

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 96 C 6138
WORLDWIDE WALLCOVERINGS & BLINDS, INC.,)	
a corporation,)	Judge Aspen
)	Magistrate Judge Guzman
BRUCE SEARS,)	
individually and as an officer of the corporation, and)	
)	
MARTHA KAZAK,)	
individually and as an officer of the corporation,)	
)	
Defendants.)	
)	

**FINAL JUDGMENT BY DEFAULT AND ORDER FOR PERMANENT INJUNCTION
AGAINST WORLDWIDE WALLCOVERINGS & BLINDS, INC.**

Plaintiff, Federal Trade Commission ("Commission" or "FTC"), has filed a complaint for a permanent injunction and other equitable relief in this matter, pursuant to sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, charging the defendant with deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Federal Trade Commission's Trade Regulation Rule Concerning the Sale of Mail or Telephone Order Merchandise (the "Mail Order Rule" or "Rule"), 16 C.F.R. Part 435.

Pursuant to Rule 55 (a) of the Federal Rules of Civil Procedure, the Commission filed an Application for Entry of Default against defendant Worldwide Wallcoverings & Blinds, Inc. ("Worldwide") on May 9, 1997. The Commission now has moved this Court for entry of a

judgment by default and permanent injunction, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. Having considered the memoranda and exhibits filed in support of said motion, and all other pleadings and files in this action, and now being fully advised in the premises, the Court finds:

1. This Court has jurisdiction over the subject matter of this case and all parties hereto, and the Complaint states a claim upon which relief may be granted against defendant Worldwide. 15 U.S.C. § § 45(a) and 53(b).
2. Venue as to defendant Worldwide in the Northern District of Illinois is proper.
3. The activities of defendant Worldwide as alleged in the Complaint are in or affecting commerce, as defined in 15 U.S.C. § 44.
4. Process and service of process as to defendant Worldwide is proper.
5. Defendant Worldwide has failed to answer or otherwise defend as to the Complaint. Accordingly, defendant Worldwide is in default for failure to plead or otherwise defend in this action.
6. It is proper in this case to issue a permanent injunction prohibiting defendant Worldwide from engaging in any deceptive practices or making certain material misrepresentations in connection with the advertising, marketing, proposed sale, or sale of any merchandise, through the mail or over the telephone, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Federal Trade Commission's Trade Regulation Rule Concerning the Sale of Mail or Telephone Order Merchandise (the "Mail Order Rule" or "Rule"), 16 C.F.R. Part 435, and providing for the monitoring by the Commission of the compliance with such permanent injunction by defendant Worldwide.

7. It is proper in this case to enter a monetary judgment against defendant Worldwide to redress consumer injury which resulted from its violations of the FTC Act and the Mail Order Rule. The proper measure of consumer injury here is the amount of money paid by consumers that resulted from these violations. Redress to consumers is warranted because defendant Worldwide's misrepresentations are of a type generally relied upon by consumers and consumers, for the most part, did not receive merchandise which they paid for and were not, for the most part, given refunds or issued credits as promised.

8. The activities of defendant Worldwide caused consumer injury in the amount of \$562,643.00.

9. The entry of this judgment as set forth below is in the public interest.

ORDER

I.

CEASE MISREPRESENTATIONS

IT IS THEREFORE ORDERED that defendant Worldwide, its successors and assigns, agents, representatives, servants, employees, salespersons, independent contractors, and all other persons or entities directly or indirectly under its control or under common control with it and all other persons or entities in active concert or participation with it, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, in connection with the advertising, marketing, proposed sale, or sale of any merchandise, or the entering into any contract or any other arrangement relating to

the advertising, marketing, proposed sale or sale of any merchandise, is hereby permanently restrained and enjoined from:

A. Misrepresenting in any manner, directly or by implication, that delivery of ordered items will be made within a certain number of days; and

B. Misrepresenting in any manner, directly or by implication, any fact that is material to any consumer's decision to purchase any merchandise from defendant.

II.

CEASE VIOLATIONS OF MAIL OR TELEPHONE ORDER MERCHANDISE RULE

IT IS FURTHER ORDERED that defendant Worldwide, and its successors and assigns, agents, representatives, servants, employees, salespersons, independent contractors, and all other persons or entities directly or indirectly under its control or under common control with it and all other persons or entities in active concert or participation with it, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, in connection with the advertising, marketing, proposed sale, or sale of any merchandise, or the entering into any contract or any other arrangement relating to the advertising, marketing, proposed sale or sale of any merchandise, is hereby permanently restrained and enjoined from violating any provision of the Commission's Mail Order Rule 16 C.F.R. Part 435, a copy of which is attached as Exhibit A and incorporated by reference, including but not limited to:

A. Failing to offer the buyer within the applicable times set out in Section 435.1(a) of the Rule, 16 C.F.R. § 435.1(a), clearly and conspicuously and without prior demand, an option

either to consent to a delay in shipping or to cancel the order and receive a prompt refund when required to do so under Section 435.1(b) of the Rule, 16 C.F.R. § 435.1(b);

B. Failing, when notifying the buyer of a definite revised shipping date of thirty days or less after the applicable time, to notify the buyer that unless the seller received, prior to shipment and prior to the expiration of the definite revised shipping date, a response from the buyer rejecting the delay and canceling the order, the buyer would be deemed to have consented to the revised shipping date, thereby violating 16 C.F.R. § 435.1(b)(1)(ii);

