

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil No. _____
)	
AMERICAN CAREER SERVICES, INC., and)	
DOUGLAS HOLCOMB,)	
)	
Defendants.)	
)	

STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND SETTLEMENT OF CLAIMS

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action on _____, 2002, by filing its Complaint for Injunction and Other Equitable Relief ("Complaint") against defendants American Career Services, Inc. ("ACS") and Douglas Holcomb (collectively "the defendants"). The Commission alleges that the defendants engaged in deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), and seeks a permanent injunction and monetary relief pursuant to Section 13(b) of the FTC Act. The Commission and the defendants hereby stipulate to this Final Order for Permanent Injunction and Settlement of Claims ("Order").

FINDINGS

By stipulation of the parties, the Court finds as follows:

1. The Commission brings this action pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Commission seeks permanent injunctive relief for alleged deceptive acts or practices in connection with the sale and offering for sale of employment goods and services in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2. The Commission has the authority under Section 13(b) of the FTC Act to seek the relief it has requested.

3. This Court has jurisdiction over the subject matter of this action and has jurisdiction over the defendants. The defendants waive service of a summons. Venue in the Southern District of Alabama is proper, and the Complaint states a claim upon which relief may be granted against the defendants.

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

5. The Commission and the defendants stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the Complaint to the date of entry of this Order. The defendants do not admit any of the allegations set forth in the Complaint, other than jurisdictional facts. The Commission and the defendants stipulate and agree that this Order constitutes a settlement agreement pursuant to Federal Rule of Evidence 408.

6. The defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. They also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorneys' fees.

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

8. Pursuant to Federal Rule of Civil Procedure 65(d) the provisions of this Order are

binding upon the defendants and their officers, agents, servants, employees and attorneys, and upon those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

DEFINITIONS

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

1. "Employment good or service" means any item, product, good or service represented to assist consumers in obtaining employment, including preparation or other training for any employment examination.

2. "Assisting others" means providing any of the following goods or services to any person or entity: (A) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (B) formulating or providing, or arranging for the formulation or provision of, any sales script or any other written marketing material; (C) providing names of, or assisting in the generation of, potential customers; (D) performing marketing services of any kind; or (E) acting as an officer or director of a business entity.

3. "Clearly and conspicuously" means:

(A) In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

(B) In print communications, the message shall be in a type size, location, and a print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.

(C) In communications made through electronic media (such as television, video, radio, and interactive media such as the Internet and online services), the message shall be presented simultaneously in both the audio and visual portions of the communication. *Provided, however*, that in any communication presented solely through visual or audio means, the message may be made through the same means in which the communication is presented. The audio message shall be delivered in a

volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual message shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. *Provided, further*, that in any communication presented through any interactive medium, the message shall appear on the same Web page, online service page, or other electronic page as the communication, and shall not include messages accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.

(D) The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that the defendants and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, promotion, offering for sale, or sale of any item, product, good or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting, directly or by implication, that employment positions are available in particular geographic areas;

B. Misrepresenting, directly or by implication, that consumers who purchase any employment good or service are likely to obtain employment positions;

C. Misrepresenting, directly or by implication, that consumers who purchase any employment good or service are likely to receive a particular score or range of scores on any employment exam;

D. Misrepresenting, directly or by implication, that refunds will be paid to consumers who purchase any employment good or service and do not receive a particular score on any employment exam or do not receive a test date to take any employment exam within a particular amount

of time;

E. Failing to disclose in a clear and conspicuous manner, prior to charging a consumer for any good or service, all material terms, conditions, and limitations of any refund policy or any policy of non-refundability;

F. Misrepresenting, directly or by implication, any material aspect of the nature or terms of any refund, guarantee, cancellation, exchange, or repurchase policies;

G. Misrepresenting, directly or by implication, that any item, product, good, or service solicited, sold or offered for sale is affiliated with or endorsed by any government agency.

H. Misrepresenting, directly or by implication, any material fact regarding any item, product, good, or service solicited, sold or offered for sale;

I. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, including any amendments thereto; and

J. Assisting others who violate any provision of sub-paragraphs A-I of this Paragraph I.

II. AFFIRMATIVE DISCLOSURES

IT IS FURTHER ORDERED that:

A. The defendants and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, promotion, offering for sale, or sale of any postal employment good or service, shall, in the course of making any oral, written, or Internet sales presentation, disclose, clearly and conspicuously, that:

1. The defendants are not affiliated with or endorsed by the U.S. Postal Service or any other federal or state government agency;

2. There is no guarantee that at the present time or in the foreseeable future there will be jobs available with the U.S. Postal Service in a consumer's geographic area;

3. There is no guarantee that at the present time or in the foreseeable future the U.S. Postal Service will offer any entrance examination in a consumer's geographic area;

4. There is no guarantee that purchasing and using defendants' materials will guarantee that a consumer will likely receive any particular score on any U.S. Postal Service entrance examination; and

5. There is no guarantee that purchasing and using defendants' materials will guarantee that a consumer will likely obtain a job with the U.S. Postal Service.

B. *Provided, however,* that in any print advertisement placed solely in the classified advertisement section of a newspaper, the disclosures required by this Paragraph II shall include:

1. The defendants are not affiliated with or endorsed by the U.S. Postal Service or any other federal or state government agency; and

2. There is no guarantee that jobs with the U.S. Postal Service are available in any particular geographic area.

C. The disclosures required by this Paragraph II are in addition to, and not in lieu of, any other disclosures that the defendants may be required to make, including but not limited to any disclosure required by state or federal law or by a self-regulatory organization. The disclosure requirements of this Paragraph II are not intended to, and shall not be interpreted to, exempt the defendants from making any other disclosure.

III. CONSUMER LISTS

IT IS FURTHER ORDERED that the defendants, and their officers, agents, servants, employees, and attorneys, and all persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from hereafter selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, email address, or other identifying information of any person who purchased any employment good or service from any defendant, at any

time prior to entry of this Order; *provided, however*, that a defendant may disclose such identifying information (i) with the express written consent of the person whose information is disclosed, (ii) to a law enforcement agency, or (iii) as required or authorized by any law, regulation, or court order.

IV. MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against the defendants, jointly and severally, in the amount of ONE HUNDRED AND FIFTY THOUSAND (\$150,000.00); *provided, however*, that this judgment shall be suspended (1) upon payment to the Commission of \$10,000.00, which payment shall be in the form of a certified cashier's check made payable to the Commission or its designated agent; and (2) as long as the Court makes no finding, as provided in Paragraph V of this Order, that any defendant has materially misrepresented or omitted the nature, existence or value of any asset;

B. The funds received by the Commission pursuant to this Paragraph IV shall be deposited into an account to be maintained by the Commission or its agent. Upon the final disposition of this action, such funds shall be either (1) distributed as redress to consumers, or (2) paid to the U.S. Treasury as equitable disgorgement (if such distribution is deemed impractical). If the Commission in its sole discretion determines that redress is practical, it shall submit a plan for the disbursement of funds to the Court for review and approval;

C. Defendant Douglas Holcomb is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission his social security number, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order; and

D. The defendants further agree that the facts as alleged in the Complaint shall be taken as true in the event of any subsequent litigation to collect amounts due pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding.

E. The judgment entered pursuant to this Paragraph IV is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.

V. RIGHT TO REOPEN

IT IS FURTHER ORDERED that, within fifteen days after entry of this Order, each defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order and shall reaffirm and attest to the truth, accuracy and completeness of the financial statements previously submitted to the Commission. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of the defendants' financial condition as represented by the financial statements provided by defendants on October 3, 2001 and December 18, 2001 and by defendants' counsel on May 2, 2002. If, upon motion by the Commission, the Court finds that the defendants' financial statements failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the suspended judgement entered in Paragraph IV of this Order shall become immediately due and payable as to the responsible defendant; *provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Order. For purposes of this Paragraph V, the defendants waive any right to contest any of the allegations in the Complaint.

VI. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that each defendant, in connection with (i) any business where such defendant is an officer, director or majority owner, and (ii) such business promotes, offers for sale, or sells, or assists others in promoting, offering for sale, or selling, employment goods or services, is hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps to sufficiently monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraphs I, II and III of this Order. Such steps shall include adequate monitoring of sales presentations or other

calls with customers, and shall also include, at a minimum, the following: (1) adopting procedures for listening to the oral representations made by persons engaged in sales or other customer service functions; (2) reviewing all Internet sales presentations on a regular basis; (3) establishing a procedure for receiving and responding to consumer complaints; and (4) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved; *provided*, that this Paragraph VI does not authorize or require the defendant to take any steps that violate any federal, state, or local laws; and

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph VI applies.

VII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that for a period of ten years from the date of entry of this Order, each defendant, in connection with (i) any business where such defendant is an officer, director or majority owner, and (ii) such business promotes, offers for sale, or sells, or assists others in promoting, offering for sale, or selling, employment goods or services, is hereby restrained and enjoined from failing to have such business create, and from failing to have such business retain for a period of three years following the date of such creation, unless otherwise specified:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. 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; *provided* that the business subject to this sub-paragraph B shall retain such records for a period of two years following the date of each such person's termination;

C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, for all consumers to

whom such business has sold, invoiced or shipped any goods or services, to the extent such information is obtained in the ordinary course of business;

D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party: (1) the consumer's name, address, telephone number and the dollar amount paid by the consumer; (2) the written complaint or refund request, if any, and the date of the complaint or refund request; (3) 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; (4) each response and the date of the response; (5) any final resolution and the date of the resolution; and (6) in the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; *provided* that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three years after the last date of dissemination of any such materials.

