

LAWRENCE HODAPP (D.C. Bar # 221309)
 ROBERT S. KAYE (Md. Bar # 160446929)
 JONATHAN KRADEN (N.Y. Bar # 2847853)
 Federal Trade Commission
 600 Pennsylvania Ave., NW
 Washington, DC 20580
 (202) 326-3105, fax (202) 326-3395
 Attorneys for Plaintiff

JAMES W. JENNINGS, JR.
 Assistant United States Attorney
 601 N.W. Loop 410, Suite 600
 San Antonio, Texas 78216
 Tel. (210) 384-7330
 Fax (210) 384-7322
 Texas Bar No. 10641400
 Local Counsel

RECEIVED

FEB 04 2003

CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 BY aw
 DEPUTY CLERK

FILED

FEB 04 2003

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF TEXAS, WACO DIVISION

CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
[Signature]
 DEPUTY CLERK

_____)
 FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 vs.)
)
 ASSAIL, INC., ET AL.,)
)
)
 Defendants)
 _____)

Civ. N. W03CA007

STIPULATED PRELIMINARY
 INJUNCTION ORDER AS TO
 DEFENDANTS SPECIALTY
 OUTSOURCING SOLUTIONS,
 LTD., JAY LANKFORD, AND
 LEE MUPRHY

On January 9, 2003, Plaintiff Federal Trade Commission ("Commission" or "FTC"), pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 et seq., and Section 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. § 6822(a), filed a Complaint for Injunctive and Other Equitable Relief, including consumer redress, and applied *ex parte* for a Temporary Restraining Order ("TRO") and Other Equitable Relief. That same day, this Court, having considered the Complaint, memorandum of law, declarations, and other exhibits filed in support of Plaintiff's motion, issued a TRO including an asset freeze and appointment of a temporary receiver.

On January 27, 2003, this Court signed the "Agreed Order on Joint Motion of Federal Trade Commission, Specialty Outsourcing Solutions, Ltd., Jay Lankford and Lee Murphy for Clarification of, and Supplemental Order Concerning, Temporary Restraining Order" ("the Agreed Order") pursuant to which the TRO was clarified and supplemented to authorize and allow Specialty Outsourcing Solutions, Ltd., Jay Lankford and Lee Murphy to make certain expenditures and take certain actions notwithstanding provisions contained in the TRO to the contrary.

The FTC and defendants Specialty Outsourcing Solutions, Ltd., Jay Lankford, and Lee Murphy (hereafter "Stipulating Defendants") have agreed to entry of the following Stipulated Preliminary Injunction without further adjudication or findings other than as contained herein.

FINDINGS OF FACT

The Court has considered the pleadings, declarations, exhibits, and memoranda filed in support of the Commission's application and finds that:

1. This Court has jurisdiction of the subject matter of this case and jurisdiction over all parties to this Stipulated Preliminary Injunction.
2. The Court's entry of this Stipulated Preliminary Injunction does not represent a finding that the Stipulating Defendants have violated the law as alleged in the Commission's complaint or have taken the actions complained of therein.
3. Issuance of this Stipulated Preliminary Injunction with asset freeze and appointment of a permanent receiver is in the public interest.
4. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

ORDER

Definitions

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

- A. "Assets" means all real and personal property of any defendant, or held for the benefit of any defendant, including but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit and all cash, wherever located.
- B. "Defendants" means Specialty Outsourcing Solutions, Ltd., Jay Lankford, and Lee Murphy, and each of them. Pursuant to the provisions of Fed. R. Civ. P. 65(d), the provisions of this Order shall be binding upon Defendants and upon their officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device.
- C. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes but is not limited to audio and video recordings and computer records. A draft or non-identical copy is a separate document within the meaning of the term.
- D. "Plaintiff" means Federal Trade Commission.
- E. "SOS Defendant" means Specialty Outsourcing Solutions, Ltd.
- F. "Telemarketing" shall mean any business activity (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to, initiating or receiving

telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any investment, item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing.

G. "TRO" means the *Ex Parte* Temporary Restraining Order With Asset Freeze and Other Equitable Relief, issued by the Court in this matter on January 9, 2003, and as extended by the Court on January 17, 2003, and clarified and supplemented by the Court in the Agreed Order signed and entered on January 27, 2003.

H. "Credit," "credit card," "customer," "seller," "telemarketer," and "telemarketing" are defined as in Section 310.2 of the TSR, 16 C.F.R. § 310.2.

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer or entity, including, but not limited to, the following:

A. Falsely representing that Defendants are affiliated with, or calling from or on behalf of, a bank or other financial institution, Visa, MasterCard, or a consumer protection agency;

B. Falsely representing that after consumers pay Defendants a fee, consumers are highly likely or are guaranteed to receive a major credit card, such as a VISA or MasterCard credit card;

C. Falsely representing that after consumers pay Defendants a fee, consumers will receive, as a bonus, additional discounted products or services, or membership enrollment in a discount buyer's club that offers significant discounts on a variety of products and services;

D. Falsely representing that after consumers pay Defendants a fee, Defendants will report consumers payment history to a credit reporting agency;

E. Falsely representing that Defendants already possess, and are merely verifying, consumers' credit card numbers, or that Defendants require consumers to provide evidence of a valid personal bank account to establish the consumers' eligibility for a credit card;

F. Falsely representing that consumers purchased or agreed to purchase goods or services from Defendants, and therefore owe money to defendants;

G. Falsely representing any information material to a consumer's decision to purchase Defendants' goods or services.

II.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby restrained and enjoined from causing consumers' credit card accounts to be charged or consumers' bank accounts to be electronically debited without having previously obtained both unequivocal and verifiable authorization from the consumer for such charges or debits.

III.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby restrained and enjoined from violating any provision of Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821, or as that Act may be amended in the future.

IV.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, or as that Rule may be amended in the future.

ASSET FREEZE

V.

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined, without permission from counsel for Plaintiff or leave of Court, from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein, wherever located, that are: (1) owned or controlled by the Defendants, in whole or in part, for the benefit of Defendants; (2) in the actual or constructive possession of Defendants; or (3) owned, controlled by, or in the actual constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, including, but not limited to any assets

held by or for, or subject to access by, any of the Defendants, at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository of any kind;

B. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, or subject to access by any of them;

C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant as of January 9, 2003;

D. Obtaining a personal or secured loan; and

E. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant.

Provided further, that the assets affected by this Section shall include: (1) all assets of the Defendants as of the time the TRO was entered; and (2) for assets obtained after the time the TRO was entered, only those assets of Defendants that are derived from the actions alleged in Plaintiff's Complaint.

Notwithstanding, SOS Defendant may make any expenditure in the normal course of business that is both reasonable and necessary for the continuation of its operations in compliance with this Order; provided however, that SOS Defendant shall make no individual expenditure of over \$10,000 without the agreement of counsel for plaintiff or leave of court.

FINANCIAL REPORTS

VI.

IT IS FURTHER ORDERED that, to the extent that Defendants have not complied with Section VI of the TRO, each Defendant shall:

A. Prepare and deliver to the Court and counsel for Plaintiff Commission completed financial statements on the forms attached to the TRO as Attachments A and B, for themselves individually and for each business entity under which they conduct business, or of which they are an officer, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of entry of the TRO;

B. Provide Plaintiff Commission with a full accounting of all assets and documents that are located inside or outside of the territory of the United States of America and are held by or for Defendants or are under their direct or indirect control, jointly, severally, or individually.

IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS AND OTHERS

VII.

IT IS FURTHER ORDERED that, to the extent that Defendants have not complied with Section VII of the TRO, each Defendant shall provide counsel for the Commission: (1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hired for financial, business or tax advice or services, since January 1, 2000; and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership who was hired on behalf of any of the Defendants since January 1, 2000, to perform accounting, financial planning, investment advice or stock brokerage services for any of the Defendants.

PRESERVATION OF RECORDS

VIII.

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any Defendant.

RECORD KEEPING/BUSINESS OPERATIONS

IX.

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined from:

A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and

B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing Plaintiff Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities, including but not limited to any telemarketing scripts to be used.

RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS

X.

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of the Defendant, or has held, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court. *Provided, however,* that each defendant shall be permitted to open accounts or make withdrawals from and deposits to new or existing accounts with the agreement of counsel for plaintiff, as necessary to effectuate the exceptions to the asset freeze provided in Paragraph V *supra*, or by further order of the Court;

B. Deny the Defendants access to any safe deposit box that is:

1. titled in his name, individually or jointly; or
2. otherwise subject to access by the Defendant;

C. Provide the Commission's counsel, (to the extent not previously provided pursuant to prior order of this Court) within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of the Defendant, or held on behalf of, or for the benefit of the Defendant;
2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. the identification of any safe deposit box that is titled in the name, individually or jointly, of the Defendant, or is otherwise subject to access by the Defendant; and

D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks.

