will be accorded or made available to purchasers;

(e) Representing, directly or indirectly, that any subscription contract or other purchase agreement can be cancelled at the purchaser's option, or that the right to cancel will be accorded to any purchasers, when there is no provision in such contract or agreement for cancellation on the terms and conditions represented, and unless cancellation is in fact granted on such terms and conditions;

(f) Refusing or failing upon request to cancel a contract when the representation has been made directly or indirectly that the contract will be cancelable;

(g) Making any reference or statement concerning "a few dollars per week," "60 months," or any other statement as to a sum of money or duration or period of time in connection with a subscription contract or other purchase agreement which does not in fact provide, at the option of the purchaser, for the payment of the stated sum, at the stated interval, and over the stated duration or period of time; or misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to purchasers or prospective purchasers;

(h) Failing, in the case of PDS Plan sales, to clearly reveal orally prior to the time the subscription contract is agreed to by the customer and in writing on the subscription order form and the sales agreement (or separate schedule), with such conspicuousness and clarity as will likely to be read by the purchaser, the following terms of the subscription order:

(i) The name, the exact number of issues, and the exact number of months of service of each publication covered by the contract;

(ii) The total cost of each publication and all the publications covered by the contract; and

(iii) The downpayment or first payment required and the number, amount, and due dates of all subsequent installment payments, and the amount of any finance charges;

(iv) The method of payment (e.g., coupon book, credit card, or electronic banking); and

(v) The purchasers right to rescind or cancel the subscription order or sale within three (3) business days after date of receipt of the sales agreement by mailing a notice of cancellation to the seller's address or, if the seller uses a service company, to the service company's address, before the expiration of the cancellation period. It is not a violation of the order if BMI adopts a cancellation policy giving the consumer a longer time to cancel than that set forth herein;

(i) Representing, directly or indirectly, that a subscription contract or other purchase agreement is a "preference list," "guarantee," "route slip" or any kind of document other than a contract or agreement; or otherwise misrepresenting, in any manner, the nature, kind or legal characteristics of any document;

(j) Failing, clearly, emphatically and unqualifiedly to reveal orally and in writing to each consumer before execution, the identity, nature and legal import of any document that he or she is requested or required to execute in connection with the purchase of any product or service;

(k) Engaging in any unfair or deceptive practices in order to effect payment of any account by any means, including but not limited to the following:

(i) Communicating with consumers in a harassing or abusive manner;

(ii) Making telephone calls to consumers before 8 a.m. or after 9 p.m. at the consumer's time zone;

(iii) Using forms or any other printed or written materials purporting to be simulated legal documents or process when in fact they are not;

(iv) Representing, directly or indirectly, that, in the event of non-payment or delinquency in any account or alleged debt arising from any subscription agreement, the credit rating of any consumer may be adversely affected unless the information concerning such delinquency is actually referred to a *bona fide* credit reporting agency;

(v) Threatening to take action that cannot legally be taken, or that is not intended to be taken;

(vi) Representing, directly or indirectly, that attorneys' fees or other amounts will be added to a consumer's debt if the consumer fails to pay the amount allegedly owed and legal action is taken, unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(vii) Misrepresenting in any manner the action to be taken or results of any action which may be taken to effect payment of any delinquent account or alleged debt;

(viii) Using any other practice which debt collectors are prohibited from using by the Fair Debt Collection Practices Act;

(l) In the case of PDS Plan sales, cancelling any subscription contract for any reason other than a breach by the subscriber or pursuant to a request from the consumer;

(m) Failing to furnish to each consumer a final copy of the consumer's subscription contract, showing either the date mailed to the consumer or the date the consumer signs the contract, and the name of the seller with the seller's address and telephone number or, if the seller uses a service company, the address and telephone number of the service company;

(n) Failing to provide on a sheet separable from the written sales agreement a clearly understandable form which the purchaser may use as a notice of cancellation;

(o) Failing to cancel the sales agreement where the purchaser's written cancellation request is received within fourteen (14) calendar days from the date of mailing or delivering the sales agreement form to the purchaser, and, in such event, refund within thirty (30) days after cancellation any payment received from the purchaser;

(p) In the case of PDS Plan sales, failing to include on the cover of each coupon book furnished to consumers electing to use payment coupons:

(i) A statement showing a total number of coupons in the book, the dollar amount of each such coupon, and the total dollar amount of all such coupons;

(ii) A legend stating: "Check the number of coupons in this book and their amounts against your original subscription contract," and

(iii) The seller's address and telephone number or, if the seller uses a service company, the service company's address and telephone number on the cover of the first separate inside page or on each coupon;

(q) In the case of PDS Plan sales, in the event of the discontinuance of publication, or other unavailability, of any magazines subscribed for, at any time during the life of the contract, failing to offer the subscriber the right to substitute one or more magazines or other publications of the subscriber's choice from respondents' current list of publications on a pro rata dollar-for-dollar basis, or the extension of subscription periods of magazines already selected;

(r) Failing or refusing to cancel, at the subscriber's sole option, all or any portion of a subscription contract entered into after entry of

this order whenever any misrepresentation prohibited by this order has been made; and

(s) Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner or as to things prohibited by the order.

