

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 03 C 2541
)	
v.)	Judge George W. Lindberg
)	
JAMES D. THOMPSON and)	Magistrate Judge Morton Denlow
SUSAN B. GERMEK,)	
)	
Defendants.)	
)	

**FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AS TO JAMES D. THOMPSON**

Plaintiff Federal Trade Commission (“Commission” or “FTC”) filed a Complaint for a permanent injunction and other equitable relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b. The Complaint charged Defendant James D. Thompson with violations of Section 5(a) of the FTC Act, as amended, 15 U.S.C. § 45(a), and the Commission’s Trade Regulation Rule entitled “Mail or Telephone Order Merchandise Rule (the “Rule”), 16 C.F.R. Part 435.

Plaintiff FTC subsequently filed a motion for entry of a default judgment as to Defendant James D. Thompson pursuant to Rule 55 of the Federal Rules of Civil Procedure. The Court has granted the FTC’s motion. Accordingly, the Court hereby finds and orders as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over Defendant Susan B. Germek. Venue is proper in the Northern District of Illinois under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

2. The Complaint states a claim upon which relief may be granted against Defendant James D. Thompson under 15 U.S.C. §§ 45(a), 53(b) and 57b, and Sections 435.1(a)(1), 435.1(b)(1)

and 435.1(c) of the Commission's Mail and Telephone Order Merchandise Rule, 16 C.F.R. §§ 435.1(a)(1), 435.1(b)(1), and 435.1(c).

3. The Commission has the authority under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, to seek the relief it has requested.

4. The activities of Defendant James D. Thompson in the Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. In numerous instances, Defendant James D. Thompson has misrepresented, directly or indirectly, in the course of offering merchandise for sale via Internet auction Web sites, that consumers who submitted the highest bids for merchandise and sent the agreed-upon payment for the merchandise would receive the offered merchandise. Defendant James D. Thompson is therefore jointly and severally liable for violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

6. In numerous instances, Defendant James D. Thompson has opened accounts in consumers' names, without their authorization, at Internet auction Web sites and used those accounts to conduct Internet auction transactions. Defendant James D. Thompson is therefore jointly and severally liable for violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7. Defendant James D. Thompson, directly or indirectly, has solicited numerous orders for the sale of merchandise to be ordered by the buyer indirectly through the telephone without a reasonable basis to expect that Defendants would be able to ship any ordered merchandise to the buyer with the time stated in the solicitation, or, if no time was clearly and conspicuously stated, within thirty days of receipt of a properly completed order. Defendant James D. Thompson is therefore jointly and severally liable for violating Section 435.1(a)(1) of the Rule.

8. In a number of instances, beginning in approximately September 1999, after soliciting orders for the sale of merchandise ordered by the buyer indirectly through the telephone and being unable to ship merchandise within the applicable time as set out in Section 435.1(a)(1) of the Rule, Defendant James D. Thompson, directly or indirectly, failed to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to delay in shipping or to cancel

the order and receive a prompt refund. Defendant James D. Thompson is therefore jointly and severally liable for violating Section 435.1(b)(1) of the Rule, 16 C.F.R. § 435.1(b)(1).

9. In a number of instances, Defendant James D. Thompson failed to make a “prompt refund,” as that term is defined in 16 C.F.R. § 435.2(f), to buyers when such refunds were required by Section 435.1(c) of the Rule. Defendant James D. Thompson is therefore jointly and severally liable for violating Section 435.1(c) of the Rule, 16 C.F.R. § 435.1(c).

10. Entry of this Order is in the public interest.

DEFINITIONS

1. “Defendant” means James D. Thompson.
2. “Document” is synonymous in meaning and equal in scope to the term, as defined 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 is a separate document within the meaning of this term.
3. An “Internet auction Web site” is an online forum that facilitates communications between would-be buyers and sellers of merchandise. Sellers use the Internet auction Web site to advertise the merchandise they seek to sell. Auctions are conducted on the Internet auction Web site with would-be buyers sending bids through electronic mail to the web site. Buyers “win” by submitting the highest bid before the auction concludes. At the conclusion of the auction, buyers and sellers typically communicate with each other via electronic mail about the terms of payment and delivery. Once the terms are agreed upon, the buyer sends the payment to the seller, usually in the form of a personal check or money order, and the seller ships the merchandise to the buyer.

ORDER

I. BAN ON PARTICIPATING IN INTERNET AUCTIONS

IT IS THEREFORE ORDERED that Defendant James D. Thompson, and each of his agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, is hereby permanently restrained and enjoined from engaging or participating in Internet auction Web sites.

