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DISTRICT OF ARIZONA
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**UNITED STATES DISTRICT COURT**
**DISTRICT OF ARIZONA**

SEALED

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| **Federal Trade Commission,**<br><br>Plaintiff,<br><br>– *v.*–<br><br>**Handicapped & Disabled Workshops, Inc.**, a corporation, also formerly known as Handi-Tech Company;<br><br>**Handi-Hope Industries, Inc.**, a corporation;<br><br>**Handi-Ship, LLC**, a limited liability company;<br><br>**Bruce D. Peeples**, an individual;<br><br>**George Thomas**, an individual;<br><br>*and*<br><br>**Joshua D. Abramson**, an individual,<br><br>Defendants. | CIV '08 0908 PHX DGC<br>**Case No.** ________________<br><br>**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**<br><br>**[FILED UNDER SEAL]** |

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 – 6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten monies, and other equitable relief for defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and in violation of the Unordered Merchandise Statute, 39 U.S.C. § 3009.

## JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

## PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 – 58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC also is charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101 – 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or

practices. The FTC is also charged with enforcement of the Unordered Merchandise Statute, 39 U.S.C. § 3009. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, the TSR, and the Unordered Merchandise Statute, and to secure such equitable relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

**DEFENDANTS**

5. Defendant Handicapped & Disabled Workshops, Inc. ("Handicapped & Disabled Workshops"), also formerly known as Handi-Tech Company ("Handi-Tech"), is a for-profit corporation with its principal place of business at 3001 West Indian School Road, Phoenix, Arizona. Handicapped & Disabled Workshops transacts or has transacted business in this District.

6. Defendant Handi-Hope Industries, Inc. ("Handi-Hope") is a for-profit corporation with its principal place of business at 3001 West Indian School Road, Phoenix, Arizona and a location at 12450 North 35th Avenue, Phoenix, Arizona. Handi-Hope transacts or has transacted business in this District.

7. Defendant HandiShip, LLC ("HandiShip") is a for-profit limited liability company with its principal place of business at 3001 West Indian School Road, Phoenix, Arizona. HandiShip transacts or has transacted business in this District.

8. Defendant Bruce D. Peeples is the president, an officer, and/or member of Defendants Handicapped & Disabled Workshops, Handi-Hope, and HandiShip. In connection with the matters alleged herein, he resides or has transacted

business in this District. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Defendants Handicapped & Disabled Workshops, Handi-Hope, and HandiShip, including the acts and practices set forth in this Complaint.

9. Defendant George Thomas is a manager of Defendants Handicapped & Disabled Workshops, Handi-Hope, and HandiShip. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Defendants Handicapped & Disabled Workshops, Handi-Hope, and HandiShip, including the acts and practices set forth in this Complaint.

10. Defendant Joshua D. Abramson is the vice-president, secretary, and treasurer of Handi-Hope Industries, Inc. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Defendants Handicapped & Disabled Workshops, Handi-Hope, and HandiShip, including the acts and practices set forth in this Complaint.

## COMMON ENTERPRISE AND INDIVIDUAL PARTICIPATION

11. Handicapped & Disabled Workshops, Handi-Hope, and HandiShip ("Corporate Defendants") have operated together as a common enterprise while engaging in

the acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, and business functions. Individual defendants Peeples, Thomas, and Abramson have formulated, directed, and/or controlled, or had authority to control, or participated in the acts and practices of the Corporate Defendants that comprise the common enterprise.

## DEFENDANTS' BUSINESS ACTIVITIES

12. Defendants Handicapped & Disabled Workshops, Handi-Hope, HandiShip, Peeples, Thomas, and Abramson (collectively "HD Workshops" or "Defendants") are sellers of goods and products to consumers. Defendants also are telemarketers that initiate outbound telephone calls to consumers in the United States to induce the purchase of HD Workshops's products or services.

13. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of products or services by use of one or more telephones and which involves more than one interstate telephone call.

