

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**Case No. 02-80540-CIV-HURLEY
Magistrate Judge LYNCH**

FEDERAL TRADE COMMISSION,

Plaintiff

v.

**AMERICA'S SHOPPING
NETWORK, INC.,**
a corporation,

CONSUMER SERVICES, INC.,
a corporation,

KAREN A. ZAGAMI,
individually and as an officer of the corporations,

CARIANNE SICA, also known as
CARRIE SICONE, individually and as an
officer of the corporations,

LOUIS S. GANGI, individually and as a
principal of the corporations,

HME INC.,
a corporation, and

JOHN M. EPSTEIN, individually and as an
officer of the corporation,

Defendants

(Proposed) STIPULATED JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

AS TO DEFENDANTS HME, INC. AND JOHN M. EPSTEIN

The Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action, on June 11, 2002, by filing a Complaint for Injunctive and Other Equitable Relief, including redress to consumer victims, pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b), charging that the Defendants engaged in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the sale of work-at-home employment opportunities. The Commission and Defendants HME, Inc. (“HME”) and John M. Epstein (“Epstein”), hereby stipulate to the entry of this Stipulated Judgment and Order for Permanent Injunction (“Order”) to resolve all matters of dispute between them in this action.

THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. §§ 53(b).
2. Venue is proper as to all parties in the Southern District of Florida
3. The activities of the Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against the Defendant, under Sections 5(a)(1) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b).
5. Defendants HME and Epstein have entered into this Order freely and without coercion.

Defendants HME and Epstein further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. Plaintiff and Defendants HME and Epstein have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.
7. Defendants HME and Epstein waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants HME and Epstein further waive and release any claims they may have against the Commission, its employees, representatives or agents and the Former Temporary Receiver.
8. Defendants HME and Epstein have agreed that this Order does not entitle them to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and Defendants HME and Epstein further waive any rights to attorneys' fees that may arise under said provision of law.
9. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
10. Entry of this Order is in the public interest.

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

1. "Asset" means any legal or equitable interest in, or right or claim to, any real and personal

property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. "Business Venture" means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of the payment of any consideration for:
 - a. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
 - b. The promise or provision of assistance to any person in connection with: (1) the establishment, maintenance, or operation of a new business; or (2) the entry by an existing business into a new line or type of business, including, but not limited to, referrals to one or more persons providing location services.
3. "Defendants" means HME, Inc. ("HME") and John M. Epstein ("Epstein"), their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, 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.
4. "Work-at-home employment opportunity" means any program, plan, product or service that enables or offers to enable a participant or purchaser to earn money by working at home.
5. "Person" means a natural person, organization or other legal entity, including a corporation,

partnership, proprietorship, association, or cooperative, or any other group or combination acting as an entity.

ORDER

I. PROHIBITED PRACTICES

IT IS FURTHER ORDERED that, in connection with the advertising, telemarketing, offering for sale, licensing, contracting, sale or other promotion, in or affecting commerce, of Defendants' job opportunity package, or any other work-at-home employment opportunity, business venture, or other product or service, Defendants are hereby permanently restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer, in connection with the promotion, advertising, marketing, offering for sale or sale of any business venture or any work-at-home employment opportunity, or any other good or service, including but not limited to:

- A. Falsely representing the earnings, income, profits, or sales volume likely to be achieved in connection with the purchase of or investment in any business venture or work-at-home employment opportunity;
- B. Falsely representing the types of employment opportunities promised purchasers or investors in any business venture or work-at-home employment opportunity;
- C. Falsely representing the refund policy for any purchaser of or investor in any business venture or work-at-home employment opportunity; and
- D. Falsely representing any other fact material to a consumer's decision to purchase or

invest in any business venture or work-at-home employment opportunity, or other goods or services that are the subject of a sales offer.

II. PERMANENT BAN

IT IS FURTHER ORDERED that Defendants, whether directly or indirectly, or through any corporation, business entity or person under his control, are hereby permanently restrained and enjoined from engaging or participating in the advertising, marketing, telemarketing, offering for sale, licensing, contracting, sale or other promotion of any work-at-home employment opportunity.

III. MONETARY JUDGMENT AND REDRESS

IT IS FURTHER ORDERED that judgment is hereby entered against Defendants, jointly and severally, in the amount of Eighteen Million Dollars (\$18,000,000.00); provided, however, that this monetary judgment against Defendants shall be suspended until further order of the Court, and provided further that this monetary judgment and its suspension shall be subject to the conditions set forth in Sections IV and V of this Order.

IV. MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Defendants, jointly and severally, shall pay to the Plaintiff as equitable monetary relief, costs, and attorneys fees, including but not limited to consumer redress and disgorgement and expenses of administering any redress fund, the amount of Fourteen Thousand Dollars (\$14,000.00). Such payment shall be by certified check or cashier's check delivered to the Director, Northeast Region, Federal Trade Commission, 1 Bowling Green, Suite 318, New York, NY 10004, or to a bank account identified by counsel for Plaintiff, within ten (10) business days after entry of this Order. Decisions by the parties as to the funds and assets the Defendants are to pay were based on sworn financial disclosure statements provided by the

Defendants, and the terms of this **Section IV** are subject to **Section V**, below.

B. Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid for purposes of settlement between the Plaintiff and Defendants of the claims in this action.

C. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the FTC their respective taxpayer identifying numbers (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the Defendants' judgment herein.

D. Defendants are further required, unless they have done so already, to provide the FTC with clear, legible and full-size photocopies of all valid driver's licenses they possess, which will be used for collection, reporting and compliance purposes.

E. Defendants authorize Plaintiff to verify all information provided on Defendants' corporate and individual financial statements with all appropriate third parties, including, but not limited to, financial institutions and credit reporting bureaus.

V. RIGHT TO REOPEN WITH SUM CERTAIN

IT IS FURTHER ORDERED that:

A. Plaintiff's agreement to, and the Court's approval of, this Order is expressly premised upon the truthfulness, accuracy, and completeness of the individual and corporate financial statements dated July 16, 2002 that were provided by Defendants to Plaintiff. Each Defendants' financial statement contains material information upon which Plaintiff relied in negotiating and agreeing to this Final Order. If Plaintiff should have evidence that the above-referenced financial statements

and information failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, Plaintiff may move that the Court reopen this Order for the sole purpose of allowing Plaintiff to modify the monetary liability of the Defendants.

- B. If the Court finds that Defendants, individually or in combination with each other, failed to disclose or misrepresented any material asset, and the total value of the assets misrepresented or omitted is in excess of five hundred dollars (\$500), or made any other material misrepresentation or omission in the above-referenced financial statements and information, then the Court shall reinstate the judgment against the Defendants, jointly and severally, and in favor of Plaintiff, in the amount of eighteen million dollars (\$18,000,000), which shall become immediately due and payable, less any amounts previously paid. Should this judgment be modified as to the monetary liability of the Defendants, this Order, in all other respects, shall remain in full force.
- C. Proceedings instituted under this Section are in addition to, and not in lieu of, any and all other proceedings and remedies as may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Final Order. Solely for the purposes of reopening under this Section, Defendants waive any right to contest any of the allegations set forth in the complaint filed in this matter.

VI. USE OF CONSUMER REDRESS AND DISGORGEMENT FUNDS

IT IS FURTHER ORDERED that:

- A. The Plaintiff shall deposit all funds received from the Defendants pursuant to this Order in an

interest-bearing account administered by the Plaintiff or its agent.

- B. All funds paid pursuant to this Order shall be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, Plaintiff may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited as disgorgement to the United States Treasury. Defendants shall have no right to challenge the Plaintiff's choice of remedies under this Section.

VII. TRANSFER OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants are hereby 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 in this action at any time prior to entry of this Order, in connection with the advertising, promotion, telemarketing, offering for sale, or sale of Defendants' job opportunity packages, or any other work-at-home opportunity, business venture, or other good or service, provided, however, that Defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that within five (5) business days of receipt of this Order as entered by the Court, Defendants shall submit to the Commission a truthful sworn statement, in the form

shown on Appendix A, that shall acknowledge receipt of this Order.

IX. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that Defendant Epstein, in connection with any and every business entity of which he is a majority owner, or which he otherwise manages or controls, and where the business is engaged in the sale or marketing of any consumer good or service, is hereby restrained and enjoined from failing to create and retain, for a period of five (5) years from the date of entry of this Order unless otherwise specified, the following records:

1. Accounting records that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
2. 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;
3. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, for all customers to whom such business has sold, invoiced or shipped any goods or services, or from whom such business accepted money or other items of value, to the extent such information is obtained in the ordinary course of business;
4. Records that reflect, for every customer complaint or refund request, whether received directly or indirectly or through any third party:
 - a. the customer's name, address, telephone number and the dollar amount paid by

- the customer;
 - b. the written complaint or refund request, if any, and the date of the complaint or refund request;
 - c. the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
 - d. each response and the date of the response;
 - e. any final resolution and the date of the resolution; and
 - f. in the event of a denial of a refund request, the reason for the denial; and
5. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; **PROVIDED, however**, that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

X. COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that in order that compliance with the provisions of this

Stipulated Final Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order, Defendant Epstein shall notify Plaintiff of the following:
 - 1. Any change in the Defendant's residence, mailing address, and telephone number, within ten (10) days of the date of such change;
 - 2. Any changes in the Defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that he is affiliated with or employed by, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the structure of any business entity owned or controlled by the Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, within ten (10) days of the effective date of any proposed change; **PROVIDED, however**, that, with respect to any proposed change in the corporation about which the Defendant learned less than thirty (30) days prior to the date such action is to take place, the Defendant shall notify Plaintiff as soon as practical.
- B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the Plaintiff, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. The report shall include but not be limited to:
1. For Defendant Epstein, his then current residence address and telephone number;
 2. For Defendant Epstein, his then current employment, business address and telephone number, a description of the business activities of each such employer, and his title and responsibilities for each employer;
 3. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to **Section VIII**;
 4. A statement describing the manner in which Defendants have complied and are complying with the terms of the injunctive requirements of **Sections I and II**, and the terms of the monetary relief requirements of **Sections III and IV**.
- C. Upon written request by a representative of the Plaintiff, Defendants shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' notice with respect to any conduct subject to this Order;
- D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Plaintiff's authorized representative in writing, mail all written notifications to Plaintiff to:

Northeast Regional Director
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004
Re: FTC v. America's Shopping Network, et al.