II. BAN ON MISREPRESENTATIONS

IT IS FURTHER ORDERED that, in connection with the sale or offering for sale of any goods or services via the Internet, Defendant is hereby restrained and enjoined from:

A. Making, or assisting others in making, either expressly or by implication, orally or in writing, any false or misleading statement or representation, including but not limited to the following:

1. Defendant has in his possession or under his control goods or services available to be purchased;
2. Defendant will ship goods or provide services, within a reasonable time period, upon receipt of payment for those goods or services;
3. Defendant has shipped goods upon receipt of payment for those goods;

B. Violating or assisting others to violate any provision of the Rule, 16 C.F.R. Part 435, including but not limited to:

1. Soliciting orders for the purchase of goods via the Internet without a reasonable basis for believing that he can ship the goods within the time stated in the solicitation, or if no time is stated, within thirty days of the solicitation, as required by 16 C.F.R. § 435.1(a)(1);

2. Failing to give consumers who have ordered goods from Defendant the option to accept a delay or cancel the order upon Defendant's discovery that he is unable to ship within the stated time period or within thirty days if no period was stated, as required by 16 C.F.R. § 435.1(b)(1);
3. Failing to deem an order canceled and provide a refund, where Defendant has failed to give a delay or cancellation option as required by 16 C.F.R. § 435.1(c);

C. Using any fictitious, false, or assumed title or name, other than his own proper name, or otherwise misrepresenting his true identity in the course of business dealings or in publicly filed documents.

III. BAN ON MISAPPROPRIATION OF CONSUMERS' PERSONAL INFORMATION

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering for sale of goods or services in commerce, Defendant, and any agent, servant, employee, salesperson, affiliate, successor, and any other person or entity in active concert or participation with Defendant who receives actual notice of this Order, is hereby restrained and enjoined from using consumers' personal information without their authorization.

IV. PROHIBITION AGAINST DISTRIBUTION OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant, and his officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are 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 information of any person who submitted information in conjunction with Defendant's business practices, *provided, however*, that

Defendant may disclose such information to a law enforcement agency, to Plaintiff, or as required by any law, regulation, or court order.

V. MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against Defendant James D. Thompson in the amount of eighty-eight thousand fifty six dollars and eighteen cents (\$88,056.18); and

B. Any and all funds paid pursuant to Subsection A of this Section 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 the Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Subsection.

VI. DISTRIBUTION OF ORDER BY DEFENDANTS

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

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same, from each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where: (1) the Defendant is the majority owner of the business or directly or indirectly manages or controls the

business and (2) where the business involves the advertising, marketing, sale or offering for sale of any good or service via the Internet; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments required in Subsection (A) of this Section.

VII. MONITORING BY DEFENDANT

IT IS FURTHER ORDERED that, in connection with any business where the Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the advertising, marketing, sale or offering for sale of any good or service via the Internet, the Defendant is hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I-IV of this Order;

B. Failing to investigate promptly and fully any consumer complaint received by any business to which this Section applies; and

C. Failing to take corrective action with respect to any sales person whom Defendant determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

VIII. RECORD KEEPING

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business where the Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the advertising, marketing, sale or offering for sale of any good or service via the Internet, Defendant is 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. 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, telephone 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. Complaint and refund requests (whether received directly, indirectly or through any third party), and any responses to those complaints or refund requests; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

IX. COMPLIANCE REPORTING BY DEFENDANT

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

A. For a period of five (5) years from the date of entry of this Order, Defendant shall notify the Commission of the following:

- (1) Any changes in any of the Defendant's residence, mailing address, or telephone numbers, within ten (10) days of the date of such change;
- (2) Any changes in any Defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the Defendant's duties and responsibilities in connection with the business or employment; and

- (3) Any proposed change in the structure of any business entity owned or controlled by any Defendant, such as the creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that could affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which that Defendant has complied and is complying with this Order. This report shall include, but not be limited to:

- (1) Defendant's current residence address and telephone number;
- (2) Defendant's current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant's titles and responsibilities for each employer;
- (3) A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Section VI; and
- (4) A statement describing the manner in which Defendant has complied and is complying with Sections I-V of this Order;

C. Upon written request by a representative of the Commission, Defendant shall submit additional written reports (under oath, if requested) and shall respond to any reasonable request to produce documents with respect to any conduct subject to this Order, within thirty (30) days from the date the request was received;

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

Federal Trade Commission
Midwest Region, Regional Director
55 East Monroe Street, Suite 1860
Chicago, Illinois 60603
Re: FTC v. Thompson, et al.;

E. For the purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom any Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendant, unless represented by counsel.

X. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendant's compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of Court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and suppliers to any Defendant, any Defendant's employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. 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 investigate whether Defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

XI. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendant shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business in which Defendant is the majority owner or directly or indirectly manages or controls the business, and where the business involves the advertising, marketing, sale or offering for sale of any good or service via the Internet. In providing such access, Defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

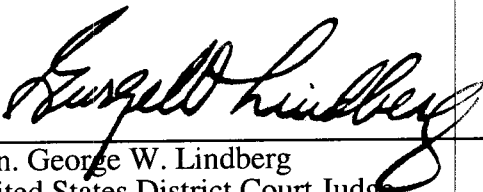
B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which subparagraph A of this Section XI applies, concerning matters relating to compliance with the terms of this Order. The persons interviewed may have counsel present.

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this matter for all purposes.

IT IS SO ORDERED.

Dated: AUG 21 2003



Hon. George W. Lindberg
United States District Court Judge