THOMAS M. HUGHES
Attorney for Plaintiff
Federal Trade Commission
Street and mailing address:
Room H-238
6th Street & Pennsylvania Ave., N.W.
Washington, DC 20580
(202) 326-3730
TMH - 4346

PETER VERNIERO
Attorney General of New Jersey
By: CINDY K. MILLER
Senior Deputy Attorney General
Attorney for Plaintiff New Jersey
New Jersey Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
(201) 648-7579
CKM - 3650

LOCAL COUNSEL
FAITH S. HOCHBERG
By: SUSAN CASSELL
970 Broad Street, 7th Floor
Newark, NJ 07102
(201) 645-2847
SCC - 8081

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION and STATE OF NEW JERSEY Plaintiffs, v. NATIONAL SCHOLASTIC SOCIETY, INC. a New Jersey Corporation; also d/b/a University Society Publishers Periodicals and DAVID C. BEASLEY, JR., individually and as an officer of National Scholastic Society, Inc. Defendants.	Hon. Civil Action No. VERIFIED COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiffs, the Federal Trade Commission ("Commission"), and the State of New Jersey, for their complaint allege:

1. The Commission brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act, ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, ("Telemarketing Act"), 15 U.S.C. § 6101et. seq., to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, appointment of a receiver, and other equitable relief for defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310.

2. Plaintiff, the State of New Jersey brings this action under Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), to secure similar injunctive and equitable relief.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b), 57b, 6102(c), 6105(b), and 6103(a).

4. Venue in the District of New Jersey is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. §§ 53(b) and 6103(e).

PLAINTIFF

5. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41et seq. The Commission is charged, inter alia, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, which prohibits deceptive and abusive telemarketing. The Commission

is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 57b.

6. Plaintiff, the State of New Jersey, is one of the fifty sovereign states of the United States. Peter Verniero is the duly qualified Attorney General acting for Plaintiff, and brings this action in his official capacity. The State of New Jersey is authorized to initiate federal district court proceedings to enjoin telemarketing that violates the Commission's Telemarketing Sales Rule and, in each such case, to obtain damages, restitution, and other compensation on behalf of residents of the State of New Jersey, and to obtain such further and other relief as the court may deem appropriate. 15 U.S.C. § 6103(a).

DEFENDANTS

7. Defendant National Scholastic Society, Inc., ("NSS"), d/b/a University Society Publishers Periodicals, ("USPP"), is a New Jersey corporation with its principal office and principal place of business at 145 N. Franklin Turnpike, Ramsey, New Jersey. USPP transacts or has transacted business in the District of New Jersey.

8. Defendant David C. Beasley, Jr., is the president and majority shareholder of NSS. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate defendant, including the acts and practices set forth in this complaint. He transacts or has transacted business in the District of New Jersey.

COMMERCE

9. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale, through telemarketing, of magazine subscriptions, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

10. Since at least 1996, defendants have engaged in a scheme to defraud consumers throughout the United States through the telemarketing sale of magazine subscriptions.

11. Consumers telephone employees or agents of the defendants in response to a direct mail solicitation. During the course of the telephone conversations, the defendants' agents or employees inform the consumers that the consumers are now entered into a sweepstakes and can receive a free gift or gifts if they purchase a multi-year subscription to a magazine.

12. In numerous instances defendants' agents and employees fail to disclose to consumers material information concerning this sweepstakes and these gifts before the consumers pay for the goods that are the subject of defendants' telemarketing sales offer.

13. In numerous instances, defendants' agents and employees fail to disclose to consumers, before the consumers pay for the goods that are the subject of defendants' telemarketing sales offer, that defendants have a policy of not permitting cancellations.

14. Defendants' agents and employees elicit consumers' credit card information, including the consumers' credit card account number, as payment for these magazine

consumers' credit card account for all or part of the cost of a magazine subscription without the consumers' authorization.

15. Many consumers attempt to cancel their subscription or contact defendants to protest these unauthorized charges. In numerous instances, defendants do not permit these consumers to cancel.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT ONE
(By Plaintiff Federal Trade Commission)

16. In numerous instances, in the course of offering for sale or selling magazine subscriptions through telemarketing, defendants represent, expressly or by implication, that (a defendants will use consumers' credit card account information for a purpose other than billin charges to the consumer's credit card account; or