

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

UNITED STATES OF AMERICA,	:	
	:	CIVIL ACTION NO.
Plaintiff,	:	1:02-CV-0917-JOF
	:	
v.	:	JUDGMENT PURSUANT TO
	:	FED. R. CIV. P. 58 FOR
	:	PERMANENT INJUNCTION,
	:	CIVIL PENALTIES, AND
RICHARD L. PROCHNOW,	:	DISGORGEMENT AS TO
	:	RICHARD L. PROCHNOW
Defendant.	:	

WHEREAS, Plaintiff, United States of America, filed its complaint for: permanent injunction, equitable relief, and civil penalties pursuant to 15 U.S.C. §§ 45(I), 45(m), 53(b), 56, and 57b, against Defendant Richard L. Prochnow 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) (“1996 FTC Order”);

WHEREAS, this Court has determined that Defendant Prochnow is personally liable for violations of the 1996 FTC Order and the TSR;

WHEREAS, this Court conducted an evidentiary hearing from August 15, 2005, through August 25, 2005, to determine the nature and amount of injunctive and other relief to be entered against Defendant Prochnow for the foregoing violations;

WHEREAS, the Court issued findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52 on December 2, 2005, assessing a civil penalty of \$ 5,455,280.00 and disgorgement of profits in the amount of \$1,685,000.00 for Defendant Prochnow's violations of the 1996 FTC Order and the TSR;

WHEREAS, the Court received submissions from the parties and held a hearing on June 12, 2006, on the issue of whether a permanent injunction should issue against Defendant Prochnow, and, if so, the nature and scope of such injunction;

WHEREAS, Defendant Prochnow has been represented by counsel at all stages of this proceeding;

The Court having carefully considered the pleadings, the evidence of record, the parties' written submissions, and the Defendant's representations regarding the activities and ownership of Amerinet, Inc., and ACS, LLC, made during the hearing on June 12, 2006, and that in subsequent pleadings Mr. Prochnow's age is given as 65, two years younger than the Court supposed, and that the portion of the Court's directions having to do with sanctions for violation of the Telemarketing Sales Act may not be enforceable, hereby finds:

1. This Court has jurisdiction of the subject matter of this action and of the parties.
2. Venue is proper as to all parties in the Northern District of Georgia.
3. The Court incorporates by reference all findings and conclusions contained in its December 2, 2005 Findings of Fact and Conclusions of Law, including the appendices thereto (the August 21, 2003 and March 25, 2004 Orders).
4. Defendant Prochnow is 65 years old.
5. Entry of this Judgment is in the public interest.

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

1. Richard L. Prochnow is hereby enjoined from owning, directly or beneficially, in whole or in part, any telemarketing business for a period of five years.
2. Richard L. Prochnow is enjoined from controlling , managing, directing the activities of any telemarketing business for five years.
3. Richard L. Prochnow is enjoined for a period of five years from assisting others who are engaged in telemarketing businesses, and he is specifically enjoined from (a) giving advice to a telemarketing business; (b) formulating, drafting or providing, or arranging for the formulating, drafting or provision of, any telephone sales script or any other marketing material; (c) performing marketing services of any kind for a telemarketing business; 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.

4. A "telemarketing business" is a business which obtains fifteen percent or more of its gross sales by the use of telephones to induce purchasers to buy goods or services, including an interest in real property, or to make contributions for any alleged charitable purposes. Sales made from customer-initiated calls shall not be counted as telemarketing sales. For example, sales made by an automobile parts store to automobile repair facilities would not be counted as telemarketing sales if the customer initiated the call. Sales where the telephone is used merely incidentally also are not counted as telemarketing sales. For example, where a customer sees an advertisement for a piece of real property, and telephone calls are made to arrange an appointment to view the property, such sales would not be counted as telemarketing sales.
5. Notwithstanding the foregoing, Richard L. Prochnow may maintain an investment in any publicly-traded company having a market capitalization of at least \$200 million, provided that he does not sit on the board of directors, is not employed by, does not manage or advise said company.
6. For a period of five years, Richard L. Prochnow may retain an ownership interest in Amerinet, Inc., and Hotdogger, LLC, either directly or indirectly, through an ownership

interest in ASC, LLC, a Colorado limited liability corporation in which Defendant Prochnow has a substantial ownership interest, but only so long as:

- A. Effective immediately upon entry of this Judgment, neither Defendant Prochnow and/or ACS, LLC: (1) exercises any role whatsoever in the management, activities, client relations, financial decisions (including distributions or payments to owners, partners, or shareholders, or to their agents or nominees), or other operations of Amerinet, Inc., or Hotdogger, LLC (an infomercial company in which Defendant Prochnow holds an interest); (2) exercises any role whatsoever in assisting others in the management, activities, client relations, financial decisions, or other operations of Amerinet, Inc., or Hotdogger, LLC, or (3) exercises any voting rights whatsoever on any issue before the shareholders or owners of Amerinet, Inc., or Hotdogger, LLC, including but not limited to the selection or appointment of corporate directors and officers; and

B. Within thirty (30) days after entry of this Judgment, Defendant Prochnow and/or ACS, LLC, places the entire ownership interest owned by Prochnow directly or through his interests in ACS, LLC, in Amerinet, Inc., and Hotdogger, LLC, in the custody and control of an independent third party approved by this Court, who shall have sole authority to exercise any rights attached to Prochnow's holdings in Amerinet, Inc., and Hotdogger, LLC, and/or to ACS, LLC's holdings in Amerinet, Inc., and Hotdogger, LLC.

To be approved by the Court, it must be shown that the independent third party obtains no more than two percent of its revenue presently or in the past five years from Richard L. Prochnow, or any organization or undertaking in which Richard L. Prochnow had an ownership interest. Further, it must be shown that no employee of the independent third party is related to Richard L. Prochnow by blood or marriage within the third degree of consanguinity or affinity. Richard L. Prochnow specifically may not consult with the independent third party on any strategic or operational decisions with reference to Amerinet, Inc., or Hotdogger, LLC. Richard L. Prochnow may direct or request that the independent third party or ACS, LLC, sell any or all of Defendant Prochnow's interest in Amerinet, Inc., or Hotdogger, LLC,

and to that end, may consult with the independent third party on the details of any sale.

7. For a period of five years, Richard L. Prochnow is Ordered and Directed to provide to the Chief Executive Officer of any economic enterprise, which is not publicly traded, in which Mr. Prochnow directly or indirectly has an ownership interest, with a copy of this Order, and said Chief Executive Officer is Enjoined from knowingly suffering or permitting Mr. Prochnow to violate the terms of this Order. If any Chief Executive Officer is replaced during this time frame, Mr. Prochnow is Ordered and Directed to provide the new Chief Executive Officer with a copy of this Order.
8. For a period of five years, Richard L. Prochnow is Ordered and Directed to provide to the Federal Trade Commission on a quarterly basis a report with appropriate documentation concerning: (1) his holders, (2) the nature of the business engaged in by the enterprises, and (3) representations as to the amount of sales the enterprise generates through telemarketing.

These written notifications should be submitted to:

Director  
Officer of Consumer Litigation  
U.S. Department of Justice  
P.O. Box 386  
Washington, D.C. 20044  
Re: DOJ #102-3115

and

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Re: United States v. Prochnow, et al.

9. Plaintiff and the FTC are authorized to use reasonable discovery mechanisms to ascertain Mr. Prochnow's compliance with this Order.

### **CIVIL PENALTY AND DISGORGEMENT**

IT IS FURTHER ORDERED that:

1. Defendant Prochnow shall pay to Plaintiff: (A) 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 Five Million Four Hundred Fifty-Five Thousand Two Hundred Eighty Dollars (\$5,455,280.00), and (B) disgorgement, pursuant to 15 U.S.C. §§ 45(l), 53(b), in the amount of One Million Six Hundred Eighty Five Thousand Dollars (\$1,685,000.00), plus any interest pursuant to 28 U.S.C. § 1961.



2. Defendant Prochnow shall make both of the payments specified in Subsection 1 within ten (10) days of the date of entry of this Judgment, or by August 15, 2006, whichever is later, by Electronic Fund Transfer to the Treasurer of the United States, pursuant to instructions and procedures provided by the Department of Justice, with a written confirmation of the payments to file Director, Office of Consumer Litigation, Department of Justice, P.O. Box 386, Ben Franklin Station, Washington, DC 20044. The written confirmation shall reference DJ# 102-3115.
3. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, then interest as computed pursuant 28 U.S.C. § 1961, shall immediately become due and payable, in addition to the amounts due pursuant to Subsection 1. In the event of any default, payments will first be applied to interest due, then to civil penalties, then to disgorgement.
4. Defendant Prochnow must, in accordance with 31 U.S.C. § 7701, furnish to the Office of Consumer Litigation, Department of Justice, his taxpayer identifying number (social security number), which will be used for purposes of collecting and reporting on any delinquent amount arising out of monetary obligations to the United States pursuant to this Judgment.

**IT IS SO ORDERED** this 31<sup>st</sup> day of July 2006.

s/ J. Owen Forrester  
J. OWEN FORRESTER  
SENIOR UNITED STATES DISTRICT JUDGE