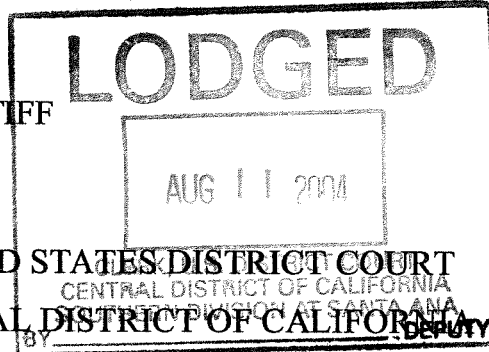


1 TRACY S. THORLEIFSON
2 Federal Trade Commission
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4 Seattle, Washington 98174
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6 Tom Syta, CA Bar No. 116286
7 Federal Trade Commission
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9 Los Angeles, CA 90024
10 (310) 824-4324
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12 ATTORNEYS FOR PLAINTIFF



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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
SOUTHERN DIVISION

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 Guidestar Direct Corp., d.b.a. Carney
18 Direct Marketing,

19 Defendant.

Civil No. CV04-6671 NM (Ex)

STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF

21 Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), has filed
22 a complaint for permanent injunction and other equitable relief pursuant to Section
23 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b),
24 charging defendant Guidestar Direct Corp., d.b.a. Carney Direct (defendant or
25 "Guidestar"), with assisting and facilitating the commission of deceptive and
26 abusive telemarketing acts and practices, in violation of Section 310.3(b) of the
27 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

1 The Commission and defendant, having been represented by counsel and
2 acting by and through such counsel, have consented to the entry of this Stipulated
3 Order for Permanent Injunction and Other Equitable Relief (“Stipulated Order” or
4 “Order”) without a trial or adjudication of any issue of law or fact herein.

5 NOW, THEREFORE, the Commission and defendant having requested the
6 Court to enter this Stipulated Order, it is ORDERED, ADJUDGED, AND
7 DECREED as follows:

8
9 **FINDINGS**

10 1. This is an action by the Commission instituted under Section 13(b) of
11 the FTC Act, 15 U.S.C. § 53(b). Pursuant to this section, the Commission has the
12 authority to seek the relief contained herein.

13 2. The Commission’s complaint states a claim upon which relief may be
14 granted against defendant under Sections 5(a), 13(b) and 19 of the Federal Trade
15 Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b) and 57b, and the
16 Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing
17 Act”), 15 U.S.C. §§ 6101 - 6108.

18 3. This Court has jurisdiction over the subject matter of this case and all
19 parties hereto. Venue in the Central District of California is proper.

20 4. The alleged activities of defendant are in or affecting commerce, as
21 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

22 5. The parties shall each bear their own costs and attorney’s fees incurred
23 in this action and have waived all claims under the Equal Access to Justice Act, 28
24 U.S.C. § 2412, and all rights to seek judicial review, or otherwise to challenge the
25 validity of this Stipulated Order.

26 6. Entry of this Stipulated Order is in the public interest.
27
28

1 **II. CONSUMER REDRESS**

2 IT IS FURTHER ORDERED that:

3 A. A judgment for equitable monetary relief in the amount of twenty-five
4 thousand dollars (\$25,000) is hereby entered against defendant Guidestar.
5 Defendant shall satisfy this judgment within ten (10) days of the date of entry of
6 this Order by the Court, by wire transfer of funds in accord with directions
7 provided by the FTC. All funds paid pursuant to this Paragraph shall be deposited
8 into a fund administered by the Commission or its agent to be used for equitable
9 relief, including but not limited to consumer redress and to pay any attendant costs
10 for the administration of any redress fund. If direct redress to consumers is wholly
11 or partially impracticable or funds remain after redress is completed, the
12 Commission may apply any remaining funds for such other equitable relief
13 (including consumer information remedies) as it determines to be reasonably
14 related to the defendant's practices alleged in the complaint. Any funds not used
15 for equitable redress shall be deposited to the United States Treasury as
16 disgorgement. Defendant shall have no right to challenge the Commission's choice
17 of remedies under this Paragraph. No portion of the payment pursuant to this
18 Paragraph shall be deemed a payment of any fine, penalty, or punitive assessment.

