

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NORTH CAROLINA

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RHEVILLE, N.C.  
2004 AUG 11 AM 10:40  
DISTRICT COURT  
W. DIST. OF N.C.

3  
4 FEDERAL TRADE COMMISSION,  
5 Plaintiff,  
6 v.  
7 NEWORLD MARKETING LLC,  
8 a North Carolina corporation,  
9 Defendant.

Case No. 1:04cv159

10  
11 **COMPLAINT FOR PERMANENT INJUNCTION  
12 AND OTHER EQUITABLE RELIEF**

13 Plaintiff, the Federal Trade Commission ("Commission"), for its complaint alleges as  
14 follows:

15 1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade  
16 Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and  
17 Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*,  
18 against defendant NeWorld Marketing, LLC ("NeWorld"), to secure a permanent injunction and  
19 other equitable relief for engaging in acts or practices in violation of the FTC's Trade Regulation  
20 Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

21  
22 **JURISDICTION AND VENUE**

23 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a),  
24 53(b), 57b, 6102(c), 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

25 3. Venue in the Western District of North Carolina is proper under 15 U.S.C. § 53(b)  
26 and 28 U.S.C. § 1391(b).

1 **THE PARTIES**

2 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United  
3 States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces Section  
4 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting  
5 commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310,  
6 which prohibits deceptive or abusive telemarketing practices. The Commission may initiate  
7 federal district court proceedings to enjoin violations of the FTC Act and the Telemarketing  
8 Sales Rule, and to secure such equitable relief as may be appropriate in each case. 15 U.S.C.  
9 §§ 53(b), 57b, 6102(c), and 6105(b).

10 5. Defendant NeWorld Marketing, LLC, is a North Carolina corporation with its  
11 principal place of business at 70 Hazel Mill Road, Asheville, North Carolina. NeWorld engages  
12 in and transacts business in this district.

13  
14 **COMMERCE**

15 6. At all times relevant to this complaint, the defendant has maintained a substantial  
16 course of conduct in or affecting commerce, as “commerce” is defined in Section 4 of the FTC  
17 Act, 15 U.S.C. § 44.

18  
19 **DEFENDANT’S BUSINESS PRACTICES**

20 7. NeWorld, a list management company, manages the marketing and sale or rental  
21 of various lists of consumer names, addresses, and telephone numbers on behalf of list owners.  
22 For a fee, NeWorld promotes and markets the lists it manages to list brokers and others in the  
23 direct marketing industry who seek lists of consumers likely to respond to other telemarketing or  
24 direct mail offers. NeWorld monitors the use of these lists by seeding them with decoy addresses  
25 and telephone numbers.

1           8.       NeWorld typically requires prospective list renters to provide it with a sample  
2 mail piece or telemarketing script. NeWorld can then approve or disapprove the use of its lists  
3 for certain purposes or in connection with certain offers. In some instances, NeWorld may also  
4 forward the sample mail piece or script to the list owner for approval.

5           9.       NeWorld has routinely rented its lists to telemarketers of advance fee credit  
6 products. The TSR prohibits requesting or receiving payment in advance of obtaining an  
7 extension of credit when the seller or telemarketer has guaranteed or represented a high  
8 likelihood of success in obtaining or arranging an extension of credit.

9           10.      Some of the sample telemarketing scripts sent to NeWorld and used by companies  
10 to which NeWorld has rented its lists demonstrate that these companies have been engaged in  
11 violations of the TSR. For example, a script provided to NeWorld by First Capital Consumers  
12 Group, states that:

13                   . . . you have been approved for a MasterCard . . . . You will receive your  
14 benefits packages . . . and one will contain the Major Bank Card . . . .  
15 [O]ur lifetime 'silver' membership fee of \$189 or 'gold' membership of  
16 \$219 can be safely processed.

17           11.      NeWorld rented lists to First Capitol Consumers Group on numerous occasions in  
18 2002 and 2003. NeWorld rented lists to First Premier for another advance fee credit offer. That  
19 script states, in part:

20                   [T]his is \_\_\_\_\_ with First PREMIER Bank Visa Card processing  
21 center . . . . You're qualified for our First Premier Bank Unsecured  
22 Visa card . . . . Your one time acceptance fee of \$149 is billed  
23 directly to your Visa.

24           12.      Because it is obvious from the face of the scripts that the TSR is being violated,  
25 NeWorld should know that, by renting these companies lists of responsive consumers, it is  
26 assisting and facilitating in the unlawful marketing of advance fee credit products.



