

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners: Robert Pitofsky
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

In the Matter of)	
)	
COMPUTER BUSINESS SERVICES, INC.,)	
a corporation,)	
)	
ANDREW L. DOUGLASS,)	
individually and as an officer)	DOCKET NO. C-3705
of the corporation,)	
)	DECISION AND ORDER
MATTHEW R. DOUGLASS,)	
individually, and,)	
)	
PETER B. DOUGLASS,)	
individually.)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent CBSI is an Indiana Corporation with its principal place of business at CBSI Plaza, Sheridan, Indiana 46069.
2. Respondent Andrew L. Douglass is an officer of CBSI. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of CBSI.
3. Respondent Matthew R. Douglass is a supervisory employee of CBSI. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of CBSI.
4. Respondent Peter B. Douglass is a supervisory employee of CBSI. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of CBSI.
5. The acts and practices of the respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.
6. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. "Business venture" means any written or oral business arrangement, however denominated, whether or not covered by the Federal Trade Commission's trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business

Opportunity Ventures," 16 C.F.R. Part 436, and which consists of payment of any consideration for:

- A. the right to offer, sell, or distribute goods, or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
- B. more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

2. "Clearly and prominently" shall mean as follows:

- A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure 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.
- B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
- C. In a print or electronic advertisement, the disclosure shall be in a type size, and in a location, that is sufficiently noticeable for an ordinary consumer to see and read, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. Unless otherwise specified, "respondents" shall mean Computer Business Services, Inc., a corporation, its successors and assigns and its officers; Andrew L. Douglass, individually and as an officer of the corporation; Matthew R. Douglass, individually; and Peter B. Douglass, individually; and each of the above's agents, representatives and employees.

4. "In or affecting commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

5. "Automatic telephone dialing system" shall mean as defined in the Telephone Consumer Protection Act, 47 U.S.C. § 227(a)(1).

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not misrepresent, expressly or by implication:

- A. that consumers who purchase or use such business ventures ordinarily succeed in operating profitable businesses out of their own homes;
- B. that consumers who purchase or use such business ventures ordinarily earn substantial income;
- C. the existence of a market for the products and services promoted by respondents;
- D. the amount of earnings, income, or sales that a prospective purchaser could reasonably expect to attain by purchasing a business venture;
- E. the amount of time within which the prospective purchaser could reasonably expect to recoup his or her investment; or
- F. by use of hypothetical examples or otherwise, that consumers who purchase or use such business ventures earn or achieve from such participation any stated amount of profits, earnings, income, or sales. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondents from using hypothetical examples which do not contain any express or implied misrepresentations or from representing a suggested retail price for products or services.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not represent, expressly or by implication, the performance, benefits, efficacy or success rate of any product or service that is a part of such business venture, unless such representation is true and, at the time of making the representation, respondents possess and rely upon competent and reliable evidence that substantiates such representation. For purposes of this order, if such evidence consists of any test, analysis, research, study, or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if it 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.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any business venture or any product or service that is part of any business venture in or affecting commerce, shall not:

- A. Use, publish, or refer to any user testimonial or endorsement unless respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained; or
- B. Represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:
 - 1. the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable evidence that substantiates the representation; or
 - 2. respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
 - a. what the generally expected results would be for users of the product, or
 - b. the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Provided, however, that when endorsements and user testimonials are used, published, or referred to in an audio cassette tape recording, such disclosure shall be deemed to be in close proximity to the endorsements or user testimonials when the disclosure appears at the beginning and end of each side of the audio cassette tape recording containing such endorsements or user testimonials. Provided further, however, that when both sides of an audio cassette tape recording contain such endorsements or user testimonials, the disclosure need only appear at the beginning and end of the first side and the end of the second side of the audio cassette tape recording.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture utilizing, employing or involving in any manner, an automatic telephone dialing system, shall disclose, clearly and prominently, and in close proximity to any representation regarding the use or potential use of an automatic telephone dialing system to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party, that federal law prohibits the use of an automatic telephone dialing system to initiate a telephone call to any residential telephone line using an artificial or prerecorded voice to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party unless a live operator introduces the message. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondents from making truthful statements or explanations regarding the laws and regulations regarding the use of automatic telephone dialing systems.

V.

IT IS FURTHER ORDERED that respondent Computer Business Services, Inc., directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product or service, shall not make any false or misleading statement or representation of fact, expressly or by implication, material to a consumer's decision to purchase respondents' products or services.

VI.

IT IS FURTHER ORDERED that:

- A. Respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall pay to the Federal Trade Commission by electronic funds transfer the sum of five million dollars (\$5,000,000) no later than fifteen (15) days after the date of service of this order. In the event of any default on any obligation to make payment under this Part, interest, computed pursuant to 28 U.S.C. § 1961(a) shall accrue from the date of default to the date of payment. In the event of default, respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall be jointly and severally liable.
- B. Payment of the sum of five million dollars (\$5,000,000) in accordance with subpart A above shall extinguish any monetary claims the FTC has against Jeanette L. Douglass and George L. Douglass based on the allegations set forth in the Complaint as of the date of entry of this Order. Nothing in this paragraph or

any other paragraph of this order shall be construed to prohibit the FTC from seeking administrative or injunctive relief against Jeanette L. Douglass or George L. Douglass.

- C. The funds paid by respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, pursuant to subpart A above shall be paid into a redress fund administered by the FTC and shall be used to provide direct redress to purchasers of Computer Business Services, Inc. Payment to such persons represents redress and is intended to be compensatory in nature, and no portion of such payment shall be deemed a payment of any fine, penalty, or punitive assessment. If the FTC determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission. Customers of respondents, as a condition of their receiving payments from the Redress Fund, shall be required to execute releases waiving all claims against respondents, their officers, directors, employees, and agents, arising from the sale of Computer Business Services, Inc. business ventures by respondents prior to the date of issuance of this order. The Commission shall provide respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, with the originals of all such executed releases received from respondents' customers.

VII.

IT IS FURTHER ORDERED that respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

IT IS FURTHER ORDERED that respondent Computer Business Services, Inc., and its successors and assigns, and respondent Andrew L. Douglass, for a period of five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

IT IS FURTHER ORDERED that respondent Computer Business Services, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn fewer than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondents Andrew L. Douglass, Matthew R. Douglass and Peter B. Douglass, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondents' new business addresses and telephone numbers and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XI.

IT IS FURTHER ORDERED that Computer Business Services Inc. and its successors and assigns, and respondents Andrew L. Douglass, Matthew R. Douglass and Peter B. Douglass shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XII.

This order will terminate on January 21, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in fewer than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: January 21, 1997