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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

LUTHER D. THOMAS, Clerk
Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD L. PROCHNOW, *et al.*

Defendants.

CIVIL NO. 1:02-CV-917-JOF

**STIPULATED FINAL
ORDER FOR PERMANENT
INJUNCTION AND
CIVIL PENALTIES
AS TO DEFENDANTS
MEDIA OUTSOURCING,
INC., AND CROSS MEDIA
MARKETING CORP.**

WHEREAS, Plaintiff, United States of America, has filed its complaint for permanent injunction, equitable relief, and civil penalties pursuant to 15 U.S.C. §§ 45(l), 45(m), 53(b), 56, and 57b, against Defendants Media Outsourcing, Inc., Cross Media Marketing Corporation, and others, alleging violations of the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), the Federal Trade Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and the Cease and Desist Order issued on December 13, 1996, by the Federal Trade Commission ("FTC") in Docket No. C-3698, 122

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F.T.C. 495 (1996).

WHEREAS, Plaintiff and Defendants Cross Media Marketing Corporation and Media Outsourcing, Inc. ("Settling Defendants"), and the undersigned chief executive officer of the Settling Defendants, have agreed to the entry of this Stipulated Final Order for Permanent Injunction and Civil Penalties ("Order") by this Court to resolve all matters of dispute between the Plaintiff (including the FTC) and Settling Defendants with respect to the conduct of Settling Defendants alleged in the Complaint in this action without trial or further adjudication of any issue of fact or law. Although the Settling Defendants agree to enter into this Order, Settling Defendants expressly deny all of the allegations set forth in the Complaint and the applicability of the Cease and Desist Order issued on December 13, 1996, by the Federal Trade Commission ("FTC") in Docket No. C-3698, 122 F.T.C. 495 (1996) and the Consent Decree and Permanent Injunction entered on March 17, 1997, in United States v. Budget Marketing, Civil No. 80-419-E (S.D. Iowa) as to the Settling Defendants, other than the jurisdictional facts set forth in the Complaint and the Findings of this Court set forth below.

NOW, THEREFORE, Plaintiff and Settling Defendants having requested the Court to enter this Order,

ORDER

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

FINDINGS

1. This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto.
2. Venue is proper as to all parties in the Northern District of Georgia.
3. The activities of Settling Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Settling Defendants under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101 *et seq.*, and the TSR, 16 C.F.R. Part 310.
5. Settling Defendants have waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996). Settling Defendants also have waived all rights to seek judicial review of, or otherwise challenge or contest the validity of this Order.
6. Entry of this Order is in the public interest.

DEFINITIONS

1. To “administer a magazine service” means, in connection with a magazine service as defined below, to provide order verification services; billing and collection services; other customer service functions, such as responding to inquiries and handling consumer complaints and cancellation and refund requests, when performed in conjunction with order verification services or billing and collection services; or customer fulfillment services when performed in conjunction with order verification services or billing and collection services. For purposes of this definition, (i) “billing and collection services” shall mean billing and collecting payment from a consumer for a magazine service through a merchant account established in the Settling Defendant’s name, and (ii) “order verification services” shall mean contacting a consumer by telephone for purposes of verifying a consumer’s magazine service order and during which the verifier requests the consumer’s express agreement to purchase the magazine service and express authorization to be charged using the identified account.
2. “Assisting others engaged in telemarketing” means knowingly providing any of the following services to any person or entity in conjunction with a telemarketing plan, program, or campaign conducted to induce consumers

to purchase goods or services: (a) administering a magazine service; (b) formulating, drafting, or providing, or arranging for the formulation, drafting, or provision of, any telephone sales script or any other marketing material; (c) performing marketing services of any kind, including but not limited to solicitation of sales for any person or entity; or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card or debit card, or to an individual's checking or savings account.

3. "Billing information" means any data that enables an entity to charge a consumer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account or debit card.
4. "Direct mail solicitation" means any solicitation via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which the solicitation is directed to a specific address(es) or person(s).
5. "Free-to-pay conversion" shall be defined as set forth in Section 310.2(o) of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended as of March 31, 2003, and as it may be amended subsequently.
6. "Independent Sales Organization" means any person, corporation,

partnership, sole proprietorship, or other entity authorized by all or any of the Settling Defendants to sell a magazine service to consumers pursuant to a written agreement between such person or entity and the respective Settling Defendant or Settling Defendants where the Settling Defendant or Settling Defendants will administer the consumer's magazine service and directly charge the consumer.

