

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CLINTON R. GREENWELL,

an individual doing business as
The Police Bulletin,
State Police Magazine,
State Police Enforcers Yearbook,
State Police Officers Yearbook,
Firefighters News Journal, and
Creative Publishing,

Defendant.

Civil Action No. H-03-1553

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by filing its complaint pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging defendant Clinton R. Greenwell, doing business as The Police Bulletin, State Police Magazine, State Police Enforcers Yearbook, State Police Officers Yearbook, Firefighters News Journal and Creative Publishing, with engaging in deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

Plaintiff, through its counsel, and defendant Clinton R. Greenwell have agreed to the entry of this Final Judgment and Order by this Court in order to resolve all matters in dispute in this action. The Commission and defendant Clinton R. Greenwell have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without defendant Clinton R. Greenwell admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

Being fully advised in the premises and acting upon the joint motion of the parties, the Commission and defendant Clinton R. Greenwell, to enter this Final Judgment and Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and all parties thereto;
2. The complaint states a claim upon which relief may be granted against defendant Clinton R. Greenwell under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45, 53(b);
3. Venue in this district is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53 (b);
4. The activities of defendant Clinton R. Greenwell are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Entry of this Final Judgment and Order is in the public interest; and
6. Defendant Clinton R. Greenwell has waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order.

DEFINITIONS

For the purpose of this Stipulated Final Judgment and Order, the following definitions shall apply:

1. “**Assets**” means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.
2. “**Telemarketing**” shall mean any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to make a charitable contribution or to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing. *Provided* that the term “telemarketing” shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers

solicited.

3. “*Assisting others*” means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.
4. “*Document*” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

- A. **IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering for sale, or sale of advertisements to businesses, defendant Clinton R. Greenwell, and each of his successors, assigns, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether

acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, is hereby permanently restrained and enjoined from:

1. Misrepresenting, expressly or by implication, that businesses have authorized advertising to be placed in defendant Clinton R. Greenwell's publications, and are, therefore, obligated to pay for the advertising;
2. Misrepresenting, expressly or by implication, to businesses that defendant Clinton R. Greenwell is a member of or associated with a police force or law enforcement organization; and
3. Misrepresenting, expressly or by implication, any fact material to a business consumer's decision to purchase advertising.

B. **IT IS FURTHER ORDERED** that, in connection with the advertising, promotion, offering for sale, or sale of any good or service, or the solicitation of any charitable contribution, Clinton R. Greenwell, and each of his successors, assigns, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase defendant Clinton R. Greenwell's products or services or to make a charitable contribution.

II. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that defendant Clinton R. Greenwell is hereby

permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased services from defendant Clinton R. Greenwell at any time prior to the date this Final Judgment and Order is entered. Provided, however, that defendant Clinton R. Greenwell may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

III. BOND REQUIREMENT

IT IS FURTHER ORDERED that defendant Clinton R. Greenwell, whether acting directly or indirectly through any persons or entities under his control, is hereby permanently restrained and enjoined from engaging in or assisting others engaged in telemarketing, unless, prior to engaging in or assisting others engaged in such activities, defendant Clinton R. Greenwell first obtains a performance bond ("the Bond") in the principal sum of TWO HUNDRED THOUSAND (\$200,000). The terms and conditions of the Bond requirement are as follows:

- A. The Bond shall be conditioned upon compliance with Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule, 16 C.F.R. Part 310, and with the provisions of this Order. The Bond shall be deemed continuous and remain in full force and effect as long as defendant Clinton R. Greenwell is engaging in or assisting others engaged in telemarketing. Defendant Clinton R. Greenwell shall maintain the Bond for a period of five (5) years after he provides notice to the Commission that he has ceased engaging in telemarketing. The Bond shall cite this Order as the subject matter of the Bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of

performance due, in whole or in part, to any violation of Section 5(a) of the FTC Act or the provisions of this Order, or to any other violation of law;

- B. The Bond required pursuant to this Paragraph shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each state in which defendant Clinton R. Greenwell, or any entity directly or indirectly under his control, is doing business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. The Bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any activities that required obtaining the Bond; and (2) any consumer so injured;
- C. The Bond required pursuant to this Paragraph is in addition to, and not in lieu of, any other bonds required by federal, state, or local law;
- D. At least ten (10) days before commencing in any activity that requires obtaining the Bond, defendant Clinton R. Greenwell shall provide notice to the Commission describing in reasonable detail said activities, and include in such notice a copy of the Bond obtained; and
- E. Defendant Clinton R. Greenwell shall not disclose the existence of the Bond to any consumer without simultaneously making the following disclosure: "THE BOND IS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT AS PART OF A FINAL ORDER AGAINST CLINTON R. GREENWELL in *FTC v. Clinton R. Greenwell, H-03-1553, U.S. District Court for the Southern District of Texas.*" The disclosure shall be set forth in a clear and conspicuous manner, separated from all other text, in 100 percent black ink against a light background, in print at least as large as the main text of the sales

material or document, and enclosed in a box containing only the required disclosure.

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that judgment in the amount of TWO HUNDRED THOUSAND (\$200,000) is entered against defendant Clinton R. Greenwell; provided, however, that this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Paragraph V of this Order.

V. FINANCIAL STATEMENTS

A. IT IS FURTHER ORDERED that the Commission's agreement to and the Court's approval of this Final Judgment and Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information provided by defendant Clinton R. Greenwell on or about May 14, 2003, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

B. IT IS FURTHER ORDERED that if the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Order for the sole purpose of allowing the Commission to modify the monetary liability of defendant Clinton R. Greenwell. If the Court finds that defendant Clinton R. Greenwell failed to disclose any material asset, materially misrepresented the value of any asset, or

made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against the defendant Clinton R. Greenwell, in favor of the Commission, in the amount of TWO HUNDRED THOUSAND (\$200,000), which defendant Clinton R. Greenwell and the Commission stipulate is the amount of consumer injury caused by defendant Clinton R. Greenwell, as set forth in Paragraph IV of this Order. Provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Order. Solely for the purposes of reopening or enforcing this Paragraph, defendant Clinton R. Greenwell waives any right to contest any of the allegations set forth in the Complaint filed in this matter.

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

(A) Within ten (10) days of receipt of written notice from a representative of the Commission, defendant Clinton R. Greenwell shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in defendant Clinton R. Greenwell's possession or direct or indirect control to allow Commission personnel to inspect the business operation;

(B) In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

- (1) obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
- (2) posing as consumers and suppliers to: defendant Clinton R. Greenwell, defendant Clinton R. Greenwell's employees, or any other entity managed or controlled in whole or in part by defendant Clinton R. Greenwell, without the necessity of identification or prior notice;

Provided that 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 obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

(C) Defendant Clinton R. Greenwell shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

VII. COMPLIANCE REPORTING 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 five (5) years from the date of entry of this Order, defendant Clinton R. Greenwell shall notify the Commission of the following:

- (1) Any changes in defendant Clinton R. Greenwell's residence, mailing

addresses, and telephone numbers, within ten (10) days of the date of such change;

(2) Any changes in defendant Clinton R. Greenwell's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant Clinton R. Greenwell is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of defendant Clinton R. Greenwell's duties and responsibilities in connection with the business;

(3) Any changes in defendant Clinton R. Greenwell's name or use of any aliases or fictitious names; and

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

- (1) Any changes required to be reported pursuant to subparagraph (A) above;
- (2) A copy of each acknowledgment of receipt of this Order obtained by defendant Clinton R. Greenwell pursuant to Paragraph IX.
- (3) A copy of any performance bond obtained by defendant Clinton R. Greenwell pursuant to Paragraph III.

(C) For the purposes of this Order, defendant Clinton R. Greenwell shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director
Southwest Region

Federal Trade Commission
1999 Bryan Street, Suite 2150
Dallas, TX 75201
Re: FTC v. Clinton R. Greenwell, Civil Action No. H-03-1553 (S.D. Tex.)

(D) For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with defendant Clinton R. Greenwell.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, defendant Clinton R. Greenwell and his successors, assigns, agents, servants, employees, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, subsidiary, division, affiliate, or other device, in connection with any business where defendant Clinton R. Greenwell is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in telemarketing, are hereby 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) Complaints 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.

IX. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendant Clinton R. Greenwell shall deliver a copy of this Order to the principals, officers, directors, managers and employees under his control for any business that (a) employs or contracts for personal services from defendant Clinton R. Greenwell and (b) has responsibilities with respect to the subject matter of this Order. Defendant Clinton R. Greenwell shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that defendant Clinton R. Greenwell, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI. ATTORNEYS' FEES

IT IS FURTHER ORDERED that each party to this Final Judgment and Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XII. LIFT OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of defendant Clinton R. Greenwell's assets, imposed in the Preliminary Injunction entered in this proceeding, shall be lifted upon the entry of this Final Judgment and Order.

XIII. RETENTION OF JURISDICTION

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

IT IS SO ORDERED.

Dated this _____ day of _____, 2003.

**KENNETH HOYT,
UNITED STATES DISTRICT JUDGE**

SO STIPULATED:

FEDERAL TRADE COMMISSION

WILLIAM E. KOVICIC
General Counsel

By:_____

W. DAVID GRIGGS
Attorney-in-charge
Texas Bar No. 08491100

SUSAN A. ARTHUR
Of Counsel
Texas Bar No. 01365300

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Dallas, Texas 75201
(214) 979-9378 (Griggs)
(214) 979-9390 (Arthur)
(214) 953-3079 (Facsimile)

ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION

CLINTON R. GREENWELL,
Defendant