14. At all times relevant to this complaint, Defendants have maintained a substantial course of trade or business in the offering for sale and sale of products or services via the telephone, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

15. Since at least 1998 and continuing thereafter, Defendants have engaged in a plan, program or campaign to sell consumer products and supplies, including but not limited to light bulbs, trash bags, food storage bags, and cleaning products. The

products sold by Defendant are exorbitantly over-priced. For example, Defendants have charged consumers $309 for eight incandescent light bulbs, $437.95 for seven boxes of small sandwich bags, $704.95 for ten boxes of trash bags, and $599.95 for eight rolls of plastic wrap.

16. Defendants aggressively solicit purchasers, many of whom are elderly, for their products via interstate telephone sales calls by paid telemarketers. Defendants make numerous false and misleading representations and statements to induce consumers to order, consent to the mailing of, and/or pay for consumer products and supplies from HD Workshops.

17. Defendants repeatedly call consumers seeking "support" or "donations" in the name of Handicapped & Disabled Workshops, Inc., Handi-Tech Company, or Handi-Hope Industries. As a result, many consumers agree to purchase Defendants' high-priced products, believing that doing so will help handicapped or disabled workers employed by Defendants.

18. The corporate defendants are registered for-profit entities, and do not qualify as charitable organizations.

19. Defendants are unrelenting in their efforts to persuade consumers to agree to make purchases. When consumers decline to place an order, Defendants continue to repeatedly call consumers, often multiple times in a single day, in an attempt to get consumers to change their minds and make a purchase.

20. If consumers do agree to order or purchase products from Defendants, Defendants will repeatedly call those consumers, often multiple times a day, in an attempt to get them to purchase additional products.

21. Defendants also refuse to take "no" for an answer. In numerous instances, Defendants mail unordered products without the prior express request or consent of consumers to receive such unordered products from Defendants. These packages are accompanied by invoices that state or imply that consumers authorized the mailing, purchase of, and/or billing for the products enclosed.

22. In numerous instances, in order to induce consumers to pay invoices for unordered, unauthorized, or unwanted consumer products, Defendants misrepresent to consumers that they are obligated to pay for such unordered, unauthorized, or unwanted consumer products. Defendants mail bills and invoices to these consumers and make repeated harassing telephone calls, in which Defendants represent that consumers placed orders and are required to pay for the products. Defendants often threaten to turn the consumers over to collection agencies and damage their credit ratings. As a result of these aggressive tactics, Defendants induce many consumers to pay for unordered or unwanted consumer products.

23. In truth and in fact, in numerous instances, Defendants fail to obtain consumers' express request or consent to receive such unordered products before mailing, billing, and dunning consumers for Defendants' high-priced consumer products. Therefore, consumers have the right to treat the unordered, unauthorized, or

unwanted consumer products as gifts, and have the right to retain, use, discard, or dispose of the unordered, unauthorized, or unwanted consumer products in any manner they see fit without any obligations whatsoever to Defendants, *i.e.*, without any obligation to return or pay for the consumer products.

24. Defendants represent to consumers via invoices and telephone calls that consumers have 21 days from receipt of the products to cancel the order or receive a refund of money paid. In numerous instances, however, Defendants fail to honor their stated 21-day return policy, even when consumers present proof, through shipping receipts and records, that the consumers have returned the items, at their own expense, within 21 days of receipt.

25. Consumers who fail or refuse to pay Defendants' invoices for unordered or returned products are aggressively pursued for payment by Defendants through harassing telephone calls, often multiple calls in a single day, in which Defendants use threatening and abusive language. Defendants directly or implicitly threaten to refer consumers' unpaid accounts to a collection agency, ruin consumers' credit ratings, and/or initiate legal action against consumers. In collections letters mailed by Defendants, Defendants explicitly represent to consumers that their failure to pay may damage their credit rating or that Defendants may forward their account to Defendants' attorney and/or initiate legal against them for non-payment.

26. As a result of Defendants' aggressive telemarketing and collections practices, consumers will often surrender to Defendants' demands for payment, and provide their credit card or bank account information to Defendants.