DISTRIBUTION OF ORDER BY DEFENDANTS

XI.

IT IS FURTHER ORDERED that the Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, agent, attorney, spouse and representative of the Defendants, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that the Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

SERVICE OF ORDER

XII.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

CONSUMER CREDIT REPORTS

XIII.

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to Plaintiff Commission.

SERVICE UPON PLAINTIFF AND NOTIFICATION

XIV.

IT IS FURTHER ORDERED that with regard to any correspondence, pleadings, notifications or reporting related to this case or under this Order, service on the Commission shall be performed by delivery (either by mail, facsimile or other means, as mutually agreed upon by the parties) to the Associate Director of the Division of Marketing Practices (Att: Lawrence Hodapp), Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580.

PRIOR AGREED ORDER

XV.

IT IS FURTHER ORDERED that, notwithstanding any provision to the contrary contained herein, SOS is hereby authorized and allowed to make the following expenditures, even in the event such expenditure exceeds \$10,000:

- A. Payroll transfers to West Bank & Trust;
- B. Payments to Blue Cross Blue Shield to satisfy employee health insurance;
- C. Payments to Vartec Telecom to pay long distance services provided by Vartec Telecom to SOS;
- D. Payments to ACC Business to pay for long distance services provided by ACC Business to SOS;
- E. Payments to the Internal Revenue Service for (i) Social Security and Medicare taxes and income tax withholding, and (ii) Federal unemployment (FUTA) taxes (collectively "payroll tax deposits"); and
- F. Payment of the sum of \$20,000 to the McLennan County Tax Assessor Collector to satisfy ad valorem taxes owed by SOS.

IT IS FURTHER ORDERED that, notwithstanding any provision to the contrary contained herein, Community Bank & Trust and West Bank & Trust are hereby authorized and allowed to honor checks or payments made by SOS to make any of the expenditures referred to in the preceding paragraph.

IT IS FURTHER ORDERED that, notwithstanding any provision to the contrary contained herein, SOS is hereby authorized and allowed to satisfy payroll tax deposits payable to the Internal Revenue Service, and which deposits are made by ACH transactions from accounts at Community Bank & Trust, and such bank is hereby authorized and allowed to honor such transactions.

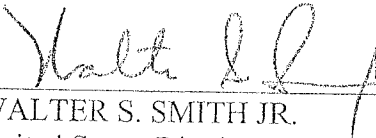
IT IS FURTHER ORDERED that, notwithstanding any provision to the contrary contained in the TRO, or other order of this Court, Jay Lankford and Lee Murphy are hereby authorized and allowed to open new accounts at any bank or other financial institution, to deposit into such accounts payroll or other similar checks received by Jay Lankford or Lee Murphy after January 9, 2003, and drawn on accounts of SOS at Community Bank & Trust or West Bank & Trust, and to write checks on such accounts.

RETENTION OF JURISDICTION

XVI.


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

SO ORDERED this 4 day of February, 2003.



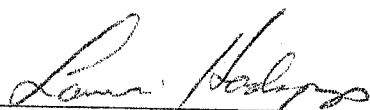
WALTER S. SMITH JR.
United States District Judge

AGREED TO:



C. Patrick Nurfley
State Bar No. 15134800
of
NAMAN, HOWELL, SMITH & LEE, L.L.P.
900 Washington, 7th Floor
P.O. Box 1470
Waco, Texas 76703-1470
(254) 755-4100
FAX (254) 754-6331

ATTORNEYS FOR SPECIALTY
OUTSOURCING SOLUTIONS, LTD.,
JAY LANKFORD AND LEE MURPHY



Lawrence Hodapp (D.C. Bar # 221309)
Robert Kaye (Md. Bar # 160446929)
Jonathan Kraden (N.Y. Bar # 2847853)
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-3105; 326-2215; 326-3257
FAX (202) 326-3395

James W. Jennings, Jr.
State Bar No. 10641400
Assistant United States Attorney
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7330
FAX (210) 384-7322

ATTORNEYS FOR
FEDERAL TRADE COMMISSION