

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

\_\_\_\_\_) )  
In the Matter of ) )  
1554 CORPORATION, ) ) FILE NO. 952-3401  
a corporation, and ) )  
BRAINERD L. MELLINGER, III, ) ) AGREEMENT CONTAINING  
individually and ) ) CONSENT ORDER TO  
as an officer of 1554 Corp. ) ) CEASE AND DESIST  
\_\_\_\_\_)

The Federal Trade Commission having initiated an investigation of certain acts and practices of 1554 Corporation, a corporation, and Brainerd L. Mellinger, III, individually and as an officer of 1554 Corporation ("respondents"), and it now appearing that respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

IT IS HEREBY AGREED by and between 1554 Corporation, a corporation, by its duly authorized officer, and Brainerd L. Mellinger, III, individually and as an officer of 1554 Corporation, and their attorney, and counsel for the Federal Trade Commission, that:

1. Respondent 1554 Corporation is a California corporation, with its office and principal place of business located at 6100 Variel Ave., Woodland Hills, CA 91367. Respondent 1554 Corporation has traded and done business as The Mellinger Company. Respondent Brainerd L. Mellinger, III, is president of the corporate respondent. Individually, or in concert with others, he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in the draft complaint. His principal office or place of business is the same as that of the corporate respondent.

2. Respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. 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.

4. 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 (in such form as the circumstances may require) and decision, in disposition of the proceeding.

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

6. 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 issued, 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 mailing of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. 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.

7. Respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further 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.

## ORDER

### Definitions

For purposes of this order, the following definitions shall apply:

1. "Mellinger Plan" shall mean the Mellinger World Trade Mail Order Plan.
2. "Business opportunity" shall mean an activity engaged in for the purpose of making a profit.
3. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

IT IS ORDERED that respondents 1554 Corporation, a corporation, its successors and assigns, and its officers, and Brainerd L. Mellinger, III, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Mellinger Plan, or any other product or service concerning business opportunities, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

- A. that consumers who use such product or service typically succeed in readily starting and operating profitable businesses;
- B. that consumers who use such product or service typically earn substantial income; or
- C. otherwise concerning the performance, benefits, efficacy or success rate of any such product or service,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

## II.

IT IS FURTHER ORDERED that respondents 1554 Corporation, a corporation, its successors and assigns, and its officers, and Brainerd L. Mellinger, III, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- A. Using, publishing, or referring to any endorsement (as "endorsement" is defined in § 255(b), Part 255, Title 16, Code of Federal Regulations) unless respondents have good reason to believe that at the time of such use, publication, or reference, the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no express or implied representations which would be deceptive or unsubstantiated if made directly by the respondents; or
- B. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service unless such representation is true and unless, at the time of making the representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. Provided, however, respondents may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondents disclose clearly, prominently, and in close proximity to the endorsement:

1. what the generally expected performance would be in

the depicted circumstances; or

2. the limited applicability of the endorser's experience to what consumers may generally expect to achieve; i.e., that consumers should not expect to experience similar results.

### III.

IT IS FURTHER ORDERED that, for five (5) years after the last date of dissemination of any representation covered by this order, respondents, their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All advertisements and promotional materials setting forth any representation covered by this order;
2. All materials that were relied upon to substantiate any representation covered by this order; and
3. All test reports, studies, surveys, demonstrations or other evidence in their possession or control, or of which they have knowledge, that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers or governmental entities.

### IV.

IT IS FURTHER ORDERED that:

- A. Respondent 1554 Corporation shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, 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 under this order; and
- B. Respondent Brainerd L. Mellinger, III, shall, for a period of three (3) years from the date of service of this order, promptly notify the Commission of the discontinuance of his present business or employment, or his affiliation with a new business or employment, with each such notice to include his new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

V.

IT IS FURTHER ORDERED that respondents, their successors and assigns, shall forthwith distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order, and shall obtain from each such person or entity a signed statement acknowledging receipt of the order.

VI.

