

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-6885-Civ.-Ferguson

FEDERAL TRADE COMMISSION,)
)
)
Plaintiff,)
)
v.)
)
STREAMLINE INTERNATIONAL, INC., et al.,)
)
Defendants.)

**STIPULATED FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AS TO DEFENDANT
ROBERT WAITKUS**

Plaintiff, Federal Trade Commission (“Commission”), has filed a Complaint for permanent injunction and other relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging Defendants Streamline International, Inc. (“Streamline”), J.R. Jackson (“Jackson”), individually and doing business as Action Enterprises, and Robert “Bob” Waitkus (“Waitkus”), individually and doing business as WorldWide Opportunities Network, with violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a). The Commission and Defendant Waitkus, represented by the attorneys whose names appear hereafter, have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Final Order”) by this Court to resolve all matters in dispute between them in this action without trial. Pursuant to agreement and stipulation, IT IS HEREBY ORDERED, ADJUDGED, AND AGREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the parties hereto;
2. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b);
3. The Commission’s Complaint states a claim upon which relief may be granted against Defendant Waitkus under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);
4. The acts and practices of Defendant Waitkus was or is in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Defendant Waitkus waives any claim he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by PL 104-121, 110 Stat. 847, 863-64 (1996), concerning the prosecution of this action to the date of this Final Order;
6. Defendant Waitkus waives all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order, and further waives and releases any claim he may have against the FTC and the employees, agents, or representatives of the FTC;
7. Entry of this Final Order is in the public interest; and
8. By his agreement to the conditions herein, Defendant Waitkus does not admit to any of the allegations asserted against him by the Commission.

DEFINITIONS

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

- A. “Asset” means any legal or equitable interest in, right to, or claim to any real or personal property of defendant Waitkus, or held for the benefit of defendant Waitkus, wherever located, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general

intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts.

- B. “Competent and reliable scientific evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
- C. “Defendant Waitkus” means Robert “Bob” Waitkus, individually or doing business as WorldWide Opportunity Network, whether acting directly, indirectly, in connection or participation with others, or through any agent, representative, business entity or other device.
- D. “Multi-level marketing program” means any marketing program in which participants make a payment and receive the right, license or opportunity to derive income as a participant primarily from: (1) recruiting additional participants, or having additional participants placed by the promoter or any other person into the program participant’s downline, tree, cooperative, income center, or other similar program grouping; (2) selling goods or services; and (3) receiving payment or other compensation, in whole or in part, based upon the retail sales of those in the participant’s downline, tree, cooperative, income center or similar program grouping.
- E. “Participating” in a multi-level marketing program or a prohibited marketing scheme includes, but is not limited to, promoting, marketing, advertising, offering for sale, or selling, or assisting others in the offering for sale or selling the right to participate in, the program or scheme, as well

as acting or serving as an officer, director, employee, salesperson, agent, shareholder, advisor, consultant, independent contractor, or distributor, or acting as a speaker or spokesperson on behalf of the program or scheme.

- F. “Prohibited marketing scheme” means any marketing program, Ponzi scheme, chain marketing scheme, or other marketing plan or program in which a participant makes a payment and receives the right, license or opportunity to derive income as a participant primarily from: (i) the recruitment of additional recruits by the participant, program, promoter or others; or (ii) non-retail sales made to or by such recruits or their successive generations of recruits.
- G. “Retail sales” means sales of goods or services to third-party end users who are not participants or recruits in the multi-level marketing program.

ORDER

Conduct Prohibitions

I.

IT IS THEREFORE ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently restrained and enjoined from participating in any manner or capacity whatsoever, directly, in concert with others, individually or through any business entity or other device, in any prohibited marketing scheme.

II.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise,

while participating in any multi-level marketing program not subject to Paragraph I, are hereby permanently restrained and enjoined from making or assisting in the making of, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement or representation of material fact, including but not limited to the following:

- A. Misrepresentations about the potential earnings or income derived from such activity;
- B. Misrepresentations about the benefits any person participating in such an activity actually can receive or reasonably can expect to receive from such activity; and
- C. Misrepresentations about the amount of sales, incentives, profit or rewards a person actually made or can potentially make through such activity.

III.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, while participating in any multi-level marketing program not subject to Paragraph I, are hereby permanently restrained and enjoined from failing to disclose, clearly and conspicuously, to any prospective participant in said program to whom any earnings, profits or sales volume claims have been made:

- A.. The number and percentage of current program participants who have made a profit through their participation in the program; and
- B. The average and median amount of money made by each current program participant.

IV.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, while participating in any multi-level marketing program not subject to Paragraph I, are hereby permanently restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement.

V.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement in or affecting commerce, are hereby permanently restrained and enjoined from making any representation in any manner, expressly or by implication, that the dietary supplement contains ingredients that are generally recognized as safe by the Food and Drug Administration, unless the representation is true.

VI.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement in or affecting commerce, are hereby permanently restrained and enjoined from representing, in any manner, expressly or by implication, the benefit, performance, efficacy or safety of such supplement, unless, at the time the representation is made, Defendant Waitkus

possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

VII.

IT IS FURTHER ORDERED that Defendant Waitkus, while participating in any multi-level marketing program not subject to Paragraph I, is hereby restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that his agents, representatives, employees, or independent contractors comply with Paragraphs I through VI of this Final Order;
- B. Failing to investigate and resolve promptly any consumer complaint received by the Defendant, his officers, agents, servants, employees, and those persons in active concert or participation with him who receive actual notice of this Final Order, and to notify the consumer of the resolution of the complaint and the reason therefore; and
- C. Failing to take corrective action with respect to any sales or customer service person whom Defendant Waitkus determines is not complying with this Final Order, which may include training, disciplining, and/or terminating the employment of such sales person.

VIII.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, 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 Defendant Waitkus,

Streamline International, Inc. or J.R. Jackson in this matter, at any time prior to entry of this Final Order. Provided, however, that Defendant Waitkus may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

Monetary Relief

IX.

IT IS FURTHER ORDERED that Defendant Waitkus shall pay to the Commission, via electronic funds transfer, \$30,000.00 within five days after the date of entry of this Final Order. Such funds shall be used to provide redress to persons whom the Commission alleges to have been injured by Defendant Waitkus' violations of the FTC Act and to pay any attendant expenses of distributing the funds; provided, however, that if the Commission, in its sole discretion, determines that redress is wholly or partially impractical or is otherwise inappropriate, any funds not so used shall be deposited in the United States Treasury as disgorgement or shall be used to educate consumers affected by the practices described in the Commission's complaint in this action. Defendant Waitkus shall have no right to contest the manner of distribution chosen by the Commission. The Commission in its sole discretion may use a designated agent to administer consumer redress.

Right to Re-Open

X.

IT IS FURTHER ORDERED that:

- A. The Commission's agreement to, and the Court's approval of, this Final Order is expressly premised upon the truthfulness, accuracy and completeness of the sworn financial statements submitted by Defendant Waitkus to the Commission. Defendant Waitkus' financial statement

contains material information upon which the Commission relied in negotiating and agreeing to this Final Order. If, upon motion by the Commission, this Court finds that Defendant Waitkus' financial statement either failed to disclose any material asset or source of income or materially misrepresented the value of any asset or source of income, or contained any other material misrepresentation or omission, the Court shall enter judgment in the amount of \$7,106,899.00, rendered immediately payable by Defendant Waitkus; provided, however, that in all other respects this Final Order shall remain in full force and effect unless otherwise ordered by this Court;

- B. Defendant Waitkus authorizes the Commission to verify all information provided in Defendant Waitkus' financial statement with all appropriate third parties, including, but not limited to, financial institutions or credit reporting bureaus;
- C. Defendant Waitkus agrees that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Order, including, but not limited to, a nondischargeability complaint in any bankruptcy proceeding; and
- D. Proceedings instituted under this Paragraph 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 the Commission may initiate to enforce this Final Order.

