

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-60746-Civ-Gold

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

GREETING CARDS OF AMERICA, INC.,  
a Florida corporation;

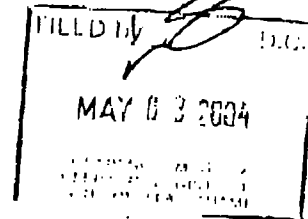
GERALD TOWBIN,  
also known as Alex Carr and John Grant,  
individually and as owner and operator of  
Greeting Cards of America;

SUSAN TOWBIN,  
also known as Mary Grant and Sandy Grant,  
individually and as an officer of Greeting  
Cards of America;

AMERICAN EAGLE PLACEMENTS,  
a Georgia company; and

FORREST ADAMS,  
individually and as the owner and officer of  
American Eagle Placements,

Defendants.



**CLOSED  
CIVIL  
CASE**

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT  
INJUNCTION AND OTHER EQUITABLE RELIEF AGAINST GREETING CARDS  
OF AMERICA, GERALD TOWBIN, AND SUSAN TOWBIN**

This matter comes before the Court on stipulation of Plaintiff, Federal Trade Commission ("FTC" or "Commission"), and Defendants Greeting Cards of America, Inc., Gerald Towbin, and

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Susan Towbin. On April 21, 2003, the Commission filed a Complaint for a permanent injunction and other equitable relief in this matter pursuant to Section 13 (b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The FTC charged Defendants Greeting Cards of America, Inc. (hereinafter "Greeting Cards of America" or "GCA"), Gerald Towbin, Susan Towbin, American Eagle Placements, and Forrest Adams with engaging in deceptive acts or practices in connection with the marketing and sale of greeting card business ventures, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the Trade Regulation Rule regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("Franchise Rule" or "Rule"), 16 C.F.R. Part 436. The Commission and Defendants GCA, Gerald Towbin, and Susan Towbin have agreed to settle all matters of dispute between them without adjudication. Accordingly, it is hereby **ORDERED, ADJUDGED, AND**

**DECREED:**

**FINDINGS**

1. This Court has jurisdiction of the subject matter of this case and the parties hereto. Venue in the Southern District of Florida is proper as to all parties.
2. The activities of Defendants GCA, Gerald Towbin, and Susan Towbin are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
3. The Complaint states a claim upon which relief may be granted against Defendants GCA, Gerald Towbin, and Susan Towbin under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 53(b). This Final Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendants that they engaged in violations of any law or regulation, or that the facts alleged in the complaint, other than

jurisdictional facts, are true.

4. Defendants GCA, Gerald Towbin, and Susan Towbin waive all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order. Defendants GCA, Gerald Towbin, and Susan Towbin further waive any claim under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any claims they may have against the Commission, its employees, representatives, or agents.

5. Defendants GCA, Gerald Towbin, and Susan Towbin enter into this Final Order freely and without coercion and acknowledge that they have read, understand, and are prepared to abide by the provisions of this Final Order.

6. This Final Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

7. Entry of this Final Order is in the public interest.

#### **DEFINITIONS**

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

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds, effects, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located, whether in the United States or abroad.

2. "Business venture" or "business opportunity venture" means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of the payment of any consideration for:

- a. the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
  - b. more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.
3. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy of a document is a separate document within the meaning of the term.
4. "Franchise" is defined in the FTC's Franchise Rule, Trade Regulation Rule regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 CFR 436.1 et seq., and includes "business opportunity ventures" as discussed in the FTC's Final Interpretative Guide for the Franchise Rule, 44 Fed. Reg. 49966 (August 24, 1979).
5. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, or cooperative, or any other group or combination acting as an entity.
6. The terms "*and*" and "*or*" shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

**ORDER****I.****PERMANENT BAN**

**IT IS THEREFORE ORDERED** that Defendants Greeting Cards of America, Inc., Gerald Towbin, and Susan Towbin are hereby permanently restrained and enjoined from advertising, offering to sell, or selling any franchise, business venture, or business opportunity venture.