IT IS FURTHER ORDERED th at this order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; **provided, however,** that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this order that terminates in less than twenty years;
- B. This order's application to a ny respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

**Provided further,** that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII.

IT IS FURTHER ORDERED that respondents, their successors and assigns, shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this order.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

1554 Corporation,  
a corporation,

By: \_\_\_\_\_  
Brainerd L. Mellinger, III  
President

---

Brainerd L. Mellinger, III, individually  
and as an officer of 1554 Corporation

---

Shirley Z. Johnson  
Attorney for Respondents  
1250 Connecticut Ave., N.W.  
Washington, DC 20036

---

Lemuel W. Dowdy  
Counsel for the Federal Trade Commission

---

Jonathan M. Cowen  
Counsel for the Federal Trade Commission

APPROVED:

---

Justin Dingfelder  
Assistant Director  
Division of Enforcement  
Bureau of Consumer Protection

---

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

---

Joan Z. Bernstein  
Director  
Bureau of Consumer Protection

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

_____ )	
In the Matter of )	
1554 CORPORATION, )	DOCKET NO.
a corporation, and )	
BRAINERD L. MELLINGER, III, )	
individually and )	
as an officer of 1554 Corp. )	
_____ )	

COMPLAINT

The Federal Trade Commission, having reason to believe that 1554 Corporation, a corporation, and Brainerd L. Mellinger, III, individually as an officer of 1554 Corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH ONE: Respondent 1554 Corporation is a California corporation, with its office and principal place of business located at 6100 Variel Ave., Woodland Hills, CA 91367. Respondent 1554 Corporation has traded and done business as The Mellinger Company.

Respondent Brainerd L. Mellinger, III, is president of the corporate respondent. Individually, or in concert with others, he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

PARAGRAPH TWO: Respondents have, individually or in concert with others, created and disseminated advertisements for the Mellinger World Trade Mail Order Plan ("Mellinger Plan"), and have offered for sale and sold the Mellinger Plan to consumers who respond to their advertisements.

PARAGRAPH THREE: The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PARAGRAPH FOUR: Respondents' advertisements for the Mellinger World Trade Mail Order Plan include, but are not necessarily limited to, the attached Exhibits A-D. These advertisements contain the following statements:

A. A program-length television advertisement for the Mellinger Plan, identified as "Mellinger's Secret Treasures" (Exhibit A):

(1) Announcer: "How would you like to earn substantial income right from the comfort of your own home? . . . Living a luxurious lifestyle with long-term security for you and your family."  
(P. A1)

- (2) Endorser: "Doesn't matter what age, what your background is, what your education is. The sooner you get started, the sooner you start making money." (P. A2)
- (3) Host: "His name is Brainerd Mellinger III, and he makes it easier than ever for people to make riches they've only dreamed of." (P. A3)
- (4) Endorser: "On my first customer my first day with the World Traders I made twelve thousand dollar profit." (P. A4)
- (5) Host: "Brainerd, these folks are making a lot of money, and enjoying every minute of it." (P. A13)
- (6) Brainerd Mellinger, III: "If you've ever dreamed of riches and living a luxurious lifestyle, give us a call right now." (P. A17)
- (7) Endorser: "You will be successful. It's been proven time and time again." (P. A17)
- (8) Endorser: "I started off with \$250 that my husband gave me, and last year I earned over \$35,000, and I did it all with the help of the Mellinger Company." (P. A21)
- (9) Endorser: "Get involved with Mellinger, and if you stick with them they have the support team there for you, they can make something like this possible for you." (P. A23)
- (10) Endorser: "Anybody today that really wants to work, and has the initiative to get out and try something new, this plan definitely makes it about as easy as pie." (P. A25)
- (11) Announcer: "Kirk may not be a rocket scientist, but with the help of the Mellinger World Trade Plan he has launched a company with sky-rocketing profits. Today is a typical business day, and Kirk is shipping out more than 400 hats. The profits are all his." (P. A36)
- (12) Endorser: "[A]nyone that gets involved with this is gonna really find [it] exciting, interesting, and create an income for themselves. It's fantastic." (P. A38)
- (13) Host: "The Mellinger Plan makes it so easy to achieve financial independence. Why isn't everyone doing it?" (P. A42)
- Brainerd Mellinger, III: "Good question. Well -- it's just that they don't know about the Mellinger Plan yet. They aren't aware that this fabulous opportunity for success and riches is waiting for them. And that's why I'm here today. I want to tell everyone that they can make money, like some of the folks you've seen on our show. The Mellinger company shows you how, step by step. And we make it simple and fun . . . ." (P. A43)

B. A magazine advertisement for the Mellinger Plan  
(Exhibit B):

2 valuable New Reports Can Make You Rich! I'll send both to you FREE! You've seen me on T.V.! Now I'm ready to help you get a fast start! Discover How to Be Independent -- Be Your Own Boss -- Make Big Money in your own IMPORT/EXPORT MAIL ORDER BUSINESS! . . . Enjoy earnings probably far greater than you ever dreamed any job could pay.

\* \* \*

Join these successful Men and Women! . . .

