

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
BUDGET MARKETING, INC.,)
a corporation;)
CHARLES A. EAGLE,)
individually;)
DENNIS H. GOUGION,)
individually;)
DALE T. LENARD,)
individually, and doing)
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 doing)
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;)
STEVEN JOHNSON,)
individually;)
WILLIAM J. STEMPLE, SR.,)
individually and doing)
business as BUDGET)
MARKETING OF VIRGINIA.)

FILE NO. 962 3247
AGREEMENT CONTAINING
CONSENT ORDER TO
CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of Budget Marketing, Inc., a corporation, and the consenting parties named individually in the caption hereof, and it now appearing that Budget Marketing, Inc., a corporation, and the consenting parties named individually, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated. The consenting parties all have been engaged in the telemarketing business of selling magazine subscriptions to the consuming public.

IT IS HEREBY AGREED by and between Budget Marketing, Inc., by its duly authorized officer, and the consenting parties named individually, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed 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 50313.

Proposed 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. Proposed 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 92069.

3. Proposed 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 55337-8199.

4. Proposed 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 50322.

5. Proposed respondent Dave Keown is an individual who has done business as Publishers Marketing, who currently resides at 7340 West 74th Place, in the City of Arvada, State of Colorado 80003-2724.

6. Proposed 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 30339.

7. Proposed 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 66202.

8. Proposed 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 33617.

9. Proposed 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 50310.

10. Proposed 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 23452.

11. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

12. Proposed respondents waive:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- (d) Any claim under the Equal Access to Justice Act.

13. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it,

together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint and decision, in disposition of the proceeding.

14. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

15. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The

order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

16. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

17. This order is not meant to relieve the proposed respondents from any obligations they may have under any other Federal Trade Commission rules or orders, the Federal Trade Commission Act, or any other applicable statutes, administrative orders, or regulations.

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)(i) 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 C.F.R. § 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 C.F.R. § 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 nonpayment 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.

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.

Signed this ____ day of _____, 19__.

BUDGET MARKETING, INC.
a corporation

By _____ President
(Name) (Title)

(Street)

(City and State)

Charles A. Eagle, individually,
and on behalf of Budget
Marketing, Inc.

Dennis H. Gougion, individually,
and on behalf of Budget
Marketing, Inc.

Dale T. Lenard, individually

Charles P. Donly, individually

Roy Golden, individually

Dave Keown, individually

Richard Prochnow, individually

John Harrison, individually

Dale Branson, individually

Steven Johnson, individually

William J. Stemple, individually

John R. Mackaman
Attorney for Budget Marketing,
Inc., Charles A. Eagle,
Dennis H. Gougion, Dale
and John Harrison

Branson,

F. Kelly Smith
Attorney for Dale T. Lenard and
Dave Keown

John L. Krenn
Attorney for Charles P. Donly

William Wheatcraft
Attorney for Roy Golden

S. Jarvin Levison
Attorney for Richard Prochnow

Robert V. Roussos
Attorney for William J. Stemple,
Sr.

Justin Dingfelder
Counsel for the Federal Trade
Commission

APPROVED:

Elaine D. Kolish
Associate Director
Enforcement Division
Bureau of Consumer Protection

Joan Z. Bernstein
Director
Bureau of Consumer Protection

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business as MEGA-MAGAZINE)
SERVICE, COLORADO DAWN,)
and KEY CONCEPT;)
CHARLES P. DONLY,) DOCKET NO.
individually, and doing)
business as BUDGET RENEWAL)
SERVICE;)
ROY GOLDEN,)
individually, and doing)
business as AMERICAN)
MARKETING SERVICE;)
DAVE KEOWN,)
individually, and doing)
business as PUBLISHERS)
MARKETING;)
RICHARD PROCHNOW,)
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individually, and doing)
business as LEISURE DAY)
MARKETING;)

STEVEN JOHNSON,)
individually; and)
WILLIAM J. STEMPLE, SR.)
individually, and doing)
business as BUDGET)
MARKETING OF VIRGINIA.)
_____)

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 Leisure 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 ONE: 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 50313.

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 franchisee, dealer and independent contractor activities.

PARAGRAPH TWO: 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, of magazines and other publications and services to the consuming public.

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

PARAGRAPH THREE: 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.

PARAGRAPH FOUR: 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.

PARAGRAPH FIVE: 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.

PARAGRAPH SIX: 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.

PARAGRAPH SEVEN: 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, false, misleading and deceptive.

PARAGRAPH EIGHT: 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 effect 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.

PARAGRAPH NINE: 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.

PARAGRAPH TEN: 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.

PARAGRAPH ELEVEN: 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this day of , A.D., 19 , issues its complaint against said respondents.

By the Commission.

SEAL

Donald S. Clark
Secretary

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Budget Marketing, Inc. (BMI), one of its officers, and some of its major dealers.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This proposed consent order is part of a proposed settlement of a civil penalty action that was filed against BMI and its dealers in Federal District Court in Des Moines, Iowa in December 1988 (Civil No. 88-1698-E). The District Court consent decree that will be filed to settle that matter provides for the payment of a total of \$395,000 civil penalties (plus \$25,000 in court costs) by BMI and some of its dealers. The decree also contains an injunction ordering the defendants in that action to obey this proposed consent order. The consent decree will dissolve the Consent Decree and Permanent Injunction entered in United States v. Budget Marketing, Civil No. 80-419-E (S.D. Iowa) on October 10, 1980, and replace it with the proposed decree.