VIII. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of ten years from the date of entry of this Order, for the purpose of further determining compliance with this Order, each defendant shall permit representatives of the Commission, within ten business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business where (i) any business where such defendant is an officer, director or majority owner, and (ii) such business promotes, offers for sale, or sells, or assists others in promoting, offering for sale, or selling, employment goods or services. In providing such access, each defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five business days 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 consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which sub-paragraph A of this Paragraph VIII 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 Commission for good cause shown, the Court may enter an *ex parte* order granting immediate access to the defendants' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

IX. AUTHORITY TO MONITOR COMPLIANCE

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

A. The Commission is authorized, without further leave of 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 monitoring the defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and suppliers to the defendants, their employees, or any other entity managed or controlled in whole or in part by any defendant, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the 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 whether any defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

X. SERVICE OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of ten years from the date of entry of this Order:

A. Defendant Douglas Holcomb shall provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where he is (i) an officer, director or majority owner, and (ii) such business promotes, offers for sale, or sells, or assists others in promoting, offering for sale, or selling, employment goods or services;

B. Defendant ACS shall provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons.

C. Each defendant shall maintain for a period of three years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in sub-paragraphs A and B above.

XI. REPORTS 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 ten years from the date of entry of this Order:

1. Defendant Douglas Holcomb shall notify the Commission in writing of (a) any changes in his residence, mailing addresses, and telephone numbers within thirty (30) days of such change; (b) any changes in his employment status (including self-employment) within thirty (30) 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 (c) any proposed change in the structure of any

business entity owned or controlled by him, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of bankruptcy petition, or change in the corporate name or address, or any change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; *provided*, however, that, with respect to any proposed change in the corporation about which he learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as is practicable after learning of such proposed change;

2. Defendant ACS and its successors and assigns shall notify the Commission in writing of (a) any changes in its mailing addresses, telephone numbers, and facsimile numbers within thirty (30) days of such change; and (b) any proposed change in the structure of American Career Services, Inc. or its successors or assigns, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of bankruptcy petition, or change in corporate name, or any change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any such change; *provided*, however, that, with respect to any proposed change in the corporation about which ACS learns less than thirty (30) days prior to the date such action is to take place, ACS shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, each defendant shall provide a written report to the Commission, sworn under penalty of perjury, setting forth in detail the manner and form in which the defendant has complied and is complying with this Order. This report shall include but not be limited to:

1. The defendant's then mailing address, telephone number, and facsimile number (if any);

2. With respect to the individual defendant, his current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and

the defendant's title and responsibilities for each employer. With respect to the corporate defendant, a description of its current business activities;

3. A copy of each acknowledgment of receipt of this Order obtained by the defendant pursuant to Paragraph X of this Order; and

4. A statement describing the manner in which the defendant has complied and is complying with each Paragraph of this Order;

C. Upon written request by a representative of the Commission, each defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Order;

D. For the purposes of this Order, the defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room S-4302
Washington, D.C. 20580

Re: FTC v. American Career Services

E. For the purposes of this Paragraph XI, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom any defendant performs services as an employee, consultant, or independent contractor.

F. For purposes of the compliance reporting required by this Paragraph XI, the Commission is authorized to communicate directly with each defendant.

XII. RETENTION OF JURISDICTION

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

SO STIPULATED:

Stipulated Final Order

AMERICAN CAREER SERVICES, INC., Defendant

DOUGLAS HOLCOMB, Defendant

ANDREW J. STRENIO, JR.
Powell, Goldstein, Frazer & Murphy
1001 Pennsylvania Ave., NW, 6th Floor
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202-326-2237 (telephone)
202-326-2559 (facsimile)

Attorneys for Plaintiff

IT IS SO ORDERED.

This ____ day of _____, 2002.

UNITED STATES DISTRICT JUDGE

**APPENDIX A
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	Civil No. _____
v.)	
)	AFFIDAVIT OF [Defendant]
AMERICAN CAREER SERVICES, INC., and)	
DOUGLAS HOLCOMB,)	
)	
Defendants.)	
)	

_____, being duly sworn, hereby states and affirms as follows:

1. My name 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.

[for corporate defendant]

2. I am the _____ of American Career Services, Inc. ("ACS"), which is a defendant in the above-captioned civil action. My current business address is _____ . My current business telephone number is _____ and facsimile number is _____.

3. The current business address of ACS is _____. The current business telephone of ACS is _____ and facsimile number is _____. The current Internet website(s) of ACS is/are _____.

[for individual defendant]

2. I am a defendant in the above-captioned civil action. My current business address is _____ . My current business telephone number _____.

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is _____ and facsimile number is _____. My current residential address is _____. My current residential telephone number is _____.

[for all defendants]

3. On [date], I received a copy of the Stipulated Final Order for Permanent Injunction and Settlement of Claims, which was signed by the Honorable [judge] and entered by the Court on [date of entry of Order]. A true and correct copy of the Order that I received is appended to this Affidavit.

4. I reaffirm and attest to the truthfulness, accuracy, and completeness of the financial statements that were submitted to the Federal Trade Commission on or about October 3, 2001 and December 18, 2001.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 200_.

Notary Public
My Commission Expires:

Stipulated Final Order