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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

[Handwritten signature]
Deputy Clerk

LUTHER D. THOMAS, Clerk
By: *[Handwritten signature]*
Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD L. PROCHNOW, *et al.*

Defendants.

CIVIL NO. 1:02-CV-917-JOF

**STIPULATED FINAL
ORDER FOR PERMANENT
INJUNCTION AND
CIVIL PENALTIES
AS TO DEFENDANT
DENNIS H. GOUGION**

WHEREAS, Plaintiff, United States of America, has filed its complaint for: permanent injunction, equitable relief, and civil penalties pursuant to 15 U.S.C. §§ 45(l), 45(m), 53(b), 56, and 57b, against Defendant Dennis H. Gougion and others alleging violations of the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), the Federal Trade Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and the Cease and Desist Order issued on December 13, 1996, by the Federal Trade Commission ("FTC") in Docket No. C-3698, 122 F.T.C. 495 (1996).

WHEREAS, Plaintiff and Defendant Gougion have agreed to the entry of this Stipulated Final Order for Permanent Injunction and Civil Penalties ("Order") by this Court to resolve all matters of dispute between the Plaintiff (including the FTC) and Defendant Gougion with respect to the conduct of Defendant Gougion alleged in the Complaint in this action without trial or

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further adjudication of any issue of fact or law. By entering into this Stipulation, Defendant Gougion does not admit any of the allegations set forth in the Complaint other than the jurisdictional facts and the Findings of this Court set forth below.

NOW,

Plaintiff and Defendant Gougion having requested the Court to enter this Order,

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto.
2. Venue is proper as to all parties in the Northern District of Georgia.
3. The activities of the Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendant Gougion under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101 *et seq.*, and the TSR, 16 C.F.R. Part 310.
5. Defendant Gougion has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996). Defendant Gougion also has waived all rights to seek judicial review of, or otherwise challenge or contest the validity of this Order.
6. Entry of this Order is in the public interest.

DEFINITIONS

1. To “administer a magazine service” means, in connection with a magazine service as defined below, to provide order verification services; billing and collection services; other customer service functions, such as responding to inquiries and handling consumer complaints and cancellation and refund requests, when performed in conjunction with order verification services or billing and collection services; or customer fulfillment services when performed in conjunction with order verification services or billing and collection services. For purposes of this definition, (i) “billing and collection services” shall mean billing and collecting payment from a consumer for a magazine service through a merchant account established in the name of the entity providing the billing and collecting services, and (ii) “order verification services” shall mean contacting a consumer by telephone for purposes of verifying a consumer’s magazine service order and during which the verifier requests the consumer’s express agreement to purchase the magazine service and express authorization to be charged using the identified account.
2. “Assisting others engaged in telemarketing” means knowingly providing any of the following services to any person or entity in conjunction with a telemarketing plan, program, or campaign conducted to induce consumers to purchase goods or services: (a) administering a magazine service; (b) formulating, drafting, or providing, or arranging for the formulation, drafting, or provision of, any telephone sales script or any other marketing material; (c) performing marketing services of any kind, including but not limited to solicitation of sales for any person or entity; or (d) providing

credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card or debit card, or to an individual's checking or savings account. **Provided** that, for purposes of Part II of this Order only, "assisting others engaged in telemarketing," as it relates to Defendant Gougion, excludes marketing to publishers the services of a seller that administers magazine services as described in Paragraph 1 of these definitions; negotiating with publishers the cost to a seller of each magazine sold and the volume of subscriptions that the seller is authorized to sell; negotiating "remit" rates and schedules for sums due from a seller to publishers; negotiating with publishers bonuses to be paid to a seller in connection with sales of designated magazines; communicating with a seller and publishers on the number of subscriptions of each magazine sold pursuant to agreements between publishers and the seller (commonly referred to as "tracking"); communicating with a seller or other fulfillment houses related to ensuring that verified subscription orders are timely fulfilled or timely cancelled and that the magazines ordered are in fact those delivered to subscribers. **Provided further** that for purposes of Part III of this Order (requiring compliance with the TSR), this definition of "assisting others engaged in telemarketing" does not define or limit in any way the acts or practices that can constitute "substantial assistance or support to any seller or telemarketer" within the "Assisting and Facilitating" provision of the TSR, 16 C.F.R. § 310.3(b) (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently) or Part VIII of this Order.