- E. For the purposes of this Section, “employment” includes the performance of services as an employee, consultant, or independent contractor, and “employers” include any individual or entity for whom Defendant Epstein performs services as an employee, consultant, or independent contractor;
- F. For the purposes of compliance reporting of this Section, Plaintiff is authorized to communicate directly with individual Defendant Epstein.

XI. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Stipulated Final Order, for the purpose of further determining compliance with this Order, individual Defendant Epstein shall permit representatives of the Plaintiff, within five (5) business days of receipt of written notice from any of the Plaintiff:

- A. Access during normal business hours to any office, or facility storing documents, of any business where such Defendant is the majority owner of the business or directly or indirectly manages or controls the business and where the business is engaged in the sale or marketing of any consumer good or service. In providing such access, he shall permit representatives of the Plaintiff to inspect and copy all documents relevant to any matter contained in this Order, and shall permit Plaintiff's representatives to remove documents relevant to any matter contained in this Order for a period not to exceed three (3) business days, subject to any appropriate

protective order, so that the documents may be inspected, inventoried, and copied; and

- B. To interview the officers, directors, and employees, including all personnel involved in responding to customer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subpart A of this Section applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present.

PROVIDED, however, that, upon application of the Plaintiff and for good cause shown, the Court may enter an *ex parte* order granting immediate access to all premises at which individual Defendant Epstein conducts business or stores documents, for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XII. PLAINTIFF'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Plaintiff is authorized to monitor Defendants' compliance with this Order by all lawful means, including, but not limited to, the following:

- A. Plaintiff is authorized, without further leave of this Court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26–37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of investigating compliance with any provision of this Order;
- B. Plaintiff is authorized, without the necessity of identification or prior notice, to use representatives posing as consumers to the Defendants and/or any of their employees, or any other entity managed or controlled in whole or in part by them, for the purposes of monitoring compliance with this Order, and may tape-record any oral communications that occur in the

course of such contacts;

- C. Nothing in this Order shall limit the Federal Trade Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate compliance with this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

XIII. ORDER DISTRIBUTION

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Stipulated Final Order, individual Defendant Epstein shall immediately provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of the same from, all officers, directors, managing agents, customer service personnel, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, in any company or other business entity directly or indirectly owned, operated or controlled by him and where the business is engaged in the sale or marketing of any consumer good or service, and maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of Plaintiff, the original signed and dated acknowledgments of the receipt of copies of this Order, as required by this Section.

XIV. INDEPENDENCE OF OBLIGATIONS

IT IS FURTHER ORDERED that the expiration of any requirements imposed by this Stipulated Final Order shall not affect any other obligation arising under this Order.

XV. COSTS AND ATTORNEYS FEES

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this _____ day of _____, 2002

DANIEL T. K. HURLEY
United States District Judge

STIPULATED AND AGREED TO:

FOR THE PLAINTIFF:

Thomas A. Cohn
Attorney for Plaintiff
FEDERAL TRADE COMMISSION

FOR THE DEFENDANTS:

John M. Epstein
Individually and as officer of HME, Inc.

Michael B. Cohen, Esq.
Attorney for Defendants John M. Epstein and
HME, Inc.

**APPENDIX A
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

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Magistrate Judge LYNCH**

FEDERAL TRADE COMMISSION,

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**AMERICA'S SHOPPING
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KAREN A. ZAGAMI,
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LOUIS S. GANGI, individually and as a
principal of the corporations,

HME INC.,
a corporation, and

JOHN M. EPSTEIN, individually and as an
officer of the corporation,

Defendants

AFFIDAVIT OF RECEIPT OF ORDER

John M. Epstein, being duly sworn, hereby states and affirms as follows:

1. My name is John M. Epstein. My current residence address is _____ . I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.
2. I am a Defendant in the above captioned case, individually and as an officer of Defendant HME, Inc.
3. On _____, I received, on behalf of myself and Defendant HME, Inc., a copy of the Stipulated Judgment and Order for Permanent Injunction, which was entered by the Court on _____, 2003. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

John M. Epstein

Executed on _____, 2003, at _____ [city and state].

State of _____

County of _____

Subscribed and sworn to before me this _____ day of _____, 2003.

Notary Public

My Commission Expires:
