

1 Barbara Y.K. Chun (Cal. Bar No. 186907)
Federal Trade Commission
2 10877 Wilshire Blvd., Ste. 700
Los Angeles, CA 90024
3 (310) 824-4343 (phone)
(310) 824-4380 (fax)

4 Attorneys for Plaintiff
5 FEDERAL TRADE COMMISSION

6
7
8 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

9 FEDERAL TRADE COMMISSION,)
10) Case No.
Plaintiff,)
11 v.)
)
12 ARTMART PUBLICATIONS, INC., a)
California corporation; and) STIPULATED FINAL JUDGMENT AND
13 ARTHUR NIDETZ, an individual,) ORDER FOR PERMANENT INJUNCTION
) AND OTHER EQUITABLE RELIEF
14 Defendants.) AGAINST ALL DEFENDANTS
)

15 Plaintiff, the Federal Trade Commission ("FTC" or
16 "Commission") has commenced this action by concurrently filing
17 its Complaint and this Stipulated Final Judgment and Order for
18 Permanent Injunction ("Order"). The Complaint seeks a permanent
19 injunction and other equitable relief pursuant to Section 13(b)
20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
21 § 53(b), and charges Defendants ArtMart Publications, Inc. and
22 Arthur Nidetz with deceptive acts and practices in connection
23 with the sale, offering for sale, or distribution of
24 advertisements and advertising space.

25 Defendants have waived service of the Summons and Complaint.
26 The parties, represented by the attorneys whose names appear
27 hereafter, have agreed to the entry of this Order and have
28

1 requested that the Court enter the same to resolve all matters in
2 dispute in this action.

3 **FINDINGS**

4 1. This Court has jurisdiction over the subject matter of
5 this case and all parties hereto. Venue in the Central District
6 of California is proper.

7 2. The alleged activities of Defendants are in or affecting
8 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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

12 4. Plaintiff has the authority under Section 13(b) of the
13 FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.

14 5. Defendants enter into this Order freely and without
15 coercion regarding the allegations or charges made in the FTC's
16 complaint, and acknowledge that they understand the provisions of
17 this Order and are prepared to abide by them.

18 6. Defendants have waived all claims under the Equal Access
19 to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial
20 review, or otherwise to challenge the validity of this Order.

21 7. Entry of this Order is in the public interest.

22 **IT IS HEREBY ORDERED** as follows:

23 **DEFINITIONS**

24 1. "Person" means a natural person, organization, or other
25 legal entity, including a corporation, partnership,
26 proprietorship, association, cooperative, government or
27 governmental subdivision or agency, or any other group or
28 combination acting as an entity.

1 space, advertisements, or any advertising-related service, are
2 hereby enjoined from:

3 1. Misrepresenting, expressly or by implication, that any
4 consumer has ordered, purchased or agreed to purchase and place
5 advertisements in one or more of Defendants' publications;

6 2. Making any misrepresentation, expressly or by
7 implication, regarding a consumer's obligation to make payment;

8 3. Misrepresenting to any consumer, or any consumer's
9 employee or representative, expressly or by implication, that the
10 consumer has previously purchased one or more advertisements from,
11 or has otherwise previously transacted business with, any of the
12 Defendants;

13 4. Misrepresenting, expressly or by implication, that any
14 advertisement is up for renewal;

15 5. Misrepresenting, expressly or by implication, that the
16 circulation or dissemination of any publication is targeted to a
17 specific demographic group;

18 6. Making any other misrepresentation, expressly or by
19 implication, concerning the circulation or dissemination of any
20 publication;

21 7. Misrepresenting, expressly or by implication, that any
22 order or purchase of such advertisement, advertising space, or
23 other advertising-related service, or that any other action, will
24 fulfill obligations under, or is required to comply with, equal
25 employment opportunity laws;

26 8. Misrepresenting, expressly or by implication, any
27 affiliation with or connection to any government entity;

28 9. Misrepresenting, expressly or by implication, any other

1 fact that is likely to affect a consumer's choice in connection
2 with the purchase of such advertisements, advertising space, or
3 other advertising-related service;

4 10. Sending an invoice or any request for payment to any
5 consumer, including any employee, agent, or representative of the
6 consumer, for any advertisement, advertising space, or other
7 advertising-related service, unless that consumer has previously
8 provided written authorization for such purchase. The written
9 authorization for the purchase shall clearly and conspicuously
10 include the following statement: "The person signing MUST be an
11 individual who has been designated by your organization as a
12 person who has the authority to place this order for the
13 advertising or other service indicated. If you do not have such
14 authority - DO NOT SIGN." Next to this statement the
15 authorization shall include lines and spaces for: (1) the person's
16 signature; (2) the person's printed name; and (3) the date. The
17 authorization shall also clearly and conspicuously disclose the
18 total price charged, a description of the advertisement or other
19 product or service being sold that is the subject of the sale, and
20 the number of previous orders for advertisements or other products
21 or services the customer has authorized from the Defendants in the
22 previous two year period (and stating "none" if that is the case);

23 11. Invoicing or collecting payment from any consumer for
24 the purchase of advertising, advertising space, or any other
25 advertising-related service from Defendants prior to the effective
26 date of this Order;

27 12. Failing to conspicuously disclose, with respect to any
28 publication in which an advertisement or advertising space is

1 whether or not in exchange for payment or other consideration, the
2 name, address, telephone number, credit card number, bank account
3 number or other identifying information of any persons whose
4 identities or customer list information were obtained by
5 Defendants before the entry of this Stipulated Order;
6 *provided, however,* that Defendants may disclose such identifying
7 information to a law enforcement agency, or as required by any
8 law, regulation or court order.

9 **III.**

10 **MONETARY JUDGMENT**

11 A. **IT IS FURTHER ORDERED** that judgment in the amount of
12 \$125,000.00 is hereby entered against the Named Defendants,
13 jointly and severally. The judgment shall be paid to the FTC by
14 wire transfer in accordance with directions provided by the FTC,
15 or by cashier's or certified check payable to and delivered to the
16 FTC, as follows:

17 1. Within ninety days of the date of entry of this
18 Order, Named Defendants shall pay the sum of \$7,500.00;

19 2. Within 180 days of the date of entry of this Order,
20 Named Defendants shall make a second payment of \$7,500.00;

21 3. Within 270 days of the date of entry of this Order,
22 Named Defendants shall make a third payment of \$7,500.00;

23 4. Within 360 days of the date of entry of this Order,
24 Named Defendants shall make a fourth payment of \$7,500.00;

25 5. Within 390 days of the date of entry of this Order,
26 Named Defendants shall make a fifth and final payment
27 comprising the balance owed on the judgment of \$95,000.00.

28 B. In the event that Named Defendants fail to make any of

1 the payments specified in Subparagraph A.1-5 above within fifteen
2 days of its due date, the Court shall enter judgment against Named
3 Defendants, jointly and severally, in the amount of \$125,000.00
4 less any payments already made. For purposes of this Paragraph
5 only and any subsequent proceedings to enforce payment, including
6 but not limited to a non-dischargeability complaint filed in a
7 bankruptcy proceeding, Named Defendants stipulate to all of the
8 allegations in the FTC's Complaint.

9 C. **IT IS FURTHER ORDERED** that Named Defendants shall provide
10 the FTC, or its agent, within thirty days of such a request, any
11 evidence in the possession, custody or control of Named Defendants
12 establishing the name, last known address, telephone number, date
13 of purchase, and the complete file record, including computer
14 records and correspondence, of each customer who paid Defendants
15 for advertisements, advertising space, or advertising-related
16 services between January 1, 1999 and the date this Order is
17 entered, as well as any further information the FTC deems
18 necessary to effectuate a customer redress program;

19 D. All funds paid pursuant to this Paragraph shall be
20 deposited into a fund administered by the FTC or its agent to be
21 used for equitable relief, including but not limited to consumer
22 redress and any attendant expenses for the administration of any
23 redress fund. In the event that direct redress to consumers is
24 wholly or partially impracticable or funds remain after redress is
25 completed, the FTC may apply any remaining funds for such other
26 equitable relief (including consumer information remedies) as it
27 determines to be reasonably related to the Named Defendants'
28 practices alleged in the Complaint. Any funds not used for such

1 equitable relief shall be deposited to the Treasury as
2 disgorgement. Named Defendants shall have no right to challenge
3 the FTC's choice of remedies under this Paragraph; and

4 E. Any redress administrator shall destroy all records
5 relating to this matter six years after the transfer of any
6 remaining redress funds to the FTC Treasury account or the closing
7 of the account from which such funds were disbursed, whichever is
8 earlier, provided that no records shall be destroyed unless and
9 until a representative of the FTC has received and approved the
10 administrator's final accounting report. Records shall be
11 destroyed in accordance with disposal methods and procedures to be
12 specified by the FTC. The FTC may, in its sole discretion,
13 require that such records, in whole or in part, be transferred, in
14 lieu of destruction, to the FTC.

15 IV.

16 RELIANCE ON DISCLOSURES

17 **IT IS FURTHER ORDERED** that the FTC's agreement to this Order
18 is expressly premised upon the truthfulness, accuracy, and
19 completeness of the financial condition of Named Defendants, as
20 represented in their respective financial statements submitted to
21 the FTC on August 2, 2002, and in any other documents submitted by
22 the Named Defendants, including any estimated closing statement
23 concerning the sale of Arthur Nidetz's residence. Said financial
24 statements and documents contain material information upon which
25 the FTC has relied in negotiating and agreeing to the terms of
26 this Order. If, upon noticed motion by the FTC to the Court, the
27 Court finds that any Named Defendant failed to disclose any asset
28 with a value exceeding \$2,500, or materially misrepresented the

1 value of any asset, or made any other material misrepresentation
2 in or omission from their financial statements or other documents,
3 the Court shall enter judgment against Named Defendants, jointly
4 and severally, in favor of the FTC in the amount of \$3,400,000.00,
5 representing the approximate amount of consumer injury, which will
6 become immediately due and payable less any amount previously paid
7 to the FTC. For purposes of this Paragraph only and any
8 subsequent proceedings to enforce payment, including but not
9 limited to a non-dischargeability complaint filed in a bankruptcy
10 proceeding, Named Defendants stipulate to all of the allegations
11 in the FTC's Complaint.

12 **V.**

13 **DISTRIBUTION OF ORDER BY DEFENDANTS**

14 **IT IS FURTHER ORDERED** that, for a period of three (3) years
15 from the date of entry of this Order,

16 A. ArtMart shall deliver a copy of this Order to all
17 principals, officers, directors, managers, employees, agents, and
18 representatives having responsibilities with respect to the
19 subject matter of this Order, and shall secure from each such
20 person a signed and dated statement acknowledging receipt of the
21 Order. ArtMart shall deliver this Order to current personnel
22 within thirty (30) days after the date of service of this Order,
23 and to new personnel within thirty (30) days after the person
24 assumes such position or responsibilities.

25 B. Nidetz shall deliver a copy of this Order to the
26 principals, officers, directors, managers and employees under
27 Nidetz's control for any business that (a) employs or contracts
28 for personal services from Nidetz and (b) has responsibilities

1 with respect to the marketing, offering for sale, or sale of
2 advertising space, advertisements, or any advertising-related
3 service. Nidetz shall secure from each such person a signed and
4 dated statement acknowledging receipt of the Order within thirty
5 (30) days after the date of service of the Order or the
6 commencement of the employment relationship.

7 **VI.**

8 **MONITORING COMPLIANCE OF SALES PERSONNEL**

9 **IT IS FURTHER ORDERED** that in connection with any business
10 that sells, offers for sale, or disseminates advertising, where
11 any Named Defendant is the majority owner of the business or
12 directly or indirectly manages or controls the business, Named
13 Defendants are hereby permanently restrained and enjoined from:

14 A. Failing to take reasonable steps sufficient to monitor
15 and ensure that all employees and independent contractors engaged
16 in sales or other customer service functions comply with Paragraph
17 I of this Order. Such steps shall include adequate monitoring of
18 sales presentations or other calls with customers, and shall also
19 include, at a minimum, the following: (1) listening from time to
20 time to the oral representations made by persons engaged in sales
21 or other customer service functions; (2) establishing a procedure
22 for receiving and responding to customer complaints; and (3)
23 ascertaining the number and nature of customer complaints
24 regarding transactions in which each employee or independent
25 contractor is involved; provided that this Paragraph does not
26 authorize or require Named Defendants to take any steps that
27 violate any federal, state, or local laws;

28 B. Failing promptly to investigate fully any customer

1 complaint received by any business to which this Paragraph
2 applies; and

3 C. Failing to terminate any employee or independent
4 contractor whom the Named Defendants knows or should know is not
5 complying with the provisions of this Order.

6 **VII.**

7 **COMPLIANCE REPORTING BY DEFENDANTS**

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

10 A. For a period of five (5) years from the date of entry of
11 this Order,

12 1. Nidetz shall notify the FTC of the following:

13 a. Any changes in his residence, mailing
14 addresses, and telephone numbers, within ten (10) days
15 of the date of such change;

16 b. Any changes in his employment status
17 (including self-employment) within ten (10) days of the
18 date of such change. Such notice shall include the name
19 and address of each business that he is affiliated with,
20 employed by, or performs services for; a statement of
21 the nature of the business; and a statement of his
22 duties and responsibilities in connection with the
23 business;

24 c. Any changes in Defendant's name or use of any
25 aliases or fictitious names; and

26 2. Named Defendants shall notify the FTC of any
27 changes in corporate structure that may affect compliance
28 obligations arising under this Order, including but not

1 limited to a dissolution, assignment, sale, merger, or other
2 action that would result in the emergence of a successor
3 corporation; the creation or dissolution of a subsidiary,
4 parent, or affiliate that engages in any acts or practices
5 subject to this Order; the filing of a bankruptcy petition;
6 or a change in the corporate name or address, at least thirty
7 (30) days prior to such change, *provided* that, with respect
8 to any proposed change in the corporation about which the
9 Named Defendant learns less than thirty (30) days prior to
10 the date such action is to take place, Named Defendant shall
11 notify the FTC as soon as is practicable after obtaining such
12 knowledge.

13 B. One hundred eighty (180) days after the date of entry of
14 this Order, Named Defendants shall each provide a written report
15 to the FTC, sworn to under penalty of perjury, setting forth in
16 detail the manner and form in which they have complied and are
17 complying with this Order. This report shall include, but not be
18 limited to:

19 1. Any changes required to be reported pursuant to
20 Subparagraph (A) above;

21 2. A copy of each acknowledgment of receipt of this
22 Order obtained by Defendant pursuant to Paragraph V;

23 C. For the purposes of this Order, Named Defendants shall,
24 unless otherwise directed by the FTC's authorized representatives,
25 mail all written notifications to:

26 Assistant Regional Director
27 Western Region - Los Angeles
28 Federal Trade Commission
10877 Wilshire Blvd., Suite 700
Los Angeles, California 90024

1 Re: FTC v. Innovative Systems Technology, et al.

2 D. For purposes of the compliance reporting required by this
3 Paragraph, the FTC is authorized to communicate directly with
4 Named Defendants.

5 **VIII.**

6 **COMPLIANCE MONITORING**

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

9 A. Within ten (10) days of receipt of written notice from a
10 representative of the FTC, Named Defendants each shall submit
11 additional written reports, sworn to under penalty of perjury;
12 produce documents for inspection and copying; appear for
13 deposition; and/or provide entry during normal business hours to
14 any business location in such defendant's possession or control to
15 inspect the business operation;

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

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

22 2. posing as consumers and suppliers to Named
23 Defendants, Named Defendants' employees, or any other entity
24 managed or controlled in whole or in part by Named
25 Defendants, without the necessity of identification or prior
26 notice;

27 **Provided** that nothing in this Order shall limit the FTC's lawful
28 use of compulsory process, pursuant to Sections 9 and 20 of the

1 FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary
2 material, tangible things, testimony, or information relevant to
3 unfair or deceptive acts or practices in or affecting commerce
4 (within the meaning of 15 U.S.C. § 45(a)(1)).

5 C. Named Defendants shall permit representatives of the FTC
6 to interview any employer, consultant, independent contractor,
7 representative, agent, or employee who has agreed to such an
8 interview, relating in any way to any conduct subject to this
9 Order. The person interviewed may have counsel present.

10 **IX.**

11 **RECORD KEEPING PROVISIONS**

12 **IT IS FURTHER ORDERED** that, for a period of eight (8) years
13 from the date of entry of this Order, in connection with any
14 business that(a) sells, offers for sale, or disseminates
15 advertisements and (b) where Nidetz is the majority owner of the
16 business or controls the business, Nidetz and his agents,
17 employees, officers, corporations, successors, and assigns, and
18 those persons in active concert or participation with him who
19 receive actual notice of this Order by personal service or
20 otherwise, are hereby restrained and enjoined from failing to
21 create and retain the following records:

22 A. Reasonable accounting records that reflect the cost of
23 goods or services sold, revenues generated, and the disbursement
24 of such revenues;

25 B. Personnel records accurately reflecting: the name,
26 address, and telephone number of each person employed in any
27 capacity by such business, including as an independent contractor;
28 that person's job title or position; the date upon which the

1 person commenced work; and the date and reason for the person's
2 termination, if applicable;

3 C. Customer files containing the names, addresses, phone
4 numbers, dollar amounts paid, quantity of items or services
5 purchased, and description of items or services purchased, to the
6 extent such information is obtained in the ordinary course of
7 business;

8 D. Complaints and refund requests (whether received
9 directly, indirectly or through any third party) and any responses
10 to those complaints or requests; and

11 E. Copies of all sales scripts, training materials,
12 advertisements, or other marketing materials.

13 **X.**

14 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

15 **IT IS FURTHER ORDERED** that each Named Defendant, within five
16 (5) business days of receipt of this Order as entered by the
17 Court, must submit to the FTC a truthful sworn statement
18 acknowledging receipt of this Order.

19 **XI.**

20 **INDEPENDENCE OF OBLIGATIONS**

21 **IT IS FURTHER ORDERED** that each obligation imposed by this
22 Order is independent of all other obligations under the Order, and
23 the expiration of any requirements imposed by this Order shall not
24 affect any other obligation arising under this Order.

25 **XII.**

26 **COSTS AND ATTORNEYS FEES**

27 **IT IS FURTHER ORDERED** that each party shall bear its own
28 costs and attorneys fees incurred in connection with this action.

1 XIII.

2 RETENTION OF JURISDICTION

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

6 XIV.

7 ENTRY BY CLERK

8 There being no just reason for delay, the Clerk of the Court
9 is hereby directed to enter this Order.

10
11 SO STIPULATED:

12 Dated: _____, 2003

13 BARBARA Y.K. CHUN
14 Attorney for Plaintiff
FEDERAL TRADE COMMISSION

15 Dated: _____, 2003

16 ARTMART PUBLICATIONS, INC. by
17 Arthur Nidetz, as its sole
Officer and Owner

18 Dated: _____, 2003

19 ARTHUR NIDETZ, INDIVIDUALLY

20 APPROVED AS TO FORM:

21
22 Dated: _____, 2003

23 DANIEL J. WEINTRAUB
24 Attorney for Defendant
ArtMart Publications, Inc.

25 IT IS SO ORDERED.

26 Dated: _____

27 UNITED STATES DISTRICT JUDGE
28

1
2 CERTIFICATE OF SERVICE

3 I, Barbara Y.K. Chun, certify as follows:

4 I am over the age of 18 and am employed by the Federal Trade
5 Commission. My business address is 10877 Wilshire Blvd. Suite
6 700, Los Angeles, CA 90024. On _____, I caused the
7 attached "**Stipulated Final Judgment and Order for Permanent**
8 **Injunction and Other Equitable Relief**" to be served by pre-paid,
9 first class U.S. mail to the following:

10 Daniel J. Weintraub, Esq.
11 12424 Wilshire Blvd. #1120
12 Los Angeles, CA 90025-1031
13 *Attorney for Defendants*

14 I declare under penalty of perjury that the foregoing is true
15 and correct.

16 Dated: _____
17 _____
18 Barbara Y.K. Chun
19
20
21
22
23
24
25
26
27
28