7. "Magazine service" means a magazine subscription or subscription package (that combines two or more magazine publications) for a term of more than one year for which payment is to be made in two or more installments (regardless of how the payments are spaced over the period of the subscription(s)) and where an entity other than the magazine publisher, such as the Settling Defendants, will bill and collect payment from the consumer.
8. "Negative option feature" shall be defined as set forth in Section 310.2(t) of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended as of March 31, 2003, and as it may be amended subsequently.
9. "Preacquired account information" shall be defined as set forth in Section 310.2(w) of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended as of March 31, 2003, and as it may be amended subsequently.

10. "Telemarketing" means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing or contracting with 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 purchase any item, good, or service, 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" does not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited; **provided further** that for purposes of Part III of this Order (requiring compliance with the TSR), the definition of telemarketing shall be consistent with the definition set forth in the TSR, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently).
11. "Upselling" shall be defined as set forth in Section 310.2(dd) of the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended as of March 31,

2003, and as it may be amended subsequently.

I.

CIVIL PENALTY

IT IS FURTHER ORDERED that

A. Defendants Media Outsourcing, Inc., and Cross Media Marketing Corporation, and their successors and assigns, shall pay to Plaintiff a civil penalty, pursuant to section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(m)(1)(A), in the amount of one million dollars (\$1,000,000). Cross Media Marketing Corporation and Media Outsourcing, Inc., are jointly and severally liable for payment of the civil penalty. Based on these Defendants' sworn representations in the Form 10-K filed with the United States Securities and Exchange Commission for the fiscal year ending December 31, 2001; the Form 10-Q filed with the United States Securities and Exchange Commission for the quarter ending September 30, 2002; the August 13, 2002, amendment to a credit agreement among Cross Media Marketing Corporation, Media Outsourcing, Inc., and affiliated entities, with their lenders; and on other financial information that Defendants Cross Media Marketing Corporation and Media Outsourcing, Inc., provided to the Plaintiff in February 2003 (hereafter "Financial Disclosure Statements"), payment of the foregoing civil penalty is suspended

except for three hundred fifty thousand dollars (\$350,000), contingent upon the accuracy and completeness of the Financial Disclosure Statements.

B. Defendants shall, within five (5) days of the date of entry of this Order, pay \$175,000 of the non-suspended portion of the Civil Penalty.

Defendants shall, within ninety (90) days of the date of entry of this Order, pay the remaining \$175,000 of the non-suspended portion of the Civil Penalty.

Payments shall be made by electronic fund transfer in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, for appropriate disposition.

C. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the suspended portion of the Civil Penalty is unsuspended, and the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. §§ 1961, from the date of default to the date of payment, shall immediately become due and payable.

D. The Settling Defendants shall not transfer or grant any security interest in the Settling Defendants' assets beyond the existing security interest granted to current senior lenders referenced in Subpart I.A. above, until the Settling Defendants have paid in full their non-suspended portion of the Civil Penalty in accordance with the payment schedule set forth in Subpart I.B. The

parties agree that the Civil Penalty is subordinate only to the existing senior credit facility referenced in Subpart I.A. above.

E. Settling Defendants must, in accordance with 31 U.S.C. § 7701, furnish to the Plaintiff their respective taxpayer identifying numbers (social security number or employer identification number), which will be used for purposes of collecting and reporting on any delinquent amount arising out of such Settling Defendant's monetary obligations to the United States pursuant to this Order.

II.

SUPERSEDING PRIOR ORDERS

IT IS FURTHER ORDERED that this Order shall supersede and replace the Consent Decree and Permanent Injunction entered on March 17, 1997, in United States v. Budget Marketing, Civil No. 80-419-E (S.D. Iowa) and the Cease and Desist Order issued on December 13, 1996, by the Federal Trade Commission ("FTC") in Docket No. C-3698, 122 F.T.C. 495 (1996) if and to the extent those orders apply to the Settling Defendants. This Order does not supersede and replace the Consent Decree and Permanent Injunction entered on March 17, 1997, in United States v. Budget Marketing, Civil No. 80-419-E (S.D. Iowa) and the Cease and Desist Order issued on December 13, 1996, by the Federal Trade

Commission ("FTC") in Docket No. C-3698, 122 F.T.C. 495 (1996), as those orders may apply to any other persons or entities.

III.

VIOLATIONS OF TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, their officers, successors and assigns, agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, each are hereby permanently restrained and enjoined from violating any provision of the TSR, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), including but not limited to:

A. the provisions requiring specified disclosures in connection with the sales of goods or services, including the sale of goods or services with a negative option feature and internal and external upsells, set forth in Sections 310.3(a)(1) and 310.4(d) (as amended as of March 31, 2003 and as it may be amended subsequently);

B. the provisions prohibiting misrepresentations in connection with the sale of goods or services, including the sale of goods or services with a negative option feature, set forth in Sections 310.3(a)(2) and 310.3(a)(4) (as amended as of March 31, 2003 and as it may be amended subsequently); and

C. the provisions regarding the submission of billing information for payment, or the collection or attempt to collect payment for goods or services, in transactions involving preacquired account information, either in conjunction with or without a free-to-pay conversion plan, set forth in Sections 310.3(a)(3) and 310.4(a)(6) (as amended as of March 31, 2003 and as it may be amended subsequently).

IV.

PROHIBITED BUSINESS PRACTICES REGARDING MAGAZINE SERVICES

IT IS FURTHER ORDERED that Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, their officers, successors and assigns, agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, in connection with the offering for sale,

sale, or administering any magazine service sold to consumers by means of telemarketing, each are hereby permanently restrained and enjoined from:

A. Failing to disclose clearly and conspicuously that the purpose of the telemarketing call is to sell goods or services promptly at the beginning of:

1. all outbound telemarketing calls and internal and external upsells; and
2. all inbound telemarketing calls in response to any direct mail solicitation sent by or on behalf of any of the Settling Defendants that does not clearly and conspicuously disclose the purpose of the solicitation.

B. Misrepresenting, either orally or in writing and either expressly or by implication, any fact material to a consumer's decision to purchase any magazine service, including but not limited to:

1. the cost or duration of any magazine service;
2. the purpose for which a consumer's billing information will be used;
3. the amount of handling, shipping, processing or similar charge,
4. that any consumer may or will receive magazines by paying only a handling, shipping, processing or other fee;

5. the terms of the Settling Defendants' cancellation policy;

6. the contractual enforceability of Settling Defendants' magazine service contract;

7. that the Settling Defendants will or may report a consumer's failure to pay for any magazine service to any credit bureau or other credit reporting agency, or that a consumer's credit rating will or may be damaged by failing to pay for a magazine service; and

8. any material conditions, limitations, or restrictions, on the ability of the purchaser to use the offered magazine service.

C. Making any reference or statement regarding the cost per day, week, or month for the magazine service without disclosing clearly and conspicuously, and in close proximity to such reference or statement, if true, that such reference or statement is separate from the billing schedule that will be used to bill the consumer for the magazine service.

D. Failing to disclose clearly and conspicuously, before requesting any credit card, bank account, or other information that could be used to obtain payment, the total number of payments and the amount of each payment in the billing schedule that the consumer will, in fact, be charged in connection with the offer.

E. Directly or indirectly causing billing information to be submitted for payment, or collecting or attempting to collect payment for a magazine service without obtaining both the consumer's express agreement to make a purchase and express authorization to be charged for the magazine service using a clearly identified account. **Provided**, that,

1. The following information must be disclosed, clearly and conspicuously, shortly before obtaining the consumer's express agreement to purchase a magazine service and express authorization to be charged using the identified account; **provided**, that for purposes of this Subpart IV.E.1, merely requesting a consumer's billing information, by itself, shall not trigger the requirement to make the disclosures below; **provided further** that this provision does not apply to consumer requests to change magazines already included within an existing magazine service:

a. The name, and the exact number of issues or the exact number of months of service, of each publication covered by the magazine service;

b. The total cost (lump sum) of the entire magazine service;

c. The dollar amount of the first payment required, and

the number, dollar amount, and frequency (*e.g.*, monthly, quarterly) of all subsequent installment payments, and the amount of any finance charges for the consumer's magazine service, if any;

d. The method of payment for the magazine service; and

e. The Settling Defendants' policy or policies, if any,

including all material terms and conditions, on the consumer's right to cancel a magazine service, including but not limited to the time period, if any, during which consumers must cancel the magazine service to avoid any obligation to pay; the time period, if any, during which the consumer may cutoff a magazine service and avoid any ongoing obligation to pay for magazine service; how the time period, if any, for cancellation of magazine service is calculated or when it starts; and whether Settling Defendants will provide full or partial refunds.