3. "Billing information" means any data that enables an entity to charge a consumer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account or debit card.
4. "Direct mail solicitation" means any solicitation via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which the solicitation is directed to a specific address(es) or person(s).
5. "Free-to-pay conversion" shall be defined as set forth in Section 310.2(o) of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended as of March 31, 2003, and as it may be amended subsequently.
6. "Independent Sales Organization" means any person, corporation, partnership, sole proprietorship, or other entity authorized by Defendant Gougion, or any business where (1) Defendant Gougion is the majority owner of the business or otherwise directly or indirectly controls the business and (2) the business administers magazine services, to sell a magazine service to consumers pursuant to a written agreement between such person or entity and Defendant Gougion or Defendant Gougion's business where Defendant Gougion or Defendant Gougion's business will administer the consumer's magazine service and directly charge the consumer.
7. "Magazine service" means a magazine subscription or subscription package (that combines two or more magazine publications) for a term of more than one year for which payment is to be made in two or more installments (regardless of how the payments are spaced over the period of

the subscription(s)) and where an entity other than the magazine publisher will bill and collect payment from the consumer.

8. "Negative option feature" shall be defined as set forth in Section 310.2(t) of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended as of March 31, 2003, and as it may be amended subsequently.
9. "Preacquired account information" shall be defined as set forth in Section 310.2(w) of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended as of March 31, 2003, and as it may be amended subsequently.
10. "Seller" means any person or entity that, in connection with a transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.
11. "Telemarketing" means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing or contracting with 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 item, good, or service, 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; **provided** that the term "telemarketing" does not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited; **provided further** that for purposes of Part III of this Order (requiring compliance with the TSR), the definition of telemarketing

shall be consistent with the definition set forth in the TSR, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently).

12. "Upselling" shall be defined as set forth in Section 310.2(dd) of the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended as of March 31, 2003, and as it may be amended subsequently.

I.

CIVIL PENALTY

IT IS FURTHER ORDERED that

A. Defendant Dennis H. Gougion shall pay to Plaintiff a civil penalty, pursuant to sections 5(l) and 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. §§ 45 (l), (m)(1)(A), in the amount of one hundred thousand dollars (\$100,000). Based on Defendant Gougion's representations as to his financial condition submitted to Plaintiff on February 24, 2003, and reaffirmed under oath on April 29, 2003 (Financial Disclosure Statements), payment of the foregoing civil penalty is suspended except for ten thousand dollars (\$10,000), contingent upon the accuracy and completeness of the Financial Disclosure Statements.

B. Defendant Gougion shall, within five (5) days of the date of entry of this Order, pay the \$10,000 non-suspended portion of the Civil Penalty by electronic fund transfer in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, for appropriate disposition.

C. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the suspended portion of the Civil Penalty is unsuspended, and the entire unpaid penalty, together with interest, as

computed pursuant to 28 U.S.C. §§ 1961, from the date of default to the date of payment, shall immediately become due and payable.

Defendant Gougion must, in accordance with 31 U.S.C. § 7701, furnish to the Plaintiff his taxpayer identifying number (social security number), which will be used for purposes of collecting and reporting on any delinquent amount arising out of such monetary obligations to the United States pursuant to this Order.

II.

