

The Honorable John C. Coughenour



03-CV-01078-ORD

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY FILED DEPUTY ENTERED

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DPS ACTIVITY PUBLISHING, LTD., et al.,

Defendants.

CIVIL ACTION NO. C 03-1078C

**DEFAULT JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION
AND MONETARY RELIEF AS TO
DEFENDANTS DPS ACTIVITY
PUBLISHING, LTD., DAVID P.
SUGGITT AND TABELA SUGGITT
(PROPOSED)**

**NOTE ON MOTION CALENDAR:
November 28, 2003**

Plaintiff, the Federal Trade Commission (hereinafter "Commission" or "FTC"), having filed a Complaint under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants' deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Clerk of the Court having entered a default against defendants DPS Activity Publishing, Ltd., d/b/a Healing Hands Busy Book, David P. Suggitt and Tabela Suggitt (hereinafter "Defendants"), and this Court having considered the pleadings, declarations, exhibits, and memoranda filed by the Commission, and now being advised in the premises, makes the following findings and enters the following Default Judgment and Order for Permanent Injunction and Monetary Relief:

FEDERAL TRADE COMMISSION
915 Second Ave., Su. 2896
Seattle, Washington 98174
(206) 220-6350

FINDINGS

1 1. This Court has jurisdiction of the subject matter of this action and of the parties hereto.

2 2. The Commission is charged, *inter alia*, with responsibility for administering and
3 enforcing Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair or deceptive acts or
4 practices in or affecting commerce.
5

6 3. The activities of Defendants are in or affecting commerce, as "commerce" is defined in
7 15 U.S.C. § 44.

8 4. This action was instituted by the Commission under Sections 5 and 13(b) of the FTC
9 Act, 15 U.S.C. §§ 45 and 53(b). The Commission seeks permanent injunctive relief and monetary and
10 other redress for alleged deceptive acts or practices by Defendants in connection with telemarketing
11 children's activity books to U.S. consumers that are purportedly donated to local hospitals in the
12 consumers' communities. Pursuant to Section 13(b) of the FTC Act, the Commission has the authority
13 to seek the relief it has requested.

14 5. The Complaint states a claim upon which relief may be granted against Defendants
15 under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

16 6. Defendants were served with the Complaint and Summons as required by Rule 4 of the
17 Federal Rules of Civil Procedure.

18 7. Defendants have failed to file an answer with the Clerk of the Court within the time set
19 forth by Rule 12(a) of the Federal Rules of Civil Procedure or otherwise defend this action.

20 8. The Clerk of this Court, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure,
21 entered default against Defendants on November 6, 2003. The FTC is therefore entitled to a default
22 judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.

23 9. The Court now finds that, in connection with the telemarketing of children's activity
24 books for purported donation to hospitals to U.S. consumers, Defendants violated Section 5(a) of the
25 FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or by implication, that:

26 (A) Defendants are affiliated with or authorized by one or more local hospitals in
27 the communities where they solicit donations for the purchase of their children's
28 activity books to undertake such solicitations; and

1 (B) the children at one or more local hospitals in the communities where Defendants
2 solicit donations for the purchase of their children's activity books will receive
3 the books purchased by local businesses.

4 10. Defendants David P. Suggitt and Tabea Suggitt are individually liable for the violations
5 attributed to them as described above.

6 11. Defendants caused injury in the amount of at least \$ 441,800.00.

7 12. Defendants are likely to continue to engage in the activities alleged in the Complaint
8 unless they are prohibited from making or assisting in making false or misleading statements or
9 representations in connection with the advertising, offering for sale or sale of any good or service.

10 13. Plaintiff is entitled to permanent injunctive relief, consumer redress, and disgorgement
11 from Defendants in the form and amounts set forth below.

12 14. Entry of this Order is in the public interest.

13 14 Definitions

15 1. "Material fact" means a fact likely to affect a person's decision as to the amount of, or
16 whether to make, a purchase, donation or contribution.

17 2. "Person" means any individual, group, unincorporated association, limited or general
18 partnership, corporation or other entity.

19 20 **ORDER**

21 **I.**

22 **PROHIBITED BUSINESS ACTIVITIES**

23 **IT IS THEREFORE ORDERED** that Defendants, their successors and assigns, their officers,
24 agents, servants, employees, those persons in active concert or participation with any one or more of
25 them who receive actual notice of this Order by personal service or otherwise, are hereby permanently
26 enjoined, directly or through any corporation, subsidiary, division, partnership or other device, in
27 connection with the telemarketing of any product or service, from:
28

1 A. Misrepresenting or assisting others in misrepresenting, either orally or in writing,
2 expressly or by implication, any material fact in connection with the marketing or sale of products or
3 services for children, including, but not limited to, the following:

- 4 1. That Defendants are affiliated with or authorized by one or more local hospitals
5 in the communities where they solicit donations for the purchase of children's
6 books to undertake such solicitations;
- 7 2. That the children at one or more hospitals in the communities where Defendants
8 solicit donations for the purchase of children's books will receive those books
9 purchased by local businesses;

10 B. Misrepresenting or assisting others in misrepresenting, either orally or in writing,
11 expressly or by implication, any material fact.

12 C. In connection with the marketing or sale of products or services for children for
13 donation, failing to disclose in each script, brochure or other marketing material, and failing to ensure
14 that telemarketers disclose during the initial telephone contact with any person, and in any follow-up
15 contact:

- 16 1. that Defendants are a for-profit corporation incorporated under the laws of
17 Canada;
- 18 2. that Defendants are not affiliated with or authorized by any hospital or other
19 entity to solicit purchases or donations of any product or service on its behalf;
20 and
- 21 3. that any hospital or other entity that receives any product or service produced,
22 provided, donated or delivered by Defendants is not obligated to accept the
23 product or service or to distribute the product or service to the intended
24 beneficiaries; and

25 D. Soliciting orders for the purchase of any goods without a reasonable basis for believing
26 that Defendants can ship the goods within the time stated in the solicitation or, if no time is stated,
27 within thirty (30) days of the solicitation.
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II.

DISCLOSURE OF CONSUMER LISTS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, and employees, 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, are permanently 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 identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with the promoting, offering for sale, sale or participating in the sale of, directly or indirectly, children's activity books for donation to hospitals. Provided, however, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation or court order.

III.

CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Judgment is entered in favor of the FTC and against the defendants in the amount of \$441,800.00. This amount includes assets already received by the FTC from Commercial Mail Receiving Agencies pursuant to Paragraph II of the Stipulated Preliminary Injunction Order entered on June 3, 2003.

B. Assets received by the FTC pursuant to Section III.A. above should be used to provide redress to consumers who were injured by Defendants' practices as described above and to pay any attendant expenses of administration. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury.

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IV.

WITHHELD MAIL

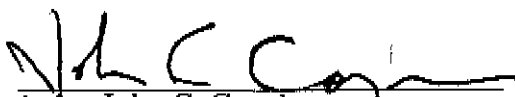
IT IS FURTHER ORDERED that the Commission may retain and/or dispose of any mail forwarded to it from Commercial Mail Receiving Agencies pursuant to Paragraph II of the Stipulated Preliminary Injunction Order entered on June 3, 2003. In its discretion, staff for the Commission may return any of the retained mail to the senders, as deemed appropriate.

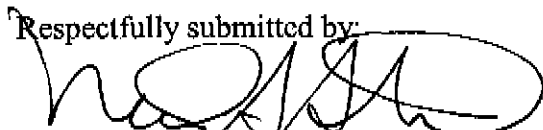
V.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or the punishment of violations thereof.

SO ORDERED, this 2 day of Dec, 2003, at _____.


Judge John C. Coughenour
United States District Judge

Respectfully submitted by:


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