1 telemarketers to whom it sells lists because NeWorld seeds its lists with decoy names, addresses,  
2 and telephone numbers.

3 19. By providing substantial assistance and support to sellers or telemarketers, while  
4 knowing or consciously avoiding knowing that the sellers or telemarketers are engaged in the  
5 sale of advance fee credit products, defendant NeWorld has itself violated Section 310.3(b) of the  
6 Rule. 16 C.F.R. 310.3(b).

### 7 8 CONSUMER INJURY

9 20. Consumers throughout the United States have suffered substantial monetary loss  
10 as a result of the defendant's unlawful acts or practices.

### 11 12 THIS COURT'S POWER TO GRANT RELIEF

13 21. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant  
14 injunctive and other ancillary relief to prevent and remedy any violations of any provision of law  
15 enforced by the Commission.

16 22. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the  
17 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court  
18 finds necessary to redress injury to consumers or other persons resulting from Defendant's  
19 violations of the TSR, including rescission and reformation of contracts and refund of monies.

20 23. This Court, in the exercise of its equitable jurisdiction, may award other ancillary  
21 relief to remedy injury caused by Defendant's law violations.

### 22 23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff, Federal Trade Commission, requests that this Court, as  
25 authorized by Section 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b) and 57b, and pursuant to  
26 its own equitable powers:

- 1 a. Permanently enjoin Defendant from violating the TSR;
- 2 b. Enter judgment against Defendant and in favor of Plaintiff for the violation
- 3 alleged in this Complaint;
- 4 c. Award such relief as the Court finds necessary to redress injury to consumers
- 5 resulting from the Defendant's violations of the Telemarketing Sales Rule and the
- 6 FTC Act, including but not limited to, rescission of contracts, the refund of
- 7 monies paid, and the disgorgement of ill-gotten monies and interest thereon by
- 8 defendants; and
- 9 d. Award Plaintiff the costs of bringing this action, as well as such other and
- 10 additional relief as the Court may determine to be just and proper.

11

12 Respectfully submitted,

13 William E. Kovacic  
14 General Counsel

15 CHARLES A. HARWOOD  
16 Regional Director  
17 TRACY S. THORLEIFSON  
18 Attorneys for Plaintiff  
19 Federal Trade Commission  
20 915 2nd Ave., Suite 2896  
21 Seattle, WA 98174  
22 (206) 220-6350

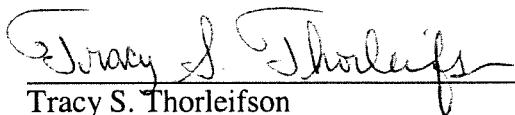
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28 By:   
Tracy S. Thorleifson

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Clerk, U. S. Dist. Court  
W. Dist. of N. C.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NEWORLD MARKETING L.L.C.,

a North Carolina corporation,

Defendant.

Case No. 1:04cv159

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), has filed a complaint for permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging defendant with assisting and facilitating the commission of deceptive and abusive telemarketing acts and practices, in violation of Section 310.3(b) of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

The Commission and defendant NeWorld Marketing, L.L.C. (defendant or “NeWorld Marketing”), having been represented by counsel and acting by and through such counsel, have consented to the entry of this Stipulated Order for Permanent Injunction and Other Equitable Relief (“Stipulated Order” or “Order”) without a trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and defendant having requested the Court to enter this Stipulated Order, it is ORDERED, ADJUDGED, AND DECREED as follows:

Stipulated Order as to NeWorld Marketing - 1 of 8

1 **FINDINGS**

2 1. This is an action by the Commission instituted under Section 13(b) of the FTC  
3 Act, 15 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the  
4 relief contained herein.

5 2. The Commission’s complaint states a claim upon which relief may be granted  
6 against defendant under Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act ("FTC  
7 Act"), 15 U.S.C. §§ 45(a), 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse  
8 Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 - 6108.

9 3. This Court has jurisdiction over the subject matter of this case and all parties  
10 hereto. Venue in the Western District of North Carolina is proper.

11 4. The alleged activities of defendant are in or affecting commerce, as defined in  
12 Section 4 of the FTC Act, 15 U.S.C. § 44.

13 5. The parties shall each bear their own costs and attorney’s fees incurred in this  
14 action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and  
15 all rights to seek judicial review, or otherwise to challenge the validity of this Stipulated Order.