27. In other instances, where consumers have done business with Defendants in the past, Defendants simply place new charges for HD Workshops's consumer products on consumers' credit or debit card accounts or extract money from consumers' bank accounts without valid consent or verifiable authorization, and send consumers products they never ordered.

28. On or after October 17, 2003, Defendants have called, or have caused telemarketers to call, consumers' telephone numbers that are on the National Do Not Call Registry. Similarly, Defendants have called, or have caused telemarketers to call, consumers' telephone numbers after the consumers have requested that their telephone numbers be placed on Defendants' entity-specific do-not-call lists. By these means, Defendants contact consumers who are, as a matter of law, off-limits to Defendants' telemarketers.

29. On or after October 17, 2003, Defendants have called, or have caused telemarketers to call, telephone numbers in various area codes without first paying the required annual fee for access to the telephone numbers within such area codes that are included in the National Do Not Call Registry.

## VIOLATIONS OF SECTION 5 OF THE FTC ACT

30. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

**COUNT I**
**Misrepresentation to Induce Payment for Defendants' Consumer Products**

31. In numerous instances, in connection with the marketing of various consumer products, or in the course of billing, attempting to collect, or collecting money from consumers for such products, Defendants represent, expressly or by implication, that consumers have ordered, purchased, or agreed to purchase products from Defendants, and therefore owe money to Defendants.

32. In truth and in fact, in numerous instances, the consumers have not ordered, purchased, or agreed to purchase products from Defendants, and therefore do not owe money to Defendants.

33. Therefore, the representation set forth in Paragraph 31 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE UNAUTHORIZED MERCHANDISE STATUE**

34. The Unordered Merchandise Statute, 39 U.S.C. § 3009, generally prohibits mailing unordered merchandise, unless such merchandise is clearly and conspicuously marked as a free sample, or is mailed by a charitable organization soliciting contributions. The statute also prohibits mailing consumers bills for unordered merchandise or dunning communications.

35. Pursuant to Section (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009, a violation of the Unordered Merchandise Statute constitutes an unfair method of

competition and an unfair trade practice, in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

**COUNT II**
**Mailing and Billing for Unordered Merchandise**

36. In numerous instances, in connection with the marketing of various consumer products, Defendants, who are not charitable organizations soliciting contributions, have mailed packages containing various consumer products to consumers without the prior expressed request or consent of the recipients and without identifying the products as free samples, thereby violating subsection (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a).

37. In numerous instances, in connection with the marketing of various consumer products, Defendants have mailed to the recipients of such consumer products one or more bills or dunning communications for such products, thereby violating subsections (a) and (c) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a) and (c).

38. Defendants' practices, as alleged in Paragraphs 36 and 37, are therefore also unfair trade practices that violate Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

**VIOLATIONS OF THE TELEMARKETING SALES RULE AND THE NATIONAL DO NOT CALL REGISTRY**

39. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101 – 6108, in 1994. On August 16, 1995, the FTC adopted the

Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original TSR by issuing a Statement of Basis and Purpose and the final amended Telemarketing Sales Rule (the "TSR"). 68 Fed. Reg. 4580, 4669.

40. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

41. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

42. It is an abusive telemarketing act or practice and a violation of the TSR for any seller or telemarketer to engage in the following conduct:

    a. Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. 16 C.F.R. § 310.4(b)(1)(i); and/or

    b. Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. 16 C.F.R. § 310.4(a)(6).

43. The TSR prohibits any seller or telemarketer from causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method

of payment used is a credit card subject to the protections of the Truth In Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205. When an audio recording of the customer's express oral authorization is used to satisfy this requirement, the TSR requires that the recording must evidence clearly the customer's authorization of payment for the goods or services that are the subject of the telemarketing transaction and the customer's receipt of all of the following information, among other information:

a. the number of debits, charges, or payments (if more than one);

b. the date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

c. the amount(s) of the debit(s), charge(s), or payment(s); and

d. a telephone number for customer inquiry that is answered during normal business hours. 16 C.F.R. § 310.3(a)(3)(ii).

44. The TSR also established a "do-not-call" registry (the "National Do Not Call Registry" or "Registry"), maintained by the FTC, of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at *www.donotcall.gov*.

45. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free

telephone call or over the Internet at *www.donotcall.gov*, or by otherwise contacting law enforcement authorities.

46. On or after September 2, 2003, the FTC allowed sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at *www.telemarketing.donotcall.gov,* pay the required fees, and download the registered numbers by area code.

47. Since October 17, 2003, sellers and telemarketers subject to the FTC's jurisdiction have been prohibited from calling numbers on the Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

48. Since October 17, 2003, sellers and telemarketers have been generally prohibited from calling any telephone number within a given area code unless the seller first has paid the annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b).

49. Since December 31, 1995, sellers and telemarketers have been prohibited from initiating an outbound telephone call to any person when that person has previously stated that he does not wish to receive an outbound call made by or on behalf of the seller whose goods or services are being offered, or made on behalf of the charitable organization for which a charitable contribution is being solicited. 16 C.F.R. § 310.4(b)(1)(iii)(A).

50. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR

constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**COUNT III**
**Abusive Repeated Calling**

51. In numerous instances, Defendants have caused consumers' telephones to ring repeatedly, and/or have engaged consumers repeatedly in telephone conversation with the intent to annoy, abuse, or harass persons at the called number, in violation of Section 310.4(b)(1)(i) of the TSR, 16 C.F.R. § 310.4(b)(1)(i).

**COUNT IV**
**Lack of Express Informed**
**Consent to Be Billed**

52. In numerous instances, in connection with telemarketing various consumer products, Defendants have caused billing information to be submitted for payment without the express informed consent of the consumer.

53. Defendants' practice as alleged in Paragraph 52 is an abusive telemarketing act or practice that violates Section 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6).

**COUNT V**
**Lack of Express Verifiable**
**Authorization for Electronic Checks**

54. In numerous instances, in connection with telemarketing various consumer products, Defendants have caused billing information to be submitted for payment using a payment method other than a credit card subject to the protections of the Truth In Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the

Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205, without the consumer's express verifiable authorization.

55. Defendants' practice as alleged in Paragraph 54 is a deceptive telemarketing practice that violates Section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3).

**COUNT VI**
**Failing to Pay Fee for Access to the National Do Not Call Registry**

56. In numerous instances since October 17, 2003, in the course of telemarketing goods or services, Defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code without Defendants, either directly or through another person, first paying the required annual fee required for access to the telephone numbers within that area code that are included in the National Do Not Call Registry.

57. Defendants' practice as alleged in Paragraph 56 violates Section 310.8 of the TSR, 16 C.F.R. § 310.8.

**COUNT VII**
**Calling Telephone Numbers on the National Do Not Call Registry**

58. In numerous instances since October 17, 2003, in the course of telemarketing goods or services, Defendants engaged in or caused others to engage in initiating an outbound telephone call to a person when that person's telephone number is on the National Do Not Call Registry.

59. Defendants' practice as alleged in Paragraph 58 is an abusive telemarketing practice that violates Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

**COUNT VIII**
**Ignoring Entity-Specific**
**Do Not Call Requests**

60. In numerous instances, in connection with telemarketing, Defendants have engaged in or caused others to engage in initiating outbound telemarketing calls to persons who had previously stated that they do not wish to receive calls made by or on behalf of Defendants.

61. Defendants' practice as alleged in Paragraph 60 is an abusive telemarketing practice that violates Section 310.4(b)(1)(iii)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

**CONSUMER INJURY**

62. Consumers in the United States have suffered and will continue to suffer injury as a result of Defendants' violations of the FTC Act, the Unordered Merchandise Statute, and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

**THIS COURT'S POWER TO GRANT RELIEF**

63. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and

redress violations of the FTC Act, the Unordered Merchandise Statute, and the TSR. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

64. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission and reformation of contracts, and the refund of money.

## PRAYER FOR RELIEF

Wherefore, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and appointment of a receiver.

B. Enter a permanent injunction to prevent future violations of the FTC Act, the TSR, and the Unordered Merchandise Statute by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, the TSR, and the Unordered Merchandise Statute, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

Dated: May 13, 2008

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