**II.****PROHIBITED BUSINESS ACTIVITIES**

**IT IS FURTHER ORDERED** that, in connection with the advertising, offering to sell, sale, or distribution of any goods or services, Defendants GCA, Gerald Towbin, and Susan Towbin, and their successors, assigns, officers, members, agents, directors, servants, employees, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase goods or services, including but not limited to:

- A. Misrepresenting the total costs to purchase, receive, or use any goods or services;
- B. Misrepresenting any material restriction, limitation, or condition to purchase, receive, or use goods or services;
- C. Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristic of any goods or services;

- D. Misrepresenting any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policies;
- E. Misrepresenting the income, profits, or sales volume likely to be achieved;
- F. Misrepresenting the income, profits, or sales volume achieved by other purchasers of the goods or services;
- G. Misrepresenting the authenticity of any reference;
- H. Misrepresenting the territorial rights to, or amount of competition within, any geographic territory; and
- I. Misrepresenting the existence or quality of locations for the machines, racks, or other equipment used to dispense Defendants' products.

### III.

#### CONSUMER REDRESS AND OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED that judgment is hereby entered jointly and severally against Defendants GCA, Gerald Towbin and Susan Towbin in the amount of \$400,000 plus the remaining corporate funds under the control of the Receiver, which shall be distributed as stated in Paragraph V.C. of this Final Order.

### IV.

#### RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

- A. The Commission's agreement to, and the Court's approval of, this Final Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial statements of Defendants GCA, Gerald Towbin, and Susan Towbin, dated May 5, 2003, and the financial

depositions of Gerald Towbin and Susan Towbin, taken on October 31, 2003, all of which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Final Order.

B. If, upon motion, this Court should find that Defendants GCA, Gerald Towbin, or Susan Towbin made a material misrepresentation or omitted material information concerning their financial condition, then the Court, without further adjudication, shall enter a modified judgment holding that defendant liable to the Commission in the amount of \$2,977,000 for consumer redress. This amount shall become immediately due and payable, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. Defendants GCA, Gerald Towbin, and Susan Towbin agree that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Order, including, but not limited to, a nondischargeability complaint filed in any bankruptcy proceeding.

D. Should this Final Order be modified pursuant to this Section, this Final Order, in all other respects, shall remain in full force and effect unless otherwise ordered by this Court. Any proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Final Order.

#### V.

#### RECEIVERSHIP PROVISIONS

**IT IS FURTHER ORDERED** that:

A. The Receiver, Jane Moscovitz, Esq., shall wind down the affairs and marshal the records and assets of Greeting Cards of America. Within 45 days after entry of this Final Order, the Receiver shall file a final report to this Court describing the wind-down of the business of Greeting Cards of America and the scope of the Receiver's activities.

B. The Receiver and all personnel hired by the Receiver as previously authorized by the Court shall be entitled to reasonable compensation for the performance of duties pursuant to her appointment and this Final Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in possession or control of the Receiver, or which may be received by the Receivership Defendants, Greeting Cards of America, Inc., and American Eagle Placements. Within 45 days after entry of this Final Order, the Receiver shall file with the Court, and serve on the parties, a final accounting and request for the payment of such reasonable compensation.

C. Upon the Court's approval of the Receiver's final report and request for payment, the Receiver shall transfer any remaining funds of Receivership Defendants to the FTC to be used for consumer redress, and the receivership shall terminate.

D. By signing this Final Order, Defendants GCA, Gerald Towbin, and Susan Towbin relinquish all dominion, control and title to the monies transferred to the FTC pursuant to this Section, and agree that all legal and equitable title to those monies is vested in the Commission.

E. All monies paid to the Commission pursuant to this Paragraph and any other Paragraph of this Final Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to



consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

#### VI.

#### LIFTING OF ASSET FREEZE

**IT IS FURTHER ORDERED** that the freeze against the assets of Defendants GCA, Gerald Towbin, and Susan Towbin pursuant to the Preliminary Injunction entered by this Court on May 14, 2003, shall be lifted upon entry of this Final Order.