16 6. Entry of this Stipulated Order is in the public interest.  
17

18 **DEFINITIONS**

19 1. “Seller” shall have the meaning set forth in Section 310.2(z) of the Telemarketing  
20 Sales Rule, 16 C.F.R. § 310.2(z).

21 2. “Telemarketer” shall have the meaning set forth in Section 310.2(bb) of the  
22 Telemarketing Sales Rule, 16 C.F.R. § 310.2(bb).

23 3. “Telemarketing” shall have the meaning set forth in Section 310.2(cc) of the  
24 Telemarketing Sales Rule, 16 C.F.R. § 310.2(cc).  
25  
26  
27



1 **ORDER**

2 **I. PROHIBITED PRACTICES**

3 IT IS THEREFORE ORDERED that, in connection with the management, rental, or sale  
4 of direct marketing lists for use in telemarketing, defendant NeWorld Marketing, its successors  
5 and assigns, and each of its officers, agents, servants, and employees, and those persons in active  
6 concert or participation with it who receive actual notice of this Order by personal service or  
7 otherwise, are hereby restrained and enjoined from:

8 A. Providing substantial assistance or support to any seller or telemarketer while  
9 knowing or consciously avoiding knowing that the seller or telemarketer is engaged in any act or  
10 practice that violates Sections 310.3(a), 310.3(c), 310.3(d), or 310.4 of the Telemarketing Sales  
11 Rule, 16 C.F.R. §§ 310.3(a), 310.3(c), 310.3(d), or 310.4; and

12 B. Failing to obtain and review sample scripts from any seller or telemarketer prior to  
13 renting or selling any list to that seller or telemarketer in order to ensure that the rental or sale of  
14 any such list does not assist the seller or telemarketer in violating Sections 310.3(a)(1)(iv) and  
15 (vi), 310.3(a)(2)(vii), 310.4(a)(2), (3), and (4), and 310.4(d) and (e) of the Telemarketing Sales  
16 Rule.

17 **II. CONSUMER REDRESS**

18 IT IS FURTHER ORDERED that:

19 A. A judgment for equitable monetary relief in the amount of sixty-two thousand five  
20 hundred dollars (\$62,500) is hereby entered against defendant NeWorld Marketing, LLC.  
21 Defendant shall satisfy this judgment within ten (10) days of the date of entry of this Order by the  
22 Court, by wire transfer of funds in accord with directions provided by the FTC. All funds paid  
23 pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its  
24 agent to be used for equitable relief, including but not limited to consumer redress and to pay any  
25 attendant costs for the administration of any redress fund. If direct redress to consumers is  
26 wholly or partially impracticable or funds remain after redress is completed, the Commission



1 *Provided* that nothing in this Order shall limit the Commission's lawful use of compulsory  
2 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any  
3 documentary material, tangible things, testimony, or information relevant to unfair or deceptive  
4 acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

5 C. Defendant shall permit representatives of the Federal Trade Commission to  
6 interview any consultant, independent contractor, representative, agent, or employee who has  
7 agreed to such an interview, relating in any way to any conduct subject to this Order. The person  
8 interviewed may have counsel present.

9  
10 **IV. DISTRIBUTION OF ORDER BY DEFENDANT**

11 A. IT IS FURTHER ORDERED that, for a period of three (3) years from the date of  
12 entry of this Stipulated Order, defendant shall deliver a copy of this Order to all principals,  
13 officers, directors, managers, employees, agents, and representatives having responsibilities with  
14 respect to the subject matter of this Order, and shall secure from each such person a signed and  
15 dated statement acknowledging receipt of the Order. Defendant shall deliver this Order to  
16 current personnel within thirty (30) days after the date of service of this Order, and to new  
17 personnel within thirty (30) days after the person assumes such position or responsibilities.