BOND REQUIREMENT

IT IS FURTHER ORDERED that:

A. Defendant Dennis H. Gougion, whether acting directly or through any business, entity, corporation, subsidiary, division or other device and their successors and assigns, is hereby permanently restrained and enjoined from: (1) engaging in telemarketing, or (2) assisting others engaged in telemarketing, unless Defendant Gougion obtains, at least two weeks prior to such activity, a performance bond in the principal sum of one million dollars (\$1,000,000).

B. This bond shall be conditioned upon compliance with Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, the TSR, 16 C.F.R. Part 310, (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and with Parts III through V of this Order. The bond shall be deemed continuous and remain in full force and effect as long as Defendant Gougion continues to engage in telemarketing, or assists others engaged in telemarketing, and for at least three years after Defendant Gougion has ceased to engage in such activity. The bond must cite this Order as the subject matter of the bond, and must provide surety thereunder against financial

loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5 of the Federal Trade Commission Act, the TSR, 16 C.F.R. Part 310, (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), or any provision set forth in Parts III through V of this Order.

C. The performance bond required pursuant to this Order must be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which Gougion does business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. The performance bond must be in favor of: (1) the Plaintiff and the FTC for the benefit of any consumer injured as a result of any false or misleading representation made by Defendant Gougion, or any agents or any other persons acting in concert with Defendant Gougion or under Defendant Gougion's authority, supervision or control, while engaged in telemarketing or assisting others engaged in telemarketing; and (2) any consumer so injured.

D. The bond required pursuant to this Order is in addition to, and not in lieu of, any other bond required by any other federal, state, or local law, or by any other court order not entered in this action. This bond requirement shall not be construed to limit or preempt the regulatory powers of any other federal, state, local, or other government agency.

E. At least ten days before the commencement of any activity for which the bond is required by this Order, Defendant Gougion must provide a copy of the bond to the Plaintiff and the FTC at the addresses specified in Part XV of this Order.

F. Defendant Gougion, whether directly or through any business entity or other device, must not disclose the existence of the performance bond to any consumer, or other purchaser or prospective purchaser in connection with advertising, promoting, marketing, offering for sale, or sale of any product or service, or servicing any magazine service. **Provided** that this provision does not apply to the handling of consumer complaints and cancellation and refund requests so long as Defendant Gougion, either directly or through any business entity or other device, also discloses clearly and prominently, at the same time, that the Bond is "required by Order of the U.S. District Court for the Northern District of Georgia to resolve an action charging that defendants engaged in deceptive practices while telemarketing magazines."

III.

VIOLATIONS OF TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendant Gougion and his agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including 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 hereby permanently restrained and enjoined from violating any provision of the TSR, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), including but not limited to:

A. the provisions requiring specified disclosures in connection with the sales of goods or services, including the sale of goods or services with a negative option feature and internal and external upsells, set forth in Sections 310.3(a)(1)

and 310.4(d) (as amended as of March 31, 2003 and as it may be amended subsequently);

B. the provisions prohibiting misrepresentations in connection with the sale of goods or services, including the sale of goods or services with a negative option feature, set forth in Sections 310.3(a)(2) and 310.3(a)(4) (as amended as of March 31, 2003 and as it may be amended subsequently); and

C. the provisions regarding the submission of billing information for payment, or the collection or attempt to collect payment for goods or services, in transactions involving preacquired account information, either in conjunction with or without a free-to-pay conversion plan, set forth in Sections 310.3(a)(3) and 310.4(a)(6) (as amended as of March 31, 2003 and as it may be amended subsequently).

IV.

PROHIBITED BUSINESS PRACTICES REGARDING MAGAZINE SERVICES

IT IS FURTHER ORDERED that Defendant Gougion and his agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the offering for sale, sale, or administering any magazine service sold to consumers by means of telemarketing, are hereby permanently restrained and enjoined from:

A. Failing to disclose clearly and conspicuously that the purpose of the telemarketing call is to sell goods or services promptly at the beginning of:

1. all outbound telemarketing calls and internal and external upsells; and

2. all inbound telemarketing calls in response to any direct mail solicitation that does not clearly and conspicuously disclose the purpose of the solicitation.

