

REFERENCE: UP 190021
(Rule Number/Section)

FEDERAL TRADE COMMISSION
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DISTRICT OF ARIZONA
BY _____ S DEPUTY

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DISTRICT OF ARIZONA
BY _____ DEPUTY

U.S. ATTORNEY'S OFFICE, DISTRICT OF ARIZONA
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Attorneys for Plaintiff Federal Trade Commission

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

FEDERAL TRADE COMMISSION,)	Civil Action No: 00 2260 PHX RCB
)	
Plaintiff,)	
)	
v.)	STIPULATED FINAL
)	JUDGMENT AND ORDER FOR
NETFORCE SEMINARS; RICHARD SLABACK;)	A PERMANENT INJUNCTION
J.D. NOLAND; DARIN EPPS; and)	AGAINST RICHARD SLABACK
EDWARD LAMONT,)	
)	
Defendants.)	
)	

Plaintiff Federal Trade Commission ("Commission") filed a Complaint on November 29, 2000. The Complaint charged Defendant Richard Slaback ("Slaback" or "Defendant") with violations of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45. Plaintiff Federal Trade Commission and Defendant have agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction ("Order") by the Court to resolve all matters in dispute in this action without adjudication of any issue of fact or law.

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over Defendant.

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2. The Complaint states claims upon which relief may be granted against Defendant under Sections 5 and 13(b) of the FTC Act, as amended, 15 U.S.C. §§ 45 and 53(b).

3. Entry of this Order is in the public interest.

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

5. The acts and practices of Defendant were or are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Nothing in this Order shall be construed as an admission by Richard Slaback that he has engaged in violations of the FTC Act or any other law, rule or regulation.

DEFINITIONS

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

A. “Defendant” means Richard Slaback.

B. “Multi-level marketing program” means any marketing program in which participants pay money to the program promoter in return for which the participants obtain the right to: (1) recruit additional participants, or have 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) sell goods or services; and (3) receive payment or other compensation, in whole or in part, based upon the sales of those in the participant's downline, tree, cooperative, income center or similar program grouping.

C. “Prohibited marketing scheme” means a pyramid sales scheme, Ponzi scheme, chain marketing scheme, or other marketing plan or program characterized by the payment by participants of money to the program in return for which they receive (1) the right to sell a product or service and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to the sale of products or services to ultimate users. Rewards are “unrelated” to the sale of products or services to ultimate users if rewards are not based primarily on revenue from retail sales.

D. "Retail Sales" means sales of products, services, or business ventures by Defendant, his agents, servants, employees, and those persons in active concert or participation with him to third-party end users. "Retail sales" does not include sales made by participants in a multi-level marketing program to other participants or recruits or to such a participant's own account.

E. "Ultimate users" are purchasers of retail sales.

F. "Business Venture" means any written or oral business arrangement, however denominated, whether or not covered by 16 C.F.R. Part 436, that consists of the payment of any consideration for: (1) the right or means 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 (2) assistance to any person 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.

ORDER

Injunctive Relief

I.

IT IS THEREFORE ORDERED that Defendant, his agents, servants, employees and distributors, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are:

A. Permanently restrained and enjoined from engaging, participating or assisting in any manner or capacity whatsoever, directly, or in concert with others, or through any business entity or other device, in any Prohibited Marketing Scheme; and

B. Restrained for a period of seven years from the date the Defendant signs this Order from engaging, participating or assisting in any manner or capacity whatsoever, directly, or in concert with others, or through any business entity or other device, in an Multi-Level Marketing Program.

II.

IT IS FURTHER ORDERED that Defendant, his agents, servants, employees and distributors, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, promoting, offering for sale, sale, or distribution of any Business Venture, 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 misrepresentation of material fact, including but not limited to the following:

- A. Misrepresenting the potential earnings or income derived from such activity;
- B. Misrepresenting the benefits any person participating in such an activity actually can receive from such activity; and
- C. Misrepresenting the amount of sales a person actually made or can potentially make through such activity.

III.

IT IS FURTHER ORDERED that Defendant, his agents, servants, employees and distributors, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, promoting, offering for sale, sale, or distribution of any Multi-Level Marketing Program or Business Venture are hereby restrained and enjoined from assisting others in the making, expressly or by implication, orally or in writing, any false or misleading representation or omission of material fact.

IV.

IT IS FURTHER ORDERED that Defendant, when acting in a commercial capacity as an individual or in connection with any Business Venture or Multi-Level Marketing program in which Defendant has an ownership interest or is a director, officer (or comparable position with a non-corporate entity), or is a person who formulates policies or procedures, is permanently enjoined and restrained from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all Defendant's agents, representatives, employees, or independent contractors comply with Paragraphs I, II and III of this Order. Reasonable steps shall include, at a minimum, establishing and maintaining a compliance program which includes random, blind testing of the oral representations made by any representative or independent contractor; spot checking of consumers to ensure that no misrepresentations were made; and ascertaining the number and nature of any consumer complaints. Defendant shall, for a period of ten (10) years, submit to the Commission, on an annual basis, no later than fifteen (15) days after the anniversary of the date of entry of this Order, a summary report indicating the efforts of Defendant to comply with the requirements of this Paragraph. These annual reports shall be submitted to the Commission's Associate Director for Marketing Practices at the address listed in Paragraph XIII.

B. Failing to investigate and resolve promptly any consumer complaint received by Defendant, his successors, assigns, officers, agents, servants, employees and distributors, and those persons in active concert or participation with him who receive actual notice of this Order regarding any Multi-Level Marketing Program, or any aspect thereof, and to notify the consumer of the resolution of the complaint and the reason therefore.

Monetary Relief

V.

IT IS FURTHER ORDERED that Defendant shall disgorge to the Commission \$38,000 five days after the entry of this Order or March 1, 2001, whichever is later. Such funds shall be used to provide redress to persons whom the Commission alleges to have been injured by the Defendant's 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. Defendant shall have no right to contest the manner of distribution chosen by the Commission.

VI.

IT IS FURTHER ORDERED that the Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of the sworn financial statement that Defendant submits upon execution of this Order. If, upon motion by the Commission, this Court should find that Defendant made a material misrepresentation or omission concerning his sworn financial statement, this Order shall be reopened for the purpose of requiring payment of additional monetary redress or obtaining other equitable relief.

Compliance

VII.

IT IS FURTHER ORDERED that Defendant, for a period of ten (10) years from the date of entry of this Order, in connection with any Business Venture in which Defendant has an ownership interest or is a director, officer (or comparable position with a non-corporate entity), or is a person who formulates policies or procedures, is hereby restrained and enjoined from failing to create, maintain and make available to representatives of the Commission, upon reasonable notice:

A. Books, records and accounts which, in reasonable detail, accurately and fairly reflect the income, disbursements, transactions and use of monies;

B. Records accurately reflecting the name, address, and phone number of Defendant's employees, independent contractors, those persons' job title or position, the date upon which those persons commenced work, and the date and reason for their termination, if applicable. Defendant shall retain such records for any terminated person for a period of two years following the date of termination;

C. Records containing the names, addresses, and phone numbers of all consumers to whom Defendant has sold, invoiced, or shipped any products or services, whether on his own behalf or that of any third party;

D. Records that, for every consumer complaint or refund request, whether received directly or indirectly or through any third party, reflect:

- (1) the consumer's name, address, telephone number and the dollar amount paid by the consumer;
- (2) the written complaint, if any, and the date of the complaint or refund request;
- (3) the basis of the complaint and the nature and the result of any investigation conducted as to the validity of any complaint;
- (4) each response by Defendant, his agents, servants, employees and distributors, and those persons in active concert or participation and the date of the response;
- (5) any final resolution and the date of the resolution; and
- (6) in the event of a denial by Defendant, his agents, servants, employees and distributors, and those persons in active concert or participation of a refund request, the reason for such denial, or if cured, the basis for determining that such complaint has been cured; and

E. Records relating to all Business Ventures undertaken by Defendant, his agents, servants, employees and distributors, and those persons in active concert or participation with him, that involve any type of marketing program including, but not limited to, group or individual meetings, telemarketing, Web sites, commercial electronic mail, infomercials or other television or radio advertising, or direct mail, including but not limited to copies of all contracts or agreements between Defendant, his agents, servants, employees and distributors, and those persons in active concert or participation and any sales company, mailhouse, printer, Internet service provider, information provider, telephone company, television or radio station, or other person through whom Defendant, his agents, servants, employees and distributors, and those persons in active concert or participation advertises or promotes products or services, as well as copies of all advertisements, Web pages, commercial electronic mail, or promotional materials utilized in such ventures; and

F. Copies of all sales scripts, training materials, advertisements or other marketing materials utilized, provided that copies of all sales scripts, training materials, advertisements or

other materials shall be retained by Defendant for ten (10) years after the last date of dissemination or use.

VIII.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry of this Order, for purposes of determining or securing compliance with this Order, Defendant and any Business Venture that he now or comes to own, operate or control, shall permit representatives of the Commission upon reasonable written notice:

A. Access during normal office hours to any office or business facility in which documents relating to compliance with the terms of this Order are stored or held, to inspect and copy such documents at the Commission's expense, provided that the Commission may retain possession of any such documents for no more than three (3) days; and

B. To interview current officers, directors, independent contractors, and employees of any entity directly or indirectly under Defendant's control or under common control with him, relating to compliance with the terms of this Order without restraint or interference from Defendant at a location reasonably convenient to Defendant and the person to be interviewed. 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's business premises for the purpose of inspecting and copying all documents relevant to any matter contained in this Order.

Provided further, that Plaintiff may otherwise monitor Defendant's compliance with this Order by all lawful means available, including: (1) the use of investigators or other representatives of the Commission posing as consumers and suppliers of Defendant, his employees or any entity which Defendant owns, operates or controls, without the necessity of prior identification or notice; (2) without further leave of Court, to obtain discovery as provided by Rules 26-37 of the Federal Rules of Civil Procedure, including the use of compulsory process

pursuant to Federal Rule of Civil Procedure 45; and (3) the use of compulsory process pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether Defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

IX.

IT IS FURTHER ORDERED that Defendant, for a period of ten (10) years from entry of this Order, shall give written notice to the Commission of his affiliation or employment with any Business Venture within thirty (30) days of the commencement of such affiliation or employment at the address listed in Paragraph XIII. Such notice shall include the new Business Venture's name and address, a statement of the nature of the Business Venture, and a summary of his position and responsibilities with the Business Venture.

X.

IT IS FURTHER ORDERED that Defendant, for a period of ten (10) years from the date of entry of this Order, shall, in order to enable the Commission to monitor compliance with the provisions of this Order, give written notice within thirty (30) days to the Commission, at the address listed in Paragraph XIII, indicating any change in his residential address.

XI.

IT IS FURTHER ORDERED that Defendant, for a period of ten (10) years from the date of entry of this Order, for the purposes of determining or securing compliance with this Order, in connection with any Business Venture in which Defendant has an ownership interest or is a director, officer (or comparable position with a non-corporate entity), or is a person who formulates policies or procedures, shall, within sixty (60) days of a written request from the Commission:

A. File with the Commission a statement containing the names of the media in or on which Defendant, his agents, representatives, servants, employees, salespersons, independent contractors or those of any corporations, trusts, or persons or other entities managed or controlled in whole or in part by Defendant, have placed advertisements, the months during which those

advertisements were published or broadcast, the caller paid and/or toll-free telephone numbers utilized in furtherance of the sale of products and services, the URL of all Web sites utilized in furtherance of the sale of products and services, and the local carriers and/or telephone service common carriers utilized in furtherance of any telemarketing or teleconferencing activities; and

B. Produce any requested marketing materials used in the advertising, promoting, offering for sale, sale, or distribution of any product or service sold or offered for sale by Defendant, his agents, representatives, or affiliates.

XII.

IT IS FURTHER ORDERED that:

A. Within three (3) days after entry of this order, Defendant shall distribute a copy of this Order to all his agents, servants, representatives and independent contractors, and those persons in active concert or participation with him, and Defendant shall make his best efforts to obtain a signed and dated acknowledgment of receipt of the same;

B. For a period of five (5) years from the date of entry of this Order, Defendant shall provide to all new owners, directors, managing agents, and corporate officers (a) of any Business Venture in which Defendant has a 25% or greater ownership interest or is a director, officer (or comparable position with a non-corporate entity) or (b) of any Multi-Level Marketing Program in which Defendant is an officer, director, or is a person who formulates policies, a copy of the key prohibitions and affirmative requirements of this Order, which must include Paragraphs I, II, III, IV, VII, VIII, XI, XII; and

C. For a period of three (3) years from the date of this Order, Defendant shall retain, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of receipts required by subparagraph A.

XIII.

IT IS FURTHER ORDERED that Defendant shall submit any information, notifications, or reports required by this Order 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.

XIV.

IT IS FURTHER ORDERED, that no portion of the payment as herein provided shall be deemed a payment of any fine, penalty, forfeiture, or punitive assessment.

XV.

The parties hereby stipulate and agree, without further notice to any of them, to entry of the foregoing order, which shall constitute a final judgment in this action. Defendant hereby waives any claim they 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 Order.

XVI.

IT IS FURTHER ORDERED that Defendant shall execute, have notarized and return to the Commission at the address listed in Paragraph XVI a signed, dated acknowledgment of receipt of a date-stamped copy of this Order within five (5) days of his receipt of the date-stamped copy of this Order.

XVII.

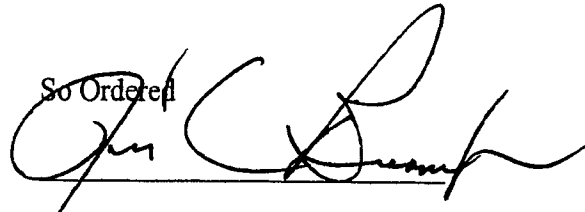
IT IS FURTHER ORDERED that should Defendant fail to comply with any deadline

for reporting information to the Commission pursuant to this order, the Commission shall provide written notice of that failure to Defendant and shall not file any motion for contempt unless Defendant fails to comply within 10 days of mailing such notice to the last address provided to the Commission by Defendant.

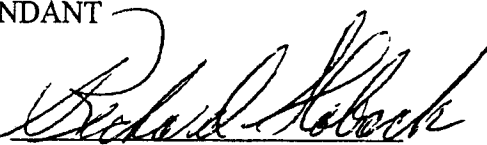
XVIII.

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

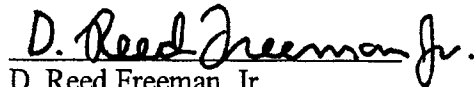
There being no just cause for delay, this Stipulated Final Judgment and Order for a Permanent Injunction as to Defendant Richard Slaback, is hereby entered this 7 day of June 2001.

So Ordered

United States District Judge

DEFENDANT

By: 
Richard Slaback

4-11-2001
Date


D. Reed Freeman, Jr.
Collier Shannon Scott, PLLC
1050 Connecticut Avenue NW
Washington, D.C. 20036-5339
(202) 342-8615

April 18, 2001
Date

Attorney for Defendant Richard Slaback

FEDERAL TRADE COMMISSION

By:



David Fix
James Davis
Counsel for Plaintiff
600 Pennsylvania Avenue, N.W., Rm. 238
Washington, D.C. 20580

6/20/01

Date