#### VII.

#### CUSTOMER LISTS

**IT IS FURTHER ORDERED** that Defendants GCA, Gerald Towbin, and Susan Towbin, and their successors, assigns, agents, servants, employees, officers, and all persons directly or indirectly under their control, and all other persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, subsidiary, division, or other device, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid money to any of the Defendants for the purchase of a business venture and/or location services or who were

contacted or on a list to be contacted by any of the Defendants; provided that Defendants GCA, Gerald Towbin, and Susan Towbin may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

### VIII.

#### COMPLIANCE MONITORING

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Final Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants GCA, Gerald Towbin, and Susan Towbin shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation.
- B. In addition, the Commission is authorized to monitor compliance with this Final Order by all other lawful means, including but not limited to the following:
- (1) obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
  - (2) posing as consumers and suppliers to Defendants GCA, Gerald Towbin, and Susan Towbin, employees of Defendants GCA, Gerald Towbin, and Susan Towbin, or any other entity managed or controlled in whole or in part by Defendants GCA, Gerald Towbin, and Susan Towbin, without the necessity of identification or prior notice;

*Provided* that nothing in this Final Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

C. Defendants GCA, Gerald Towbin, and Susan Towbin shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Final Order. The person interviewed may have counsel present.

#### IX.

#### COMPLIANCE REPORTING BY DEFENDANT

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Final Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Order,
- (1) Defendants Gerald Towbin and Susan Towbin shall notify the Commission of the following:
    - (a) Any changes in Defendants' residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - (b) Any changes in Defendants' employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that either Defendant is affiliated with, employed by, or performs

services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business;

- (c) Any changes in Defendants' names or use of any aliases or fictitious names; and
- (2) Defendants GCA, Gerald Towbin, and Susan Towbin shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Final Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Final Order, Defendants GCA, Gerald Towbin, and Susan Towbin shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Final Order. This report shall include, but not be limited to:

- (1) Any changes required to be reported pursuant to subparagraph A. above;
- (2) A copy of each acknowledgment of receipt of this Final Order obtained by Defendants pursuant to Paragraph XI.

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

Regional Director  
Federal Trade Commission  
Southeast Region  
225 Peachtree Street, Suite 1500  
Atlanta, Georgia 30303

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D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants Gerald Towbin and Susan Towbin.

#### X.

#### RECORDKEEPING PROVISIONS

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Final Order, Defendants Gerald Towbin and Susan Towbin, in connection with any business in which either Defendant is the majority owner or otherwise controls the business, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain

the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

## XI.

### **DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Order:

- A. Defendant Greeting Cards of America shall deliver a copy of this Final Order to all principals, officers, directors, managers, employees, agents, and representatives

having responsibilities with respect to the subject matter of this Final Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant Greeting Cards of America shall deliver this Final Order to current personnel and to former personnel employed at the time of the serving of this case's complaint within thirty (30) days after the date of service of this Final Order, and to new personnel, if any, within thirty (30) days after the person assumes such position or responsibilities.

- B. Defendants Gerald Towbin and Susan Towbin shall deliver a copy of this Final Order to the principals, officers, directors, managers and employees under the control of Defendants Gerald Towbin and Susan Towbin for any business that (a) employs or contracts for personal services from Gerald Towbin or Susan Towbin and (b) has responsibilities with respect to the subject matter of this Final Order. Gerald Towbin or Susan Towbin shall secure from each such person a signed and dated statement acknowledging receipt of the Final Order within thirty (30) days after the date of service of the Final Order or the commencement of the employment relationship.

## XII.

### ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

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

XIII.

RETENTION OF JURISDICTION

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

SO STIPULATED:

*Gerald Towbin* 2/9/04  
Greeting Cards of America, Inc. Date  
by Gerald Towbin, President

*Harold E. Kirtz* 4/29/04  
Federal Trade Commission Date  
By Harold E. Kirtz, Esq.  
Attorney for Plaintiff

*Gerald Towbin* 2/9/04  
Gerald Towbin Date

*Susan Towbin* 2/9/04  
Susan Towbin Date

*Hector E. Lora*  
Hector E. Lora, Esq.  
Cove & Associates, P.A.  
Attorney for Defendants

SO ORDERED, this 3 day of May, 2004.

*Alan S. Gold*  
Hon. Alan S. Gold  
United States District Judge