"Mellinger has the answers! I'm looking at \$25,000. year's income -- just 2 hours a day part-time." [endorser]

"Just one world trade transaction paid me \$5,000 profit! Yes...follow the Mellinger Plan!" [endorser]

- C. Mellinger Internet site ( <http://www.tradezone.com>) (Exhibit C):

SUCCESSFUL INTERNATIONAL TRADERS MEMBERS[.] HOW PLAN BROUGHT SUCCESS TO THEM! . . .

Having trouble sleeping one night, [endorser] turned on his TV and became enthralled by a Mellinger infomercial. A phone call brought him full details about the Mellinger Plan. "I was so impressed with what I saw, I immediately began following the Mellinger Plan and became a Member of International Traders. I began putting the Plan into practice and started showing Import products. In less than two months, I had generated well over \$2,000 in business." . . .

The Mellinger Plan provided exactly what [endorser] needed. . . . "I would tell you this works for you. It's very good for beginners like myself." She reported sales of \$1200. right away and with her early momentum she says she is looking now at earnings of \$6000. a month!

- D. A pamphlet mailed to consumers who request information about the Mellinger Plan (Exhibit D):

START AT HOME...make money your very first day!

\* \* \*

MEN & WOMEN--Welcome to your exciting, high-income, full-or part-time future in Import/Export/Mail Order. Follow the Mellinger Plan as it guides your every step. Nothing has been left to chance. Each easily followed step is based 100% upon many years of successful business experience!

\* \* \*

SUCCESS STORIES in World Trade! Read these ACTUAL REPORTS of MONEY-MAKING . . . .

Concentrating on imported sports equipment, [endors er] took in \$35,000.00 the first year, devoting only a few hours a day.

PARAGRAPH FIVE: Through the use of the statements contained in the advertisements and promotional materials referred to in PARAGRAPH FOUR, including but not limited to the advertisements attached as Exhibits A-D, respondents have represented, directly or by implication, that:

- A. Consumers who use the Mellinger Plan typically succeed in readily starting and operating profitable businesses;
- B. Consumers who use the Mellinger Plan typically earn substantial income; and
- C. Endorsements appearing in Exhibits A-D reflect the typical or ordinary experience of members of the public who have used the Mellinger Plan.

PARAGRAPH SIX: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondents have represented, directly or by implication, that at the time they made the representations set forth in PARAGRAPH FIVE, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH SEVEN: In truth and in fact, at the time they made the representations set forth in PARAGRAPH FIVE, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH SIX was, and is, false and misleading.

PARAGRAPH EIGHT: The acts and practices of respondents as alleged in this Complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, has issued this complaint against respondents.

By the Commission.

Donald S. Clark  
Secretary

SEAL

[Exhibits A-D attached to paper copies of complaint, but not available in electronic form.]

## Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from 1554 Corporation and its president Brainerd L. Mellinger, III (collectively, "respondents"). The agreement would settle a proposed complaint by the Federal Trade Commission that respondents engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

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.

### The Proposed Complaint

This matter concerns advertising practices related to the sale of 1554 Corporation's Mellinger World Trade Mail Order Plan ("Mellinger Plan"). The administrative complaint, which the Commission has proposed to issue, would allege that respondents promoted the sale of the Mellinger Plan by creating and disseminating advertisements and promotional materials, including a program-length television advertisement entitled "Mellinger's Secret Treasures."

The complaint charges that through the use of statements contained in their advertisements and promotional materials, respondents made unsubstantiated representations that consumers who use the Mellinger plan typically succeed in readily starting and operating profitable businesses and that consumers who use the Mellinger Plan typically earn substantial income. The complaint also charges that endorsements appearing in respondents' advertisements and promotional materials were represented, without substantiation, to be reflective of the typical or ordinary experience of members of the public who have used the Mellinger Plan.

### The Proposed Order

The proposed consent order contains provisions that are designed to remedy the alleged advertising violations and to prevent respondents from engaging in similar acts and practices in the future. The order prohibits respondents from making any unsubstantiated representations: (1) that consumers who use the Mellinger plan typically succeed in readily starting and operating profitable businesses, (2) that consumers who use the Mellinger Plan typically earn substantial income, or (3) about the performance, benefits, efficacy or success rate of any product or service concerning business opportunities.

The proposed order also contains prohibitions about using or misusing testimonials or endorsements. In particular, the order prohibits respondents from using testimonials that do not reflect the actual opinions, beliefs, or experiences of the endorser, and from using testimonials to represent the typical experience of respondents' customers unless respondents can substantiate that such claims are in fact typical or respondents clearly disclose that the endorser's experience is not typical. The order also contains standard provisions regarding record-keeping, notification of changes in corporate or employment status, distribution of the order, termination of the order, and the filing of a compliance report.

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