18  
19 **V. COMPLIANCE REPORTING BY DEFENDANT**

20 IT IS FURTHER ORDERED that, in order that compliance with the provisions of this  
21 Stipulated Order may be monitored:

22 A. For a period of three (3) years from the date of entry of this Order, defendant  
23 shall notify the Commission of the following:

24 1. Any changes in defendant's principal place of business, mailing addresses,  
25 and telephone numbers, within ten (10) days of the date of such change;

26 2. Any changes in defendant's name or use of any aliases or fictitious names;

1 and

2 3. Any changes in corporate structure that may affect compliance obligations  
3 arising under this Order, including but not limited to a dissolution, assignment, sale,  
4 merger, or other action that would result in the emergence of a successor corporation; the  
5 creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or  
6 practices subject to this Order; the filing of a bankruptcy petition; or a change in the  
7 corporate name or address, at least thirty (30) days prior to such change, provided that,  
8 with respect to any proposed change in the corporation about which the defendant learns  
9 less than thirty (30) days prior to the date such action is to take place, defendant shall  
10 notify the Commission as soon as is practicable after obtaining such knowledge.

11 B. One hundred eighty (180) days after the date of entry of this Order, defendant  
12 shall provide a written report to the Federal Trade Commission, sworn to under penalty of  
13 perjury, setting forth in detail the manner and form in which it has complied and is complying  
14 with this Order. This report shall include, but not be limited to, any changes required to be  
15 reported pursuant to paragraph A, above.

16 C. For the purposes of this Order, defendant shall, unless otherwise directed by the  
17 Commission's authorized representatives, mail all written notifications to the Commission to:

18 Regional Director  
19 Northwest Region  
20 Federal Trade Commission  
21 915 Second Ave., Suite 2896  
22 Seattle, WA 98174

23 D. For purposes of the compliance reporting required by this Order, the Federal  
24 Trade Commission is authorized to communicate directly with defendant.

## 25 VI. RECORD KEEPING PROVISIONS

26 IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of  
27 this Order, in connection with telemarketing or with assisting others engaged in telemarketing,

1 defendant and defendant's agents, employees, officers, servants, corporations, successors, and  
2 assigns, and those persons in active concert or participation with them who receive actual notice  
3 of this Stipulated Order by personal service or otherwise, are hereby restrained and enjoined from  
4 failing to create and retain, unless otherwise specified:

5 A. Personnel records accurately reflecting: the name, address, and telephone number  
6 of each person employed in any capacity by such business, including as an independent  
7 contractor; that person's job title or position; the date upon which the person commenced work;  
8 and the date and reason for the person's termination, if applicable; and

9 B. Customer files containing the names, addresses, phone numbers, sample scripts  
10 and mail pieces, and a description of the direct marketing lists rented or purchased, to the extent  
11 such information is obtained in the ordinary course of business.

12  
13 **VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

14 IT IS FURTHER ORDERED that defendant must, within five (5) business days of receipt  
15 of this order as entered by the Court, submit to the Commission a truthful sworn statement  
16 acknowledging receipt of this Order.

17  
18 **VIII. RETENTION OF JURISDICTION**


19 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for  
20 purposes of construction, modification, and enforcement of this Order.


21  
22 **SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

23  
24  
25 \_\_\_\_\_  
United States District Judge

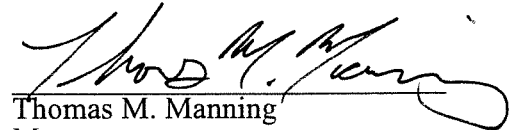
1 The parties, by their respective counsel, hereby consent to the terms and conditions of the  
2 Stipulated Order as set forth above and consent to the entry thereof. Defendant waives any rights  
3 that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.  
4


5 **FOR THE PLAINTIFF FEDERAL**  
6 **TRADE COMMISSION**

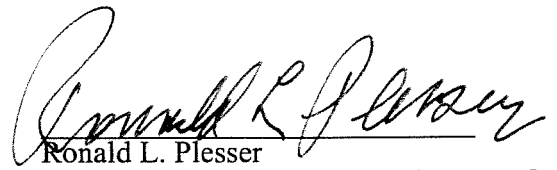
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8 Tracy S. Thorleifson  
9 Federal Trade Commission, Northwest Region  
10 915 Second Avenue, Suite 2896  
11 Seattle, WA 98174  
12 206-220-4481  
13 206-220-6366 (fax)

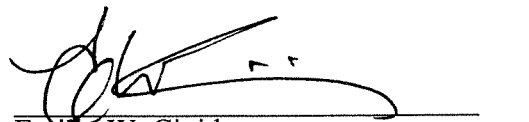
14   
15 Charles A. Harwood  
16 Attorney for Plaintiff  
17 Federal Trade Commission,  
18 915 Second Avenue, Suite 2896  
19 Seattle, WA 98174  
20 206-220-4480  
21 206-220-6366 (fax)

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