Provided, however, in the event the Commission promulgates a trade regulation rule prohibiting deceptive (including fraudulent) and other abusive telemarketing activities applicable to respondents' sale of magazine subscription contracts and other products and services to consumers and to their collection of delinquent accounts, which trade regulation rule contains provisions that contradict any provisions of this order, the Commission, upon a request from respondent(s), shall reopen this proceeding and modify this order to conform it to the Rule.

II.

It is further ordered:

(A) That respondents shall deliver, by registered mail, or in person, a copy of this order to each of their present and future dealers, franchisees, licensees, employees, salespersons, agents, solicitors, independent contractors, and other representatives who are not themselves respondents and who sell or promote the products or services included in this order, or who make or attempt to make collections for the accounts of any of the respondents hereto;

(B) That respondents shall provide each person described in paragraph (A) above with a form, returnable to respondents clearly stating each person's intention to be bound by and to conform his or her business practices to the requirements of this order;

(C) That respondents shall inform all such present and future dealers or franchisees, licensees, employees, salespersons, agents, solicitors, independent contractors, or other representatives who are not themselves respondents and who sell or promote the products or services included in this order, or who make or attempt to make collections for the account of any of the respondents hereto, that respondents shall not use any third party, or the services of any third party, unless such third party agrees to, and does, file notice with

respondents that he or she will be bound by and conform his or her business practices to the requirements contained in this order;

(D) That respondents shall not use any such person described in paragraph (A) above to sell or promote the products or services in this order or to make or attempt to make collections for the account of respondents, if such person will not agree to so file notice with the respondents and be bound by the provisions contained in this order;

(E) That the obligations of respondents as set forth in paragraphs (A) through (D) above and in paragraphs (F) and (G) hereafter of this order shall, with respect to persons engaged solely to make, or attempt to make, collections for the account of the respondents, apply only to compliance with those provisions of this order relating to said activity and said persons solely so engaged shall be required under this order only to conform their practices to the provisions of paragraph (k) of this order;

(F) That respondents shall institute and continue for any period they are engaged in practices covered by this order a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order; and

(G) That respondents shall discontinue dealing with any persons (including dealers, independents, and outside collection agents or other third-parties) who, as revealed by the aforesaid program of surveillance, continue the deceptive acts or practices prohibited by this order.

III.

It is further ordered, That the respondent BMI Corporation shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent, such as dissolution, assignment, reorganization or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

IV.

It is further ordered, That the individually named respondents shall notify the Commission at least thirty (30) days prior to sale or discontinuance of the entities through which they have been engaging

in the sale of magazine subscription contracts or of the creation of any additional business entities (doing business as or trading as firms), or any decision to enter or entry into any new business engaged in the telemarketing of any product or service in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

V.

It is further ordered, That this order shall hereafter govern the conduct of the respondents, and, to that end, the Decision and Order in Docket No. 8831, issued on August 3, 1972, is hereby vacated insofar as it applies to respondents in this matter.

Complaint

122 F.T.C.

IN THE MATTER OF

TELEBRANDS CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3699. Complaint, Dec. 13, 1996--Decision, Dec. 13, 1996*

This consent order prohibits, among other things, a Virginia-based mail order company and its officer from representing that their antenna improves television and radio reception, provides the best, crispest, clearest or most focused television reception achievable without cable installation, and requires any claim concerning the relative or absolute performance, attributes, or effectiveness of any product intended to improve a television's or radio's reception, sound, or image to be truthful and substantiated by competent and reliable evidence.

Appearances

For the Commission: *Donald D'Amato* and *Michael Bloom*.

For the respondents: *Robert Ullman, Bass & Ullman*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Telebrands Corp., a corporation; and Ajit Khubani, individually and as an officer and director of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Telebrands Corp., also doing business as Uncle Bernie's and U.S. Buyers Network, and previously having been known as Telebrands Direct Response Corp. and Telebrands Wholesale Corp., is a Virginia corporation with its office and principal place of business located at 2428 Patterson Avenue, Roanoke, Virginia.

Respondent Ajit Khubani is an officer and director of the corporate respondent. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondent, including the various acts and practices alleged