B. Misrepresenting, either orally or in writing and either expressly or by implication, any fact material to a consumer's decision to purchase any magazine service, including but not limited to:

1. the cost or duration of any magazine service;
2. the purpose for which a consumer's billing information will be used;
3. the amount of handling, shipping, processing or similar charge,
4. that any consumer may or will receive magazines by paying only a handling, shipping, processing or other fee;
5. the terms of the seller's cancellation policy;
6. the contractual enforceability of any magazine service contract;
7. that the seller will or may report a consumer's failure to pay for any magazine service to any credit bureau or other credit reporting agency, or that a consumer's credit rating will or may be damaged by failing to pay for a magazine service; and
8. any material conditions, limitations, or restrictions, on the ability of the purchaser to use the offered magazine service.

C. Making any reference or statement regarding the cost per day, week, or month for the magazine service without disclosing clearly and conspicuously, and in close proximity to such reference or statement, if true, that such reference or statement is separate from the billing schedule that will be used to bill the consumer for the magazine service.

D. Failing to disclose clearly and conspicuously, before requesting any credit card, bank account, or other information that could be used to obtain payment, the total number of payments and the amount of each payment in the billing schedule that the consumer will, in fact, be charged in connection with the offer.

E. Directly or indirectly causing billing information to be submitted for payment, or collecting or attempting to collect payment for a magazine service without obtaining both the consumer's express agreement to make a purchase and express authorization to be charged for the magazine service using a clearly identified account. **Provided**, that,

1. The following information must be disclosed, clearly and conspicuously, shortly before obtaining the consumer's express agreement to purchase a magazine service and express authorization to be charged using the identified account; **provided**, that for purposes of this Subpart IV.E.1, merely requesting a consumer's billing information, by itself, shall not trigger the requirement to make the disclosures below; **provided further** that this provision does not apply to consumer requests to change magazines already included within an existing magazine service:

- a. The name, and the exact number of issues or the exact number of months of service, of each publication covered by the magazine service;
- f b. The total cost (lump sum) of the entire magazine service;
- ¶ c. The dollar amount of the first payment required, and the number, dollar amount, and frequency (*e.g.*, monthly, quarterly) of all subsequent installment payments, and the amount of any finance charges for the consumer's magazine service, if any;
- d. The method of payment for the magazine service; and
- ¶ e. The seller's policy or policies, if any, including all material terms and conditions, on the consumer's right to cancel a magazine service, including but not limited to the time period, if any, during which consumers must cancel the magazine service to avoid any obligation to pay; the time period, if any, during which the consumer may cutoff a magazine service and avoid any ongoing obligation to pay for magazine service; how the time period, if any, for cancellation of magazine service is calculated or when it starts; and whether the seller will provide full or partial refunds.

V.

**PROHIBITED BUSINESS PRACTICES
REGARDING TELEMARKETING INVOLVING NEGATIVE OPTION
FEATURES**

IT IS FURTHER ORDERED that Defendant Gougion and his agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary,

division or other device including 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 hereby permanently restrained and enjoined from:

A. In connection with the telemarketing of any product or service pursuant to an offer or agreement with a free-to-pay conversion, making any representation, expressly or by implication, that a good or service is offered with “no obligation” or words of similar import, denoting or implying the absence of any obligation on the part of the recipient of the offer to affirmatively act in order to avoid charges if, in fact, a charge will be submitted for payment at the end of a trial period unless the consumer cancels;

B. In connection with the telemarketing of any product or service pursuant to an offer or agreement with a negative option feature, directly or indirectly causing billing information to be submitted for payment, or collecting or attempting to collect payment without the consumer’s express agreement to make a purchase and express authorization to be charged using an identified account.