2. Settling Defendants shall make an audio recording of the entire telephone call during which the disclosures set forth in Part IV. E. 1. are made and during which the consumer provides express agreement to make a purchase and express authorization to be charged for the magazine service using the identified account. Settling Defendants shall, upon

request by the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency or the Plaintiff, including the FTC, provide a copy of such recording to the requestor. **Provided** that Settling Defendants' compliance with this taping provision shall not be deemed *prima facie* evidence of compliance with any part of this Order except as evidence that the tapes have been made and maintained and, if true, that the disclosures required by Subpart IV. E.1. are contained on the tapes.

3. If the Settling Defendants receive or discover credible evidence that any of their, agents, employees, and other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, have made any representation to the consumer during any part of the transaction that is inconsistent with or contradicts any of the disclosures required in Subpart IV. E.1., other than an excusable mistake, the Settling Defendants must offer to the consumer a full refund and cancellation of the magazine service notwithstanding the terms and

conditions of the Settling Defendants' general refund policies. If a consumer asserts, directly or through a third party, without any evidence, that a representation inconsistent with or contradicting any of the disclosures required in Subpart IV. E. 1., was made, the Settling Defendants, unless they can produce evidence to the contrary, must offer to the consumer cancellation of future payment obligations for the remainder of the magazine service notwithstanding the terms and conditions of the Settling Defendants' general refund policies. **Provided** that compliance with this refund/cancellation provision shall not be deemed *prima facie* evidence of compliance, or noncompliance, with any other part of this Order.

V.

**PROHIBITED BUSINESS PRACTICES
REGARDING TELEMARKETING INVOLVING NEGATIVE OPTION
FEATURES**

IT IS FURTHER ORDERED that Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, their officers, successors and assigns, agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device including all other persons or entities in

active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, each are hereby permanently restrained and enjoined from:

A. In connection with the telemarketing of any product or service pursuant to an offer or agreement with a free-to-pay conversion, making any representation, expressly or by implication, that a good or service is offered with “no obligation” or words of similar import, denoting or implying the absence of any obligation on the part of the recipient of the offer to affirmatively act in order to avoid charges if, in fact, a charge will be submitted for payment at the end of a trial period unless the consumer cancels;

B. In connection with the telemarketing of any product or service pursuant to an offer or agreement with a negative option feature, directly or indirectly causing billing information to be submitted for payment, or collecting or attempting to collect payment without the consumer’s express agreement to make a purchase and express authorization to be charged using an identified account.

Provided, before obtaining the consumer’s express agreement to make a purchase and express authorization to be charged using an identified account, the Settling Defendants must clearly and conspicuously disclose all material

terms and conditions of the negative option feature, including but not limited to, the fact the consumer's account will be charged unless the consumer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, the total amount of each charge, and the specific steps the consumer must take to avoid the charge(s).

VI.

**REQUIREMENT TO FURNISH THE CONSUMER'S AGREEMENT WITHIN
A REASONABLE PERIOD OF TIME**

IT IS FURTHER ORDERED that Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, and their successors and assigns, must provide to each consumer for whom Settling Defendants are administering a magazine service a copy of the consumer's magazine service contract showing: 1) the date Settling Defendants or their agents mailed the contract to the consumer, 2) the name of the entity responsible for billing, collection, and customer service, and 3) the address and telephone number of any such entity. The Settling Defendants must send this copy of the consumer's magazine service contract to each consumer, via first class mail, commercial or interstate carrier, or any other method of delivery disclosed to and expressly agreed upon by the consumer, within a reasonable period of time after obtaining the consumer's express informed authorization to be charged for Settling Defendants' magazine service

and must identify the contents of the mailing as information regarding the terms and conditions of the consumer's magazine service the consumer has purchased, advising of the time sensitivity of such materials, and directing the consumer to review such materials, in a clear and conspicuous manner on the outside of the envelope if sent by first-class mail, or other similar location if sent by any other permissible method.

VII.

REQUIREMENT TO TIMELY HONOR REFUND AND CANCELLATION REQUESTS THAT COMPLY WITH DISCLOSED POLICIES

IT IS FURTHER ORDERED that Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, and their officers, successors and assigns, are hereby permanently restrained and enjoined from failing to honor a request that any of them receive, either directly or indirectly through a third party, to cancel a magazine service and provide a refund in accordance with the disclosed policy when the consumer has complied or made reasonable attempts to comply with the terms and conditions of the Settling Defendants' policies, as disclosed pursuant to Part IV.E.1. of this Order.

VIII.

CREDIT REPORTING

IT IS FURTHER ORDERED that

A. Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, their officers, successors and assigns, agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device, including all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, each are hereby permanently restrained and enjoined from knowingly submitting to any credit bureau or other credit reporting agency any information concerning a consumer's failure to pay for any magazine service where: 1) the consumer's failure to pay occurred after the Settling Defendants have received and had a reasonable period of time to process a cancellation request that complies with the Settling Defendants' stated cancellation policy; or 2) the Settling Defendants do not possess evidence that they have obtained the consumer's express agreement to make a purchase and express authorization to be charged using the identified account, such as an audio recording as set forth in Part IV.E.2.; **provided, however,** that this SubPart shall not affect the right of any

consumer to dispute the validity of a debt that Settling Defendants claim is owed or the right to raise any claim or defense that the consumer might have concerning the alleged debt.

IX.

REQUIREMENTS FOR INDEPENDENT SALES ORGANIZATIONS

IT IS FURTHER ORDERED that Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, their officers, successors and assigns, agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device, including all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, each are permanently restrained and enjoined from administering any magazine service sold or offered by any Independent Sales Organization unless such organization has entered into a signed written agreement with the applicable Settling Defendant that requires the following:

A. That the Independent Sales Organization must provide all individuals it employs or contracts with to sell Settling Defendants' magazine service with a copy of the TSR (effective as of December 31, 1995, amended as of

March 31, 2003, and as it may be amended subsequently), and with a copy of a Summary of Parts III-V of this Order (to the extent Parts III-V of this Order are applicable to the activities of the Independent Sales Organization), to be approved by counsel for Plaintiff, and must retain a signed copy of each employee's or contractor's acknowledgment of these documents in the employee's or contractor's file;

B. That the Independent Sales Organization must comply with the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and Parts III – V of this Order (to the extent Parts III - V are applicable to the activities of the Independent Sales Organization);

C. That the Settling Defendants must provide the Independent Sales Organization suggested telemarketing scripts, which must include those disclosures required pursuant to the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and Part IV.A. of this Order and must not make any misrepresentations prohibited by the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), or this Order; the Independent Sales Organization must make no material changes to these scripts that may affect compliance with the TSR (effective as of December 31, 1995, amended as of

March 31, 2003, and as it may be amended subsequently), or this Order without the prior written approval of the Settling Defendants (who must maintain a copy of any such approval);

D. That the Independent Sales Organization must develop and implement reasonable policies and procedures to train and monitor the individuals it employs or contracts with to sell Settling Defendants' magazine service regarding compliance with the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and with Parts III-V of this Order (to the extent Parts III-V of this Order are applicable to the activities of the Independent Sales Organization). Such procedures must include:

1. Requiring each individual employed or contracted with to sell Settling Defendants' magazine service on behalf of Settling Defendants to receive a training program prior to commencing such sales and at least twice during each calendar year.

2. Auditing and monitoring the performance of each individual employed or contracted with to sell Settling Defendants' magazine service on a routine and random basis such that each employee or contractor is monitored or audited at least once every month.

3. Taking appropriate disciplinary action against any individual employed or contracted to sell Settling Defendants' magazine service who has violated the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), or Parts III-V of this Order (to the extent Parts III-V of this Order are applicable to the activities of the Independent Sales Organization).

X.

**MONITORING SALES, VERIFICATION, AND
CUSTOMER SERVICE CALLS**

IT IS FURTHER ORDERED that Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, and their successors and assigns, whether acting directly or through any business entity, corporation, subsidiary, division or other device, are permanently restrained and enjoined from failing to develop and implement policies and procedures reasonably designed and intended to ensure compliance by all of their subsidiaries, affiliates, employees, independent contractors, and Independent Sales Organizations engaged in the sale or administration of Settling Defendants' magazine service with the TSR (effective as of December 31, 1995, amended as of March 31, 2003), and Parts III - V of this Order (to the extent Parts III-V of this Order are applicable to their activities). Such procedures must include adequate monitoring of sales presentations,

verification calls, customer service calls, and collection calls and must include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales, verification, customer service, and collection functions on a routine and regular basis; (2) taping an audio recording of each telephone call during which Settling Defendants or any person acting on behalf of any of them obtains or attempts to obtain the consumer's express agreement to make a purchase and express authorization to be charged using an identified account, pursuant to Part IV.E. of this Order, including all telephone calls where Settling Defendants attempt but fail to obtain the consumer's express agreement to make a purchase and express authorization to be charged using an identified account; (3) taping an audio recording of all customer service calls and collection calls when performed in conjunction with administering a magazine service; (4) establishing a procedure for receiving and responding to consumer complaints and inquiries received from any source or via any means, including but not limited to complaints or inquiries made during a verification call, customer service call, or collection call; (5) ascertaining the number and nature of consumer complaints and inquiries regarding telemarketing transactions in which each Independent Sales Organization, employee, or independent contractor is involved; (6) promptly investigating fully, and attempting to resolve in good

faith, any consumer complaint or inquiry from any source or via any means; and (7) taking timely and appropriate disciplinary action against any Independent Sales Organization, employee, or independent contractor who has not complied with the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently) or this Order (to the extent the Order is applicable to their activities), including but not limited to termination of any contract or agreement between any Settling Defendant and any such contractor or Independent Sales Organization, if appropriate. **Provided** the Settling Defendants shall not be in violation of this Order for the acts of an employee, independent contractor, or an Independent Sales Organization beyond the scope of their actual or apparent authority as an employee, independent contractor, or Independent Sales Organization of a Settling Defendant or for the acts of an employee, independent contractor, or an Independent Sales Organization in violation of the written contract set forth in Part IX, in violation of the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently) or in violation of this Order (to the extent the Order is applicable to their activities), if the Settling Defendants take appropriate steps to remedy such acts promptly after learning of such acts.

XI.

**ACKNOWLEDGMENT OF RECEIPT OF ORDER
AND TSR BY DEFENDANTS**

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Settling Defendants of this Order as entered by the Court, each Settling Defendant must submit to the Plaintiff at the addresses set forth in Part XV a truthful sworn statement that acknowledges receipt of this Order and acknowledges that each has reviewed and is familiar with the requirements and obligations imposed by the TSR (effective as of December 31, 1995 , as amended as of March 31, 2003, and as may be amended subsequently).

XII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, and their successors and assigns, must deliver a copy of this Order to all officers, directors, and all individuals employed by them serving in a management capacity, and must deliver a Summary of this Order, to be agreed upon by counsel, to all sales and sales verification personnel and all personnel involved in responding to consumer complaints or inquiries (whether such persons are designated as employees, consultants, independent contractors,

or otherwise) for goods or services subject to this Order and must secure from each such person a signed and dated statement acknowledging receipt of the Order or Summary, as applicable. The Settling Defendants, and their successors and assigns, must deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

XIII.

RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Order, Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, their officers, successors and assigns, agents, employees, and all other persons or entities within the scope of Fed. R. Civ. P. 65, whether acting directly or through any business entity, corporation, subsidiary, division or other device, including all other persons or entities in active concert or participation with any of the Defendants who receive notice of this Order by personal service or otherwise, in connection with any of the businesses entities described below, 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 goods or services purchased, and description of goods or services purchased, to the extent such information is obtained in the ordinary course of business, and a copy of each customer's magazine service contract;

D. Consumer complaints and refund or cancellation requests and other communications reasonably understood to concern Settling Defendants' possible non-compliance with the obligations of the TSR or this Order (whether received directly, indirectly or through any third party, by telephone, in writing, by fax or email or by any other means) and Settling Defendants' responses to such complaints, requests, or other communications;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials used or that Settling Defendants have made available

for use by Settling Defendants to their employees, subsidiaries, and affiliates, and the Independent Sales Organizations acting on behalf of Settling Defendants;

F. Each recording of telephone calls required to be made pursuant to Part X of this Order in a manner reasonably designed so that each such recording can be reasonably identified, located, and produced upon request; and

G. For each Independent Sales Organization:

1. A copy of the written agreement and any amendments between the Independent Sales Organization and any of the Settling Defendants;

2. Records that accurately reflect the name, address and telephone number of such Independent Sales Organization;

3. Records that accurately reflect all payments made to such Independent Sales Organization by any of the Settling Defendants, all payments made to any of the Settling Defendants by such Independent Sales Organization, and the nature of such payments; and

4. Copies of any written or electronic correspondence with any Independent Sales Organization or any person or entity that relate to inquiries or complaints from consumers, government entities or any other parties about the sales or any other activities of any Independent Sales

Organization.

XIV.

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 Plaintiff, including the FTC, Defendants Media Outsourcing, Inc., and Cross Media Marketing Corporation, each 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 such Defendant's possession or direct or indirect control to inspect the business operation; **provided** that the Settling Defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c).

B. In addition, the Plaintiff, including the FTC, 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 proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as consumers and suppliers to: Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, their officers, successors and assigns, their employees, any other entity managed or controlled in whole or in part by any of the Settling Defendants, and Settling Defendants' Independent Sales Organizations, without the necessity of identification or prior notice;

Provided that nothing in this Order shall limit the Plaintiff's or the FTC'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. Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, and their officers, successors and assigns, must allow representatives of the Plaintiff, including the FTC, to interview any 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.

XV.

COMPLIANCE REPORTING BY DEFENDANTS

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, Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, and their successors and assigns, shall notify the Plaintiff and the FTC of any changes in corporate structure 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, or a sale of assets or other transaction that would permit the purchaser to continue the telemarketing and upselling activities of Defendants Cross Media Marketing Corporation or Media Outsourcing, Inc., irrespective of the name or corporate or other form under which the purchaser engages in such activities and irrespective of any legal opinion concerning the purchaser's status as a successor to Cross Media Marketing Corporation or Media Outsourcing, Inc.; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a

change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any of the foregoing proposed changes about which the affected Defendant learns less than thirty (30) days prior to the date such action is to take place, such affected Defendant shall notify the Plaintiff and the FTC regarding such action as soon as is practicable after obtaining such knowledge.

B. Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, and their successors and assigns shall notify the Plaintiff, including the FTC, of any changes in Defendant Dennis H. Gougion's employment status with either Settling Defendant within ten (10) days of the date of such change that affects Defendant Gougion's compliance with the Bond provision in his Order resolving this action. Such notice shall include, to the extent a Settling Defendant has the information, the name and address of each business that Defendant Gougion becomes affiliated with, employed by, or performs services for.

C. One hundred eighty (180) days after the date of entry of this Order, and every one hundred eighty (180) days thereafter for a period of five (5) years after entry of this Order, Defendants Media Outsourcing, Inc. and Cross Media Marketing Corporation, and their successors and assigns, shall provide a written

report to the FTC, under oath, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Subpart XV.A.;
2. A copy of each acknowledgment of receipt of this Order obtained by each Settling Defendant pursuant to Part XII.

Provided that if a Court finds that any of the Settling Defendants has violated either this Order or the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), this reporting requirement shall be extended five (5) years from the final order issued by the Court as to the Defendant(s) found to have violated the Order or TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently).

D. The undersigned officer, signing as the chief executive officer of the Settling Defendants, for so long as he remains in the Settling Defendants' employ in such capacity or in any other capacity where he has the authority to control the acts and practices of the Settling Defendants, shall personally certify in each compliance report submitted on behalf of the Settling Defendants that:

1. he has reviewed the report;

2. based on the his knowledge, after reasonable, diligent inquiry, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

3. based on his knowledge, after reasonable, diligent inquiry, the statements made relating to Settling Defendants' compliance with each of the provisions of this Order, and to the measures designed to ensure Settling Defendants' compliance with each of the provisions of this Order, are complete, and accurately and truthfully presented;

4. he, either directly or upon advice of an officer or individual serving in a management capacity to whom he has delegated responsibility for monitoring and enforcing compliance with this Order, the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and the FTC Act, and who reports to him—

a. is responsible, for establishing, implementing, evaluating the effectiveness, and revising when necessary, the Settling Defendants' policies and practices to ensure compliance with each of the provisions of this Order;

b. has designed and enforces or oversees enforcement of the policies and practices that require that all material information relating to Settling Defendants' compliance with the requirements of this Order, the TSR (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), and the FTC Act, be provided to him and to the officer or individual serving in a management capacity to whom he has delegated responsibility for monitoring and enforcing compliance and who reports to him (if any);

c. has presented in the report his conclusions about the effectiveness of the Settling Defendants' compliance policies and practices set forth in Part XV.D.4.b. based on the information provided to him as of that date;

E. For the purposes of this Order, each Settling Defendant shall, unless otherwise directed by the Plaintiff's authorized representatives, mail all written notifications to the Plaintiff to:

Director
Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, DC 20044
Re: DOJ 102-3043, United States v. Prochnow, et al.

and to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington D.C. 20580
Re: United States v. Prochnow, et al.

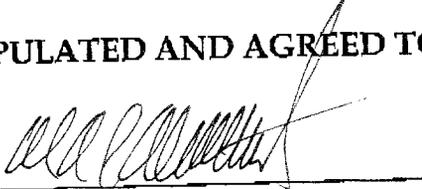
XVI.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for all purposes, including but not limited to, the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or for the punishment of violations thereof.

The parties hereby consent to entry of this Order without further proceedings.

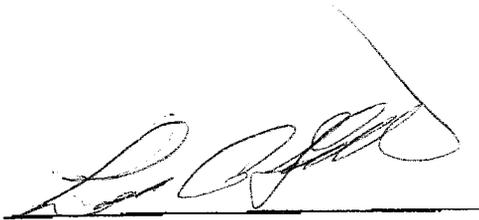
STIPULATED AND AGREED TO BY:



Ronald S. Altbach
As chief executive officer of Cross Media
Marketing Corporation and Media Outsourcing, Inc.

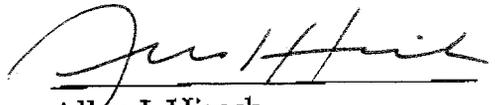
Date: March 28, 2003

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Date: 4/10, 2003

Linda Goldstein
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New York, New York 10022
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(212) 935-2015 (FAX)



Date: 4/24, 2003

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(404) 873-8661 (FAX)
Attorneys for Defendants Cross Media Marketing Corporation
and Media Outsourcing, Inc.



Date: 5/30, 2003

Elizabeth Stein
Office of Consumer Litigation
Department of Justice
1331 Pennsylvania Ave., NW, # 950N
Washington, DC 20004
(202) 307-0486
(202) 514-8742 (FAX)
Elizabeth.Stein2@usdoj.gov

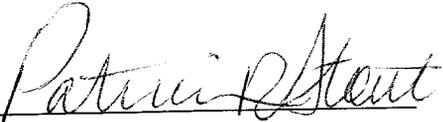
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WILLIAM S. DUFFEY
United States Attorney



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(404) 581-6181 (FAX)

Date: 6/2, 2003

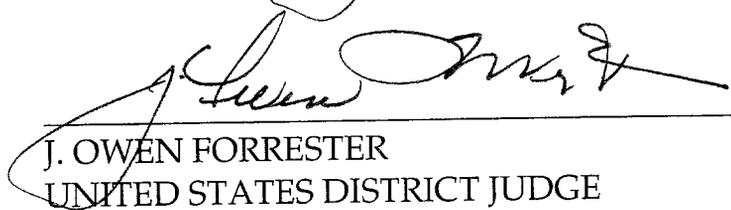


JAMES REILLY DOLAN
JAMES A. PRUNTY
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room NJ-2122
Washington, D.C. 20580
202-326-3292, 326-3292 (telephone)
202-326-2558 (facsimile)

Date: May 30, 2003

Attorneys for Plaintiff

SO ORDERED, this 6th day of June 2003.


J. OWEN FORRESTER
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

JUN 09 2003