

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**GREAT AMERICAN PRODUCTS, INC.,
PHYSICIAN'S CHOICE, INC.,
STEPHAN KARIAN, and
MICHAEL TEPLITSKY, M.D., a/k/a
MICHAEL TEPLISKY, M.D.,**

Defendants.

Civil Action No.

3:05cv170/RV/MD

**STIPULATED ORDER MODIFYING FINAL ORDER
AS TO DEFENDANTS GREAT AMERICAN PRODUCTS, INC.,
PHYSICIAN'S CHOICE, INC., AND STEPHAN KARIAN**

WHEREAS, the Federal Trade Commission ("FTC" or "Commission") and the Defendants Great American Products, Inc. ("GAP"), Physician's Choice, Inc. ("PCI"), and Stephan Karian ("Karian") (collectively "Defendants") in 2005 agreed to settle the Commission's allegations that the Defendants violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and the FTC's Trade Regulation Rule entitled "Telemarketing Practices Sales Rule" ("TSR"), 16 C.F.R. Part 310, and have now agreed to settle allegations that the Defendants violated Paragraph VIII of the Stipulated Final Order entered May 20, 2005 (the "Stipulated Final Order"), and

WHEREAS, the Commission and the Defendants stipulate and agree to the entry of this Stipulated Order Modifying Final Order as to Defendants GAP, PCI, and Karian ("Modified Final Order") to modify in pertinent part the Stipulated Final Order as to Defendants, and to settle and resolve all matters in dispute between the Commission and

the Defendants arising out of their violations of Paragraph VIII of the Stipulated Final Order to the date of entry of the Modified Final Order,

NOW, THEREFORE, the Court finds and orders as follows:

FINDINGS

1. The Commission and the Defendants stipulate and agree that GAP, PCI, and Karian have violated Paragraph VIII of the Stipulated Final Order by failing, in some circumstances, in their television and other video advertisements 15 minutes or more in length, to display a clear, prominent, and readable disclosure that “[t]he program you are watching is a paid advertisement [for the product or service]” immediately prior to ordering instructions, and by failing, in their radio advertisements 5 minutes or more in length, to broadcast a clear, audible, and comprehensible disclosure that “[t]he program you are listening to is a paid advertisement [for the product or service]” either immediately prior to ordering instructions or periodically throughout no more than 10 minutes apart, as required by Paragraph VIII.

2. The Commission and the Defendants stipulate and agree to this Modified Final Order to modify the Stipulated Final Order as to GAP, PCI, and Karian, and to settle and resolve all matters in dispute arising from their violation of Paragraph VIII of the Stipulated Final Order to the date of entry of the Modified Final Order.

3. The Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Modified Final Order. The Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412.

4. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Northern District of Florida is proper.

5. The activities of the Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Pursuant to the Federal Rule of Civil Procedure 65(d), the provisions of this Modified Final Order are binding upon the Defendants, and their officers, agents,

servants, employees, and all other persons or entities in active concert or participation with them, who receive actual notice of this Modified Final Order by personal service or otherwise.

7. Nothing in this Modified Final Order obviates the Defendants' obligation to comply with Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

8. Nothing in this Modified Final Order shall be construed to amend the Stipulated Final Order as to Defendant Michael Teplitsky.

9. This Order was drafted jointly by the Commission and the Defendants and reflects the negotiated agreement of the parties.

10. The paragraphs of this Modified Final Order shall be read as the necessary requirements for compliance as to Defendants and not as alternatives for compliance and no paragraph serves to modify another paragraph unless expressly so stated.

11. Each party shall bear its own costs and attorney's fees.

12. Entry of this Modified Final Order is in the public interest.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the Stipulated Final Order shall be modified as to Defendants GAP, PCI, and Karian as follows:

(1) Paragraph VIII (Format Representations and Disclosures) shall be amended as to Defendants GAP, PCI, and Karian to state as follows:

VIII.

FORMAT REPRESENTATIONS AND DISCLOSURES

IT IS FURTHER ORDERED that Defendants GAP, PCI, and Karian, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees and all persons or entities in active concert or participation with them who receive actual notice of this Modified Final Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not create, produce, sell, or disseminate:

- A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement; or
- B. Any television commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, clearly and prominently, the following disclosure:

“THE PROGRAM YOU ARE WATCHING IS A PAID
ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]”

- (i) within the first thirty (30) seconds of the advertisement, for a period of at least ten (10) seconds, and simultaneously with the audio disclosure required by Paragraph VIII.C; and

- (ii) immediately before each presentation of ordering instructions, and continuously throughout each presentation of ordering instructions for the product or service, *provided that*, for the purpose of this provision, the oral or visual presentation of a telephone number, e-mail address or mailing address for viewers to contact for further information or to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein; or
- C. Any television commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not broadcast, clearly, audibly, in a cadence sufficient for an ordinary consumer to hear and comprehend it, and in a volume as loud or louder than the loudest statement in the advertisement, the following audio disclosure:

“THE PROGRAM YOU ARE WATCHING IS A PAID
ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]”

within the first thirty (30) seconds of the advertisement and simultaneously with the visual disclosure required by Paragraph VIII.B(i); and

- D. Any radio commercial or other radio advertisement five (5) minutes in length or longer that does not broadcast, clearly, audibly, in a cadence sufficient for an ordinary consumer to hear and comprehend it, and at a volume as loud or louder than the loudest statement in the advertisement, the following disclosure:

“THE PROGRAM YOU ARE LISTENING TO IS A PAID
ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]”

- (i) within the first thirty (30) seconds of the advertisement; and
- (ii) immediately before each presentation of ordering instructions for the product or service; *provided that*, for the purposes of the provision, the presentation of a telephone number, e-mail address or mailing address for listeners to contact for further information or to place for the order for the product or service shall be deemed a presentation of ordering instructions so as to require the announcement of the disclosure provided herein;

(2) Paragraph XIII shall be amended as to Defendants GAP, PCI, and Karian as follows:

XIII

NOTIFICATION TO COMMISSION

IT IS FURTHER ORDERED that a requirement in this Modified Final Order that Defendants notify the Commission shall mean that the Defendant shall send the necessary information via first-class mail, costs prepaid, to the Associate Director for Enforcement, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. Attn: FTC v. Great American Products, Inc., et al., Civil Action No. 3:05cv170/RV/MD (N.D. Fla. 2005).

(3) The provisions in the Stipulated Final Order set forth in Paragraph XVIII (Recordkeeping Requirements) shall apply to this Modified Final Order, except that the

time period as to Defendants GAP, PCI, and Karian shall be extended to September 28, 2012, and Defendants GAP, PCI, and Karian shall be required to create and retain records accurately reflecting the dissemination of all advertisements, including but not limited to television advertisements and radio advertisements.

(4) The provisions in the Stipulated Final Order set forth in Paragraphs XIV (Acknowledgment of Receipt of Order), XV (Distribution of Order by Defendants), and XVII (Compliance Reporting) shall apply to this Modified Final Order, except that the time periods in Paragraph XV and XVII as to Defendants GAP, PCI, and Karian shall be extended to September 28, 2009. Defendants shall submit a compliance report, consistent with the requirements of Paragraph XVII.C, within one hundred and twenty (120) days of the entry of this Order.

SO STIPULATED:

_____/s/_____
ANNE M. MCCORMICK
ELSIE B. KAPPLER
Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
NJ-2122
Washington, DC 20050
(202) 326-3583
(202) 326-2558 (facsimile)
Attorneys for Plaintiff

_____/s/_____
GREAT AMERICAN PRODUCTS, INC.
By: Stephan Karian, Director

_____/s/_____
PHYSICIAN'S CHOICE, INC.
By: Stephan Karian, President

_____/s/_____
STEPHAN KARIAN, Individually and as
an Officer of Great American Products,
Inc. and Physician's Choice, Inc.

_____/s/_____
CLAUDIA LEWIS-ENG
Venable LLC
575 7th Street, N.W.
Washington, DC 20004
(202) 344-4359
(202) 344-8300 (facsimile)

_____/s/_____
RAKESH M. AMIN
217 North Jefferson Street, Suite 100
Chicago, IL 60661
(312) 327-3382

SO ORDERED:

/s/ Roger Vinson _____

SENIOR UNITED STATES DISTRICT JUDGE

Date: January 23, 2008