Provided, before obtaining the consumer’s express agreement to make a purchase and express authorization to be charged using an identified account, the seller must clearly and conspicuously disclose all material terms and conditions of the negative option feature, including but not limited to, the fact the consumer’s account will be charged unless the consumer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, the total amount of each charge, and the specific steps the consumer must take to avoid the charge(s).

VI.

**REQUIREMENT TO FURNISH THE CONSUMER'S AGREEMENT WITHIN
A REASONABLE PERIOD OF TIME**

IT IS FURTHER ORDERED that where (1) Defendant Gougion is the majority owner of a business or otherwise directly or indirectly controls a business, and where (2) the business administers magazine services, Defendant Gougion, directly or through agents or employees, must provide to each consumer for whom the business is administering a magazine service a copy of the consumer's magazine service contract showing: 1) the date the business mailed the contract to consumer, 2) the name of the entity responsible for billing, collection, and customer service, and 3) the address and telephone number of any such entity. Defendant Gougion, directly or through agents or employees, must send this copy of the consumer's magazine service contract to each consumer, via first class mail, commercial or interstate carrier, or any other method of delivery disclosed to and expressly agreed upon by the consumer, within a reasonable period of time after obtaining the consumer's express informed authorization to be charged for the magazine service and must identify the contents of the mailing as information regarding the terms and conditions of the consumer's magazine service the consumer has purchased, advising of the time sensitivity of such materials, and directing the consumer to review such materials, in a clear and conspicuous manner on the outside of the envelope if sent by first-class mail, or other similar location if sent by any other permissible method.

VII.
**REQUIREMENT TO TIMELY HONOR REFUND AND CANCELLATION
REQUESTS THAT COMPLY WITH DISCLOSED POLICIES**

IT IS FURTHER ORDERED that where (1) Defendant Gougion is the majority owner of a business or otherwise directly or indirectly controls a business, and where (2) the business is engaged in offering for sale, sale, or administering any magazine service sold to consumers by means of telemarketing, Defendant Gougion and his agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including 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 hereby permanently restrained and enjoined from failing to honor a request to cancel a magazine service or subscription contract and provide a refund in accordance with the stated refund/cancellation policies when the consumer has complied or made reasonable attempts to comply with the terms and conditions of the stated refund/cancellation policies, as disclosed pursuant to Part IV.E.1. of this Order.

VIII.
**RESTRICTIONS ON ASSISTING AND FACILITATING CROSS MEDIA
MARKETING CORP. AND MEDIA OUTSOURCING, INC.**

IT IS FURTHER ORDERED that Defendant Gougion is permanently restrained and enjoined from providing substantial assistance or support to Cross Media Marketing Corporation and Media Outsourcing Inc., or any of their subsidiaries or affiliates, whether acting directly or through any business entity, corporation, subsidiary, division or other device, when Defendant Gougion

knows or consciously avoids knowing that Cross Media Marketing Corporation or Media Outsourcing Inc., or any of their subsidiaries or affiliates, whether acting directly or through any business entity, corporation, subsidiary, division or other device, is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of the TSR or of the Final Order entered against Cross Media Marketing Corporation and Media Outsourcing, Inc. in this action.

IX.

CREDIT REPORTING

IT IS FURTHER ORDERED that where (1) Defendant Gougion is the majority owner of a business or otherwise directly or indirectly controls a business, and where (2) the business is engaged in offering for sale, sale, or administering any magazine service sold to consumers by means of telemarketing, Defendant Gougion and his agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including 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 hereby permanently restrained and enjoined from knowingly submitting to any credit bureau or other credit reporting agency any information concerning a consumer's failure to pay for any magazine service where: 1) the consumer's failure to pay occurred after the business has received and had a reasonable period of time to process a cancellation request that complies with the business' stated cancellation policy; or 2) the business does not possess evidence that it has obtained the consumer's express agreement to make a purchase and express authorization to be charged using the identified account; provided, however,

that this Part shall not affect the right of any consumer to dispute the validity of a debt that the business claims is owed or the right to raise any claim or defense that the consumer might have concerning the alleged debt.

**X.
REQUIREMENT WHEN DEALING WITH INDEPENDENT SALES
ORGANIZATIONS**

IT IS FURTHER ORDERED that where (1) Defendant Gougion is the majority owner of a business or otherwise directly or indirectly controls a business, and where (2) the business is engaged in offering for sale, sale, or administering any magazine service sold to consumers by means of telemarketing, Defendant Gougion and his agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including 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 hereby permanently restrained and enjoined from administering any magazine service sold or offered by any Independent Sales Organization unless such organization has entered into a signed written agreement that requires the following:

A. That the Independent Sales Organization must provide all individuals it employs or contracts with to sell magazine services on behalf of Defendant Gougion's business with a copy of the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and with a copy of a Summary of Parts III-V of this Order (to the extent Parts III-V of this Order are applicable to the activities of the Independent Sales Organization), to be approved by counsel for Plaintiff, and must retain a

signed copy of each employee's or contractor's acknowledgment of these documents in the employee's or contractor's file;

B. That the Independent Sales Organization must comply with the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and Parts III – V of this Order (to the extent Parts III - V are applicable to the activities of the Independent Sales Organization);

C. That Defendant Gougion must provide the Independent Sales Organization suggested telemarketing scripts, which must include those disclosures required pursuant to the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and Part IV.A. of this Order and must not make any misrepresentations prohibited by the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), or this Order; the Independent Sales Organization must make no material changes to these scripts that may affect compliance with the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), or this Order without the prior written approval of Defendant Gougion (who must maintain a copy of any such approval);

D. That the Independent Sales Organization must develop and implement reasonable policies and procedures to train and monitor the individuals it employs or contracts with to sell magazine service regarding compliance with the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and with Parts III-V of this Order (to the extent Parts III-V of this Order are applicable to the activities of the Independent Sales Organization). Such procedures must include:

1. Requiring each individual employed or contracted with to sell a magazine service on behalf of Defendant Gougion's business to receive a training program prior to commencing such sales and at least twice during each calendar year.

2. Auditing and monitoring the performance of each individual employed or contracted with to sell magazine service on behalf of Defendant Gougion's business on a routine and random basis such that each employee or contractor is monitored or audited at least once every month.

3. Taking appropriate disciplinary action against any individual employed or contracted to sell magazine service on behalf of Defendant Gougion's business who has violated the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), or Parts III-V of this Order (to the extent Parts III-V of this Order are applicable to the activities of the Independent Sales Organization).

**XI.
MONITORING SALES, VERIFICATION, AND
CUSTOMER SERVICE CALLS**

IT IS FURTHER ORDERED that where (1) Defendant Gougion is the majority owner of a business or otherwise directly or indirectly controls a business, and where (2) the business is engaged in offering for sale, sale, or administering any magazine service sold to consumers by means of telemarketing, Defendant Gougion is permanently restrained and enjoined from failing to develop and implement policies and procedures reasonably designed and intended to ensure compliance by all of Defendant Gougion's business'

Stipulated Judgment and Order

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subsidiaries, affiliates, employees, independent contractors, and Independent Sales Organizations engaged in the sale or administration of magazine service with the TSR (effective as of December 31, 1995, amended as of March 31, 2003), and Parts III - V of this Order (to the extent Parts III-V of this Order are applicable to their activities). Such procedures must include adequate monitoring of sales presentations, verification calls, customer service calls, and collection calls and must include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales, verification, customer service, and collection functions on a routine and regular basis; (2) establishing a procedure for receiving and responding to consumer complaints; (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved; (4) promptly investigating fully, and attempting to resolve in good faith, any consumer complaint or inquiry from any source or via any means; and (5) taking timely and appropriate disciplinary action against any Independent Sales Organization, employee, or independent contractor who has not complied with the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently) or this Order (to the extent the Order is applicable to their activities), including but not limited to termination of any contract or agreement between Defendant Gougion's business or any of its affiliates or subsidiaries and any such employee, contractor or Independent Sales Organization, if appropriate. **Provided** Defendant Gougion shall not be in violation of this Order for the acts of an employee, independent contractor, or an Independent Sales Organization beyond the scope of their actual or apparent authority as an employee, independent contractor, or Independent Sales Organization of