XI.

IT IS FURTHER ORDERED that, within five (5) business days of entry of this Final Order, Defendant Waitkus shall submit to the Commission a truthful sworn statement, in the form that is attached as an appendix to this Final Order, that shall reaffirm and attest to the truth, accuracy, and completeness of the financial statement executed by Defendant Waitkus on August 21, 2001.

Record Keeping Provisions

XII.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Final Order, Defendant Waitkus and his agents, employees, officers and servants, corporations, successors and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with any business where (1) Defendant Waitkus is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business engages in a multi-level marketing program not subject to Paragraph I, assists others engaged in such a multi-level marketing program, or manufactures, labels, advertises, promotes, offers for sale, sells, or distributes dietary supplements, are hereby permanently restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel 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;

- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaint and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

Compliance Reporting

XIII.

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

- A. For a period of three (3) years from the date of entry of this Final Order, Defendant Waitkus shall notify the Commission in writing of the following:
 - 1. Any changes in his residence, mailing address, and telephone numbers, within fifteen (15) days of the date of such change;
 - 2. Any changes in his employment status (including self-employment), or his participation in any multi-level marketing program not subject to Paragraph I, within fifteen (15) days of such change. Such notices shall include the name and address of each business that Waitkus is employed by or participating in, a statement of the nature of the business,

and a statement of Waitkus' duties, responsibilities or involvement in connection with the business or employment;

3. Any proposed change in the structure of any business entity owned or controlled by Defendant Waitkus, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Final 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 Defendant Waitkus learns fewer than thirty (30) days prior to the date such action is to take place, Defendant Waitkus shall notify the Commission as soon as practicable after learning of such proposed change;
4. Any filing by Defendant Waitkus of a petition for relief under the United States Bankruptcy Code, contemporaneously upon the filing of such petition; and
5. Any filing by any of Defendant Waitkus' creditors of a petition for relief under the United States Bankruptcy Code against Defendant Waitkus, within five (5) days of receipt of notice of such petition;

B. One hundred eighty (180) days after the date of entry of this Final Order, Defendant Waitkus shall provide a written report to the Commission, sworn under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Final Order.

This report shall include, but not be limited to:

1. Defendant Waitkus' then-current residence address and telephone numbers;

2. Defendant Waitkus' then-current employment, business address and telephone numbers, a description of the business activities of each such employer, and the defendant's title and responsibilities for each employer;
 3. A description of any multi-level marketing program in which Defendant Waitkus is participating, including the name and address of the program, a statement of the nature of the program, and a statement of Defendant Waitkus' involvement in or connection with the program;
 4. A copy of each acknowledgment of receipt of this Final Order obtained by Defendant Waitkus pursuant to Paragraph XVI below; and
 5. A statement describing the manner in which Defendant Waitkus has complied and is complying with this Final Order;
- C. Upon written request by a representative of the Commission, Defendant Waitkus 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 Final Order;
- D. For the purpose of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom the defendant performs services as an employee, consultant, or independent contractor; and
- E. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with the Defendant Waitkus.

Compliance Monitoring

XIV.

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendant Waitkus' compliance with this Final 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 Federal Rules of Civil Procedure 26-34, 36 and 37, and to use compulsory process pursuant to Federal Rule of Civil Procedure 45, for the purpose of monitoring and investigating Defendant Waitkus' compliance with any provision of this Final Order;
- B. The Commission is authorized to use representatives posing as consumers and employees of, and suppliers to, Defendant Waitkus, Defendant Waitkus' employees, or any other entity managed or controlled in whole or in part by Defendant Waitkus, without the necessity of identification or prior notice; and
- C. Nothing in this Final 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 Defendant Waitkus has violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

Access to Business Premises

XV.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Final Order, for the purpose of further determining compliance with this Final Order, Defendant Waitkus shall permit representatives of the Commission, within three (3) 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 (1) Defendant Waitkus is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business engages in a multi-level marketing program not subject to Paragraph I, assists others engaged in such a multi-level marketing program, or manufactures, labels, advertises, promotes, offers for sale, sells, or distributes dietary supplements. In providing such access, Defendant Waitkus shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Final Order for a period not to exceed five (5) 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 Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Order. The person interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an ex parte order granting immediate access to Defendant Waitkus' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

Distribution of the Final Order by Defendant Waitkus

XVI.

IT IS FURTHER ORDERED that Defendant Waitkus shall:

- A. For a period of three (3) years from the date of entry of this Final Order, provide a copy of this Final 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 (1) Defendant Waitkus is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business engages in a multi-level marketing program not subject to Paragraph I, assists others engaged in such a multi-level marketing program, or manufactures, labels, advertises, promotes, offers for sale, sells, or distributes dietary supplements; and
- B. Maintain for a period of three (3) 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 Final Order, as required in Subsection (A) of this Paragraph.

Cooperation by Defendant Waitkus

XVII.

IT IS FURTHER ORDERED that Defendant Waitkus shall fully cooperate with and assist agents of the Commission throughout the pendency of this litigation and any appeal that may be brought in this litigation, including but not limited to providing a sworn written statement or oral testimony, as may be necessary, concerning Defendant Waitkus' involvement with Streamline International, Inc. and J.R. Jackson. Defendant Waitkus is hereby permanently restrained and enjoined from hindering or obstructing, directly or indirectly, agents of the Commission in any manner in this litigation.

Notification

XVIII.

IT IS FURTHER ORDERED that, for the purpose of this Final Order, all correspondence, notifications, or reports that Defendant Waitkus is required to provide to the Commission shall reference the case name and number of this matter and shall be sent to: Associate Director for Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or at such future address as the Commission may designate in writing to Defendant Waitkus.

Acknowledgment of Receipt of Final Order

XIX.

IT IS FURTHER ORDERED that, within five (5) days of receipt by Defendant Waitkus of this Final Order as entered by the Court, Defendant Waitkus shall submit to the Commission a truthful sworn statement, in the form shown in the appendix to this Final Order, that shall acknowledge receipt of this Final Order.

Retention of Jurisdiction and Entry of Judgment

XX.

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

There being no just cause for delay, this Stipulated Final Judgment and Final Order for a Permanent Injunction as to Defendant Robert Waitkus is hereby entered this ___ day of _____, 2001.

Wilkie D. Ferguson, Jr.
United States District Judge

The parties hereby consent to the terms and conditions of the Final Order as set forth above and consent to entry thereof.

FOR THE COMMISSION:

FOR THE DEFENDANT:

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K. MICHELLE RODEN, ESQ.
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ROBERT WAITKUS, individually

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Appendix

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-6885-Civ.-Ferguson

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
STREAMLINE INTERNATIONAL, INC., et al.,)
)
Defendants.)

AFFIDAVIT OF ROBERT WAITKUS

I, Robert Waitkus, being duly sworn, hereby state and affirm as follows:

1. My name is Robert Waitkus. My current residence address is 4720 SW 72nd Avenue, Davie, Florida 33314. 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 FTC v. Streamline International, Inc., et al., Case No. 01-6885-Civ.-Ferguson (United States District Court for the Southern District of Florida).

3. On _____ [date], I received a copy of the Stipulated Final Judgment and Final Order For Permanent Injunction, which was signed by the Honorable Wilkie D. Ferguson, Jr. and entered by the Court on _____ [date of entry of Final Order]. A true and correct copy of the Final Order I received is appended to this Affidavit.

4. The information contained in the financial statements dated August 21, 2001, that I have submitted to the Federal Trade Commission was true, accurate, and complete at such time.

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].

Robert Waitkus

Subscribed and sworn to before me this _____ day of _____, 2001.

Notary Public
My Commission Expires:
