

premised on his violations of Paragraphs I and XI of Permanent Injunction, and the expiration of the compliance-monitoring provisions in Paragraph XI, and the Court has fully considered the contentions of the parties, the record, and the applicable law; and

WHEREAS the Court has concluded that the Permanent Injunction should be modified with respect to Defendant Neiswonger, and remain in full force and effect except as specifically modified below, the Court now issues this Second Permanent Injunction, and finds as follows:

1. Defendant Neiswonger received actual notice of this Court's Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Permanent Injunction" or "Order").
2. Defendant Neiswonger has engaged in the advertising, marketing, promotion, and/or sale of a program as defined in the Permanent Injunction and herein, and has done so through means of telemarketing, as that term is defined below.
3. The evidence indicates that Defendant Neiswonger's acts and practices in connection with the advertising, marketing, promotion, and/or sale of a program violated Paragraphs I and I.A and other Paragraphs of the Permanent Injunction.
4. The evidence indicates that Defendant Neiswonger violated Paragraph XI of the Permanent Injunction, prior to its expiration, by failing to provide, and promptly provide, the Commission with written notice of his new business affiliation with APG program.
5. Defendant Neiswonger's violations of the Permanent Injunction constitute changed circumstances warranting revisions to the provisions of the Permanent Injunction, specifically, the provisions relating to the advertising, marketing, promotion, and/or sale of a program, and the compliance-monitoring provisions.
6. Entry of this Order is in the public interest.

7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

DEFINITIONS

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

A. "Document" is equal in scope and synonymous in meaning to the usage of the term in Federal Rule Civil Procedure 34(a), and includes writings, drawings, charts, graphs, photographs, audio and video recordings, computer records, electronic records and images, and any other data compilations from which information can be obtained (or translated, if necessary, through detection devices into reasonably usable form). A draft or non-identical copy is a separate document within the meaning of the term.

B. "Permanent Injunction" means this Court's original Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief, entered on February 28, 1997.

C. "Program" means any training session, course of instruction, class material, computer software, affiliation, association, newsletter, period of support, joint venture opportunity or combination thereof advertised, marketed, offered or sold by Defendant Neiswonger, whether acting directly or through any entity, corporation, subsidiary, division, or other device.

D. "Promotional Material" means any written or oral statement, advertisement, illustration, or depiction that is designed to effect a sale or create an interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public

transit card, point of purchase material (including, but not limited to, a display or an item worn by salespeople), package insert, package label, film, slide, radio, broadcast or cable television, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, program-length commercial (“infomercial”), infomercial script, the Internet, or any other medium.

E. “Relate to” means refer to, concern, regard, reflect, discuss, constitute, mention, pertain to, allude to, or associate with. “Relating to” means referring to, concerning, regarding, reflecting, discussing, constituting, mentioning, pertaining to, alluding to, or associated with.

F. “Telemarketing” means any plan, program or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.

I.
BAN ON ADVERTISING, MARKETING,
PROMOTION, OR SALE OF PROGRAMS
BY DEFENDANT RICHARD C. NEISWONGER

IT IS FURTHER ORDERED that, pursuant to Paragraph VII of the Court’s Stipulated Permanent Injunction, FED. R. CIV. P. 60(b), and the Court’s inherent jurisdiction in the exercise of its equitable discretion, Defendant Richard C. Neiswonger is hereby permanently banned from advertising, marketing, promoting, offering for sale, selling, or otherwise inducing participation in any program, or assisting others to do so, either directly or through any agent, employee, successor, assign, corporation, subsidiary, division, or other device.

Any provisions of the original Permanent Injunction in conflict with this provision are superceded by this Paragraph.

II.
BAN ON TELEMARKETING

IT IS FURTHER ORDERED that, pursuant to FED. R. CIV. P. 60(b) and the Court's inherent jurisdiction in the exercise of its equitable discretion, Defendant Richard C. Neiswonger is permanently restrained and enjoined from engaging or participating in telemarketing, directly or through an intermediary.

III.
COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order and the Court's original Permanent Injunction,

(A) Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Neiswonger 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 his possession or direct or indirect control to inspect the business operation;

(B) In addition, the Commission is authorized to monitor compliance with this Order and the Court's original Permanent Injunction 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 Defendant Neiswonger's employees, or any other entity managed or controlled in whole or in part by Defendant Neiswonger, without the necessity of identification or prior notice; and

(C) Defendant Neiswonger 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 Order or the Court's original Permanent Injunction. The person interviewed may have counsel present.

Provided, however, that nothing in this 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)).

IV. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order and the Court's original Permanent Injunction may be monitored:

- (A) For a period of five (5) years from the date of entry of this Order,
- (1) Defendant Neiswonger shall notify the Commission of the following:
- (a) Any changes in residence, mailing addresses, and telephone numbers of Defendant Neiswonger within ten (10) days of the date of such change;
 - (b) Any changes in employment status (including self-employment) of Defendant Neiswonger, and any change in the ownership of Defendant Neiswonger in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant Neiswonger is affiliated

with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Defendant Neiswonger's duties and responsibilities in connection with the business or employment; and

(c) Any changes in Defendant Neiswonger's name or use of any aliases or fictitious names; and

(2) Defendant Neiswonger shall notify the Commission of any changes in corporate structure of any business entity that Defendant Neiswonger directly or indirectly control(s), or has an ownership interest in, that may affect compliance obligations arising under this Order or the Court's original Permanent Injunction, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this 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 Defendant Neiswonger less than thirty (30) days prior to the date such action is to take place, Defendant Neiswonger 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 Order, Defendant Neiswonger shall provide a true and accurate 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 Order. This report shall include, but not be limited to:

(1) The then-current residence address, mailing addresses, and telephone numbers of Defendant Neiswonger;

(2) The then-current employment and business addresses and telephone numbers of Defendant Neiswonger, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant Neiswonger for each such employer or business; and

(3) A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph V.

(4) Any other changes required to be reported under subparagraph. A of this Paragraph III.

(C) For the purposes of this Order, Defendant Neiswonger shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director of Enforcement
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Re: *FTC v. Neiswonger*, No. 4:96CV2225 SNL.

(D) For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant Neiswonger.

V.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant Neiswonger and his agents, employees, officers, corporations,

successors, and assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, 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 promotional materials.
- (F) All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraph VI of this Order, and all reports

submitted to the FTC pursuant to Paragraph III of this Order.

**VI.
DISTRIBUTION OF ORDER BY DEFENDANT**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant Neiswonger shall deliver copies of the Order as directed below:

- (A) For any business that Defendant Neiswonger controls, directly or indirectly, or in which Defendant Neiswonger has a majority ownership interest, Defendant Neiswonger must deliver a copy of this Order to all principals, officers, directors, and managers of that business. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- (B) For any business where Defendant Neiswonger is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Neiswonger must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- (C) Defendant Neiswonger must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Paragraph.

**VII.
ACKNOWLEDGMENT OF RECEIPT OF ORDER**

IT IS FURTHER ORDERED that Defendant Neiswonger, within five (5) business days

of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**VIII.
ORIGINAL PERMANENT INJUNCTION**

IT IS FURTHER ORDERED that the Court's original Permanent Injunction in this matter remains in full force and effect, except as specifically modified and superceded by this Order.

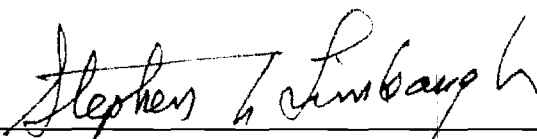
**IX.
ORDER ENTRY**

IT IS FURTHER ORDERED that there is no just reason for delay of entry of this Order, and, pursuant to Fed.R.Civ.P. 54(b), the Clerk shall enter this Order immediately.

**X.
RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED the Court shall continue to retain jurisdiction of this matter for all purposes.

Dated this 23rd day of April, 2007.



SENIOR UNITED STATES DISTRICT JUDGE