Defendant Gougion's business or for the acts of an employee, independent contractor, or an Independent Sales Organization in violation of the written contract set forth in Part XI, in violation of the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently) or in violation of this Order (to the extent the Order is applicable to their activities), if Defendant Gougion takes appropriate steps to remedy such acts promptly after learning of such acts.

**XII.
ACKNOWLEDGMENT OF RECEIPT OF ORDERS
AND TSR BY DEFENDANT**

IT IS FURTHER ORDERED that,

A. Within five (5) business days after receipt by Defendant Gougion of this Order as entered by the Court, Defendant Gougion must submit to the Plaintiff at the addresses set forth in Part XVI a truthful sworn statement that acknowledges receipt of this Order and acknowledges that he has reviewed and is familiar with the requirements and obligations imposed by the TSR (effective as of December 31, 1995, as amended as of March 31, 2003, and as may be amended subsequently).

B. Within five (5) business days after receipt by Defendant Gougion of The Final Order as entered by the Court as to Defendants Cross Media Marketing Corporation and Media Outsourcing, Inc., Defendant Gougion must submit to the Plaintiff at the addresses set forth in Part XVI a truthful sworn statement that acknowledges receipt of that Final Order.

XIII.

DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, where (1) Defendant Gougion is the majority owner of a business or otherwise directly or indirectly controls a business, and where (2) the business is engaged in offering for sale, sale, or administering any magazine service sold to consumers by means of telemarketing, Defendant Gougion and his agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, for a period of five (5) years from the date of entry of this Order, must deliver a copy of this Order to all officers, directors, and all individuals serving in a management capacity, and must deliver a Summary of this Order, to be agreed upon by counsel, to all sales and sales verification personnel and all personnel involved in responding to consumer complaints or inquiries (whether such persons are designated as employees, consultants, independent contractors, or otherwise) for goods or services subject to this Order and must secure from each such person a signed and dated statement acknowledging receipt of the Order or Summary, as applicable. In such a business, Defendant Gougion must deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

XIV.

RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that where (1) Defendant Gougion is the majority owner of a business or otherwise directly or indirectly controls a business, and where (2) the business is engaged in offering for sale, sale, or administering any magazine service sold to consumers by means of telemarketing, Defendant Gougion and his agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, for a period of seven (7) years from the date of entry of this Order, are 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. Personnel 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, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, to the extent such information is obtained in the ordinary course of business, and a copy of each customer's magazine service contract;

D. Consumer complaints and refund or cancellation requests and other communications reasonably understood to concern Defendant Gougion's possible non-compliance with the obligations of the TSR or this Order (whether received directly, indirectly or through any third party, by telephone, in writing, by fax or email or by any other means) and Defendant Gougion's responses to such complaints, requests, or other communications;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials used or that Defendant Gougion has made available for use by or on behalf of Defendant Gougion's business, to its employees, subsidiaries, and affiliates, and the Independent Sales Organizations acting on behalf of Defendant Gougion's business;

F. If Defendant Gougion's business records telephone calls to comply with the TSR, this order, or for any other reason, those recordings in a manner reasonably designed so that each such recording can be reasonably identified, located, and produced upon request; and

G. For each Independent Sales Organization:

1. A copy of the written agreement and any amendments between the Independent Sales Organization and Defendant Gougion's business;
2. Records that accurately reflect the name, address and telephone number of such Independent Sales Organization;
3. Records that accurately reflect all payments made to such Independent Sales Organization by Defendant Gougion or Defendant Gougion's business, all payments made to Defendant Gougion or

Defendant Gougion's business by such Independent Sales Organization, and the nature of such payments; and

4. Copies of any written or electronic correspondence with any Independent Sales Organization or any person or entity that relate to inquiries or complaints from consumers, government entities or any other parties about the sales or any other activities of any Independent Sales Organization.