C. Failing, when notifying the buyer of a definite revised shipping date of more than thirty days after the applicable time, to advise the buyer that unless the seller received, prior to shipment and within thirty days of the applicable time, a response from the buyer agreeing to the delay, the buyer's order will automatically be deemed to have been canceled, thereby violating 16 C.F.R. § 435.1(b)(1)(iii);

D. Failing to offer to the buyer a prepaid means of exercising the buyer's options as described in 16 C.F.R. § 435.1(b)(1), thereby violating 16 C.F.R. § 435.1(b)(3); and

E. Failing to make prompt refunds as that term is defined in 16 C.F.R. § 435.2(f) when required to do so by Section 435.1(c) of the Rule, 16 C.F.R. § 435.1(c).

III.

CONSUMER REDRESS

IT IS FURTHER ORDERED that defendant Worldwide pay to the Commission the sum of \$562,643.00 to provide redress to consumers within five (5) business days of the entry of this Order. In the event of default on any obligation to make payment under this section, interest

computed pursuant to 28 U.S.C. § 1961(a) shall accrue from the date of default to the date of payment. Except as set forth in Section X(B) below, funds collected by the Federal Trade Commission under this section shall be used to provide redress to consumers and pay any expenses attendant to the administration of such redress. If the Commission, in its sole discretion, determines that redress to purchasers is wholly or partially impracticable, any such funds not so used shall be paid to the United States Treasury.

IV.

MAINTAIN RECORDS

IT IS FURTHER ORDERED that defendant Worldwide, its successors and assigns shall, for a period of five (5) years after the date of the entry of this Judgment and Order for Permanent Injunction, maintain and upon request make available to the Federal Trade Commission all business records demonstrating its compliance with the terms and provisions of this Order, including, but not limited to, documents and materials comprising and relating to orders, payments, advertisements, personnel records, and consumer complaints and refund requests and any responses thereto.

V.

DELIVER COPY OF ORDER

IT IS FURTHER ORDERED that the defendant Worldwide, its successors and assigns, shall for a period of five (5) years from the date of the entry of this Order:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of this Order from, each of its officers, directors, agents, representatives, servants, employees, salespersons, telemarketers, and attorneys; and

B. Maintain, and upon reasonable notice make available to representatives of the Commission, the original and dated acknowledgments of receipts of copies of this Order required by Paragraph A above, and a list identifying the names, addresses, and telephone numbers of the persons and entities served with a copy of this Order.

VI.

MONITORING PROVISIONS

IT IS FURTHER ORDERED that, in order to facilitate the Commission's monitoring of compliance with the provisions of this permanent injunction, defendant Worldwide shall, for a period of five (5) years from the date of entry of this Order:

A. Notify the FTC in writing at least thirty (30) days prior to the effective date of any proposed change in the structure of any business entity owned or controlled by defendant, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other changes that may affect compliance obligations arising out of this Order;

B. Upon reasonable notice from the FTC, permit duly authorized representatives of the FTC access during normal business hours to the offices of any company or any person under defendant's control, to inspect and copy all documents belonging to defendant and all documents of any company owned or controlled by defendant, in whole or in part, relating in any way to any conduct subject to this Order;

C. Refrain from interfering with duly authorized representatives of the FTC who wish to interview defendant's employers, agents, and employees (who may have counsel present) relating in any way to any conduct subject to this Order;

D. Upon thirty (30) days written notice by any duly authorized representative of the FTC, submit written reports (under oath, if requested) and produce documents with respect to any conduct subject to this Order; and

E. Appear on fifteen (15) days notice for deposition with respect to any conduct subject to this Order.

Provided further, that the FTC may otherwise monitor defendant's compliance with this Order by all lawful means available, including the use of investigators posing as consumers, potential investors, suppliers and other entities.

VII.

ADDRESS FOR NOTICES

IT IS FURTHER ORDERED that all notices required of defendant by this Order shall be made to the following address: Regional Director, Federal Trade Commission, 55 East Monroe, Suite 1860, Chicago, IL 60603.

VIII.

COMPLIANCE REPORT

IT IS FURTHER ORDERED that, within sixty (60) days after the date of entry of this Order, defendant Worldwide shall file a report with the Commission setting forth the manner and form in which it has complied with this Order.

IX.

JURISDICTION

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

X.

COSTS AND ATTORNEY'S FEES

IT IS FURTHER ORDERED that:

A. Each party shall bear its own costs and attorney's fee; provided, however, in the event the Federal Trade Commission or the United States initiates proceedings to enforce the provisions of this Order and provided further the Court determines that the defendant has violated any term or provision of this Order, the defendant shall pay the costs and attorney fees incurred by the Federal Trade Commission, the United States or their agents in connection with proceedings to enforce this Order; and

B. Notwithstanding any other provision of this Order, if defendant fails to meet the payment obligations set forth in Section III above, the defendant shall pay the costs and attorney's

fees incurred by the Federal Trade Commission and its agents in any attempt to collect amounts due pursuant to this Order.

SO ORDERED, this _____ day of _____, 1997, at _____.

Magistrate Judge