19 B. In the event of any default in the above payment schedule, which
20 default continues for ten (10) days beyond the due date of payment, the entire
21 unpaid amount together with interest, as computed under 28 U.S.C. § 1961, from
22 the date of default until the date of payment, shall immediately become due and
23 payable.

1 **III. COMPLIANCE MONITORING**

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

4 A. Within ten (10) days of receipt of written notice from a representative
5 of the Commission, defendant shall submit written reports, sworn to under penalty
6 of perjury; produce documents for inspection and copying; appear for deposition;
7 and/or provide entry during normal business hours to any business location in
8 defendant's possession or direct or indirect control, to inspect any business
9 operation.

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

- 12 1. obtaining discovery from any person, without further leave of
13 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31,
14 33, 34, 36, and 45;
- 15 2. posing as customers, clients or suppliers to defendant or any
16 other entity managed or controlled in whole or in part by
17 defendant without the necessity of identification or prior notice;

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

23 C. Defendant shall permit representatives of the Commission to
24 interview any consultant, independent contractor, representative, agent, or
25 employee who has agreed to such an interview, relating in any way to any conduct
26 subject to this Stipulated Order. The person interviewed may have counsel present.
27
28

1 **IV. DISTRIBUTION OF ORDER BY DEFENDANT**

2 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the
3 date of entry of this Stipulated Order, defendant shall deliver a copy of this Order
4 to all principals, officers, directors, managers, employees, agents, and
5 representatives having responsibilities with respect to the subject matter of this
6 Order, and shall secure from each such person a signed and dated statement
7 acknowledging receipt of the Order. Defendant shall deliver this Order to current
8 personnel within thirty (30) days after the date of service of this Order, and to new
9 personnel within thirty (30) days after the person assumes such position or
10 responsibilities.

11
12 **V. COMPLIANCE REPORTING BY DEFENDANT**

13 **IT IS FURTHER ORDERED** that, in order that compliance with the
14 provisions of this Stipulated Order may be monitored:

15 A. For a period of three (3) years from the date of entry of this Order,
16 Defendant shall notify the Commission of the following:

- 17 1. Any changes in defendant's principal place of business, mailing
18 addresses, and telephone numbers, within ten (10) days of the
19 date of such change;
- 20 2. Any changes in defendant's name or use of any aliases or
21 fictitious names; and
- 22 3. Any changes in corporate structure that may affect compliance
23 obligations arising under this Order, including but not limited to
24 a dissolution, assignment, sale, merger, or other action that
25 would result in the emergence of a successor corporation; the
26 creation or dissolution of a subsidiary, parent, or affiliate that
27 engages in any acts or practices subject to this Order; the filing
28 of a bankruptcy petition; or a change in the corporate name or

1 address, at least thirty (30) days prior to such change, provided
2 that, with respect to any proposed change in the corporation
3 about which the defendant learns less than thirty (30) days prior
4 to the date such action is to take place, defendant shall notify
5 the Commission as soon as is practicable after obtaining such
6 knowledge.

7 B. One hundred eighty (180) days after the date of entry of this
8 Stipulated Order, defendant shall provide a written report to the FTC, sworn to
9 under penalty of perjury, setting forth in detail the manner and form in which it has
10 complied and is complying with this Order. This report shall include, but not be
11 limited to, any changes required to be reported pursuant to subparagraph A. above.

12 C. For the purposes of this Order, defendant shall, unless otherwise
13 directed by the Commission's authorized representatives, mail all written
14 notifications to the Commission to:

15 Charles A. Harwood, Director
16 Northwest Region
17 Federal Trade Commission
18 915 Second Ave., Suite 2896
19 Seattle, WA 98174

20 VI. RECORD KEEPING PROVISIONS

21 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the
22 date of entry of this Stipulated Order, in connection with telemarketing or with
23 assisting others engaged in telemarketing, defendant and defendant's agents,
24 employees, officers, servants, corporations, successors, and assigns, and those
25 persons in active concert or participation with them who receive actual notice of
26 this Stipulated Order by personal service or otherwise, are hereby permanently
27 restrained and enjoined from failing to create and retain, unless otherwise
28 specified:

1 A. Personnel records accurately reflecting: the name, address, and
2 telephone number of each person employed in any capacity by such business,
3 including as an independent contractor; that person's job title or position; the date
4 upon which the person commenced work; and the date and reason for the person's
5 termination, if applicable; and

6 B. Customer files containing the names, addresses, phone numbers,
7 sample scripts and mail pieces, and a description of the direct marketing lists rented
8 or purchased, to the extent such information is obtained in the ordinary course of
9 business.

10
11 **VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

12 IT IS FURTHER ORDERED that defendant, within five (5) business days of
13 receipt of this Stipulated Order as entered by the Court, must submit to the
14 Commission a truthful sworn statement acknowledging receipt of this Order.

15
16 **VIII. RETENTION OF JURISDICTION**

17 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this
18 matter for purposes of construction, modification and enforcement of this Order.

19
20
21 **SO ORDERED**, this _____ day of _____, 2004.

22
23 _____
24 United States District Judge


1 The parties, by their respective counsel, hereby consent to the terms and
2 conditions of the Stipulated Order as set forth above and consent to the entry
3 thereof. Defendant waives any rights that may arise under the Equal Access to
4 Justice Act, 28 U.S.C. § 2412.

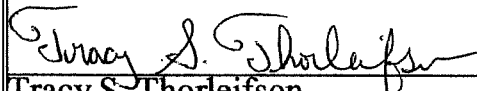
5
6 **FOR PLAINTIFF FEDERAL
TRADE COMMISSION:**

FOR DEFENDANT:

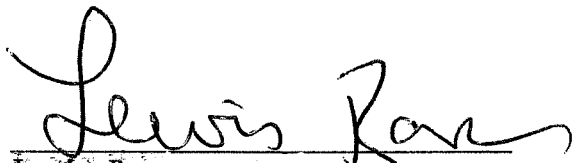
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13 Los Angeles, CA 90024
14 (310) 824-4324
15 (310) 824 4380 (fax)


Peter Carney, President, Guidestar
Direct Corp., d.b.a Carney Direct

16
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18 

19 Tracy S. Thorleifson
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21 915 Second Avenue, Suite 2896
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23 206-220-4481
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25
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Charles A. Harwood
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ATTORNEYS FOR PLAINTIFF

FILED

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U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

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9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION
13

14 FEDERAL TRADE COMMISSION,
15 Plaintiff,
16 v.
17 Guidestar Direct Corp., d.b.a. Carney
18 Direct Marketing,
19 Defendant.

Civil No. _____
CV04-6671 NM (Ex)
COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

20
21
22 Plaintiff, the Federal Trade Commission ("Commission"), for its complaint
23 alleges as follows:

24 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
25 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
26 Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing
27 Act"), 15 U.S.C. § 6101 *et seq.*, against defendant Guidestar Direct Corp., d.b.a.
28 Carney Direct Marketing ("Carney Direct"), to secure a permanent injunction and

1 other equitable relief for engaging in acts or practices in violation of the FTC's
2 Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R.
3 Part 310.

4 5 **JURISDICTION AND VENUE**

6 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C.
7 §§ 45(a), 53(b), 57b, 6102(c), 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8 3. Venue in the Central District of California is proper under 15 U.S.C.
9 § 53(b) and 28 U.S.C. § 1391(b).