XV.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within ten (10) days of receipt of written notice from a representative of the Plaintiff, including the FTC, Defendant Gougion shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation; **provided** that Defendant Gougion, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c).

B. In addition, the Plaintiff, including the FTC, is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as consumers and suppliers without the necessity of identification or prior notice;

Provided that nothing in this Order shall limit the Plaintiff's or the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

C. Defendant Gougion must allow representatives of the Plaintiff, including the FTC, to interview any consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

XVI.

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 Gougion shall notify the Plaintiff of the following:

1. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
2. Any changes in his employment status (including self-employment) within ten (10) days of the date of such change. Such notice

shall include the name and address of each business that he is affiliated with or hires him as an employee, consultant or independent contractor; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business;

3. Any changes in his name or use of any aliases or fictitious names.

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

1. Any changes required to be reported pursuant to Subpart XVI.A.;

2. A copy of each acknowledgment of receipt of this Order obtained by pursuant to Part XIII; and

3. Compliance with the provisions of Part II (Bond Requirement).

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

Director
Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, DC 20044
Re: DOJ 102-3043, United States v. Prochnow, et al.

and to:

Associate Director for Enforcement
Federal Trade Commission

600 Pennsylvania Avenue, N.W.
Washington D.C. 20580
Re: United States v. Prochnow, et al.

XVII.

SUPERSEDING PRIOR ORDERS

IT IS FURTHER ORDERED that this Order shall supersede and replace the Consent Decree and Permanent Injunction entered on March 17, 1997, in United States v. Budget Marketing, Civil No. 80-419-E (S.D. Iowa) and the Cease and Desist Order issued on December 13, 1996, by the Federal Trade Commission ("FTC") in Docket No. C-3698, 122 F.T.C. 495 (1996) as those orders apply to Defendant Gougion. This Order does not supersede and replace the Consent Decree and Permanent Injunction entered on March 17, 1997, in United States v. Budget Marketing, Civil No. 80-419-E (S.D. Iowa) and the Cease and Desist Order issued on December 13, 1996, by the Federal Trade Commission ("FTC") in Docket No. C-3698, 122 F.T.C. 495 (1996), as those orders may apply to any other persons or entities.

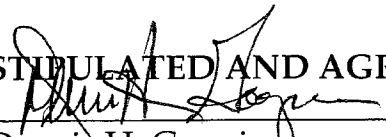
XVIII.

RETENTION OF JURISDICTION

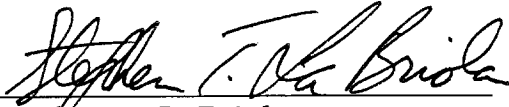
IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for all purposes, including but not limited to, the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or for the punishment of violations thereof.

The parties hereby consent to entry of this Order without further proceedings.

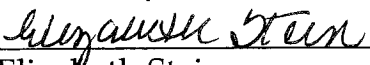
STIPULATED AND AGREED TO BY:


Dennis H. Gougion

Date: 4/29, 2003



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(404) 586-2020
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Date: 4/30, 2003


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Department of Justice
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Date: 5/30, 2003

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(404) 581-6181 (FAX)

Date: 6/2, 2003



JAMES REILLY DOLAN

Date: May 30, 2003

JAMES A. PRUNTY
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room NJ-2122
Washington, D.C. 20580
202-326-3292, 326-3292 (telephone)
202-326-2558 (facsimile)

Attorneys for Plaintiff


SO ORDERED, this 6th day of June 2003.



J. OWEN FORRESTER
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

JUN 09 2003


DEPUTY CLERK