BMI and its dealers are engaged in the sale by subscription, of magazines and other publications throughout the United States. This matter concerns various sales and collection practices engaged in by BMI and the named dealers to sell, by telephone, magazine subscription contracts and to collect payments for its services. The Commission's proposed complaint alleges that BMI and its dealers, among other things, have misrepresented the terms and conditions of contracts; misrepresented the identity of solicitors or firms they are representing; misrepresented the savings which will be accorded or made available to purchasers; misrepresented the action or results of any action which may be taken to effect payment of alleged indebtedness. The proposed complaint also charges respondents with violating the Electronic Fund Transfer Act (EFTA)(15 U.S.C. § 1693 et seq.) by not obtaining the requisite authorization in writing as proscribed by Section 205.10(b) of Regulation E, 12 C.F.R. § 205.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the proposed consent order contains a number of prohibitions. Paragraph (a) prohibits respondents from

failing to comply with Regulation E requiring authorization by the consumer in writing only for preauthorized electronic fund transfers from a consumer's account and from failing to comply with the Official Commentary to 12 C.F.R. § 205.10, Question 10-18.6. Paragraph (b) prohibits respondents from making representations, directly or indirectly, that its representatives who are, in fact, calling to secure subscriptions are conducting or participating in any survey or contest; performing services for educational, charitable or social organizations; or giving products or services for free or as a gift. Paragraph (c) prohibits the respondents from failing to identify that the purpose of their contacts is to sell products or services. Paragraph (d) prohibits respondents from representing that the price covers only the cost of mailing or misrepresenting the savings to be accorded to the purchaser. Paragraph (e) prohibits respondents from representing that subscription contracts can be cancelled at the purchaser's option, unless it can be, while paragraph (f) requires respondents to cancel upon request if such a misrepresentation has been made to the purchaser. Paragraph (g) prohibits respondents from misrepresenting the terms of payments to prospective purchasers. Paragraph (h) prohibits respondents from failing to reveal orally, prior to the customer's entering into a contract, and in writing on the subscription form, the names, number of issues, total cost, installment payments, method of payments and the right to rescind the sale within three business days of receipt of the sales agreement. Paragraph (i) prohibits respondents from representing that a purchase agreement is any other kind of document other than a contract or agreement. Paragraph (j) prohibits respondents from failing to identify the nature and legal import of any document that the consumer is required to execute. Paragraph (k) prohibits respondents from engaging in any unfair or deceptive practice in order to effect payment. Paragraph (l) prohibits respondents from cancelling any subscription contract for any reason other than a breach by the subscriber or a request by the subscriber; Paragraph (m) prohibits respondents from failing to provide to each consumer a copy of the subscription contract showing either the date it was mailed to the consumer or the date the consumer signed the contract and the name, address and telephone number of the seller or the service company used by the seller. Paragraph (n) prohibits respondents from failing to provide a sheet separable from the written sales agreement which can be used as a notice of cancellation. Paragraph (o) prohibits respondents from failing to cancel a sales agreement where the request is received fourteen (14) calendar days from the date the agreement was mailed or delivered to the purchaser and from refunding any payment received within thirty (30) days after cancellation. Paragraph (p) prohibits respondents from failing to furnish those PDS customer who use payment coupons with

specific information on the coupon payment book including the total coupons in the book, the total dollar amount of all such coupons, and the seller's address and telephone number. Paragraph (q) prohibits the respondents from failing to offer the right to substitute magazines on a pro rata dollar-for-dollar basis or the extension of subscription periods on magazines already selected in the event of the discontinuance of publication or availability of magazines already subscribed for by the customer. Paragraph (r) prohibits respondents from failing to cancel, at the subscriber's sole option, any portion of a contract whenever any misrepresentation prohibited by the order has been made. Finally, Paragraph (s) prohibits respondents from furnishing the means and instrumentalities to others by which the public may be misled in the manner or as to the things prohibited by this Order.

Part II of the proposed consent order requires BMI and its dealers to distribute copies of the order to each of the present and future dealers, employees and other representatives; to secure from such persons a statement indicating their intention to be bound by the order; to institute a program of continuing surveillance to reveal whether such persons are conforming to the order and to discontinue dealing with any such persons who are revealed to be engaging in practices prohibited by the order.

Part III of the proposed consent order requires BMI to notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent.

Part IV of the proposed consent order requires the individually named respondents to notify the Commission at least thirty (30) days prior to the sale or discontinuance of the entities through which they have been engaging in the sale of subscription contracts or of the creation of any additional businesses or entry into any new business engaged in the telemarketing of products or services.

Part V of the proposed consent order vacates the Decision and Order in Docket No. 8831, issued on August 3, 1972, insofar as it applies to the respondents in this matter.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.