10 **THE PARTIES**

11 4. Plaintiff, the Federal Trade Commission, is an independent agency of
12 the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The
13 Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which
14 prohibits deceptive acts or practices in or affecting commerce. The Commission
15 also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits
16 deceptive or abusive telemarketing practices. The Commission may initiate federal
17 district court proceedings to enjoin violations of the FTC Act and the
18 Telemarketing Sales Rule, and to secure such equitable relief as may be appropriate
19 in each case. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

20 5. Defendant Guidestar Direct Corp., d.b.a. Carney Direct Marketing, is a
21 California corporation with its office and principal place of business located at
22 15520 Rockfield Blvd., Suite C, Irvine, CA 92618. Carney Direct engages in and
23 transacts business in this district.

24 25 **COMMERCE**

26 6. At all times relevant to this complaint, the defendant has maintained a
27 substantial course of conduct in or affecting commerce, as "commerce" is defined
28 in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT'S BUSINESS PRACTICES

1
2 7. Carney Direct, a list management company, manages the marketing
3 and sale or rental of various lists of consumer names, addresses, and telephone
4 numbers on behalf of list owners. For a fee, Carney Direct promotes and markets
5 the lists it manages to list brokers and others in the direct marketing industry who
6 seek lists of consumers likely to respond to other telemarketing or direct mail
7 offers.

8 8. Carney Direct typically requires prospective list renters to provide it
9 with a sample mail piece or telemarketing script. Carney Direct then forwards the
10 sample mail piece or script to the list owner for approval or disapproval.

11 9. Carney Direct has on numerous occasions rented its lists to
12 telemarketers of advance fee credit products. The TSR prohibits requesting or
13 receiving payment in advance of obtaining an extension of credit when the seller or
14 telemarketer has guaranteed or represented a high likelihood of success in
15 obtaining or arranging an extension of credit.

16 10. Some of the sample telemarketing scripts sent to Carney Direct and
17 used by companies to which Carney Direct has rented lists demonstrate that these
18 companies have been engaged in violations of the TSR. For example, a script
19 provided to Carney Direct by U.S. Creditcom, states that:

20 We have reduced the one-time processing fee to only
21 \$149 and this . . . will guarantee you a credit card with a
22 limit up to \$2,500, upon credit verification.

23 11. Carney Direct rented lists to U.S. Creditcom on several occasions in
24 2002. On several other occasions in 2002, Carney Direct rented lists to marketers
25 of the Family Credit Card Services advance-fee credit offer. That script states, in
26 part:

1 guaranteed or represented a high likelihood of success in obtaining or arranging a
2 loan or other extension of credit for a person.” 16 C.F.R. § 310.4(4).

3 17. On numerous occasions Carney Direct has substantially assisted
4 sellers or telemarketers who are engaged in the sale of advance fee credit products,
5 in violation of Section 310.4(4) of the TSR, by selling them lists of prospective
6 customers.

7 18. Carney Direct knows that these sellers or telemarketers are engaged in
8 the sale of advance fee credit products because, prior to selling them lists of
9 prospective customers, Carney Direct obtains copies of telemarketing scripts that
10 request an advance fee for a credit product, in violation of the TSR.

11 19. By providing substantial assistance and support to sellers or
12 telemarketers, while knowing or consciously avoiding knowing that the sellers or
13 telemarketers are engaged in the sale of advance fee credit products, defendant
14 Carney Direct has itself violated Section 310.3(b) of the Rule. 16 C.F.R. 310.3(b).

15 16 **CONSUMER INJURY**

17 20. Consumers throughout the United States have suffered substantial
18 monetary loss as a result of the defendant’s unlawful acts or practices.

19 20 **THIS COURT’S POWER TO GRANT RELIEF**

21 21. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
22 to grant injunctive and other ancillary relief to prevent and remedy any violations
23 of any provision of law enforced by the Commission.

24 22. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
25 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as
26 the Court finds necessary to redress injury to consumers or other persons resulting
27 from Defendant’s violations of the TSR, including rescission and reformation of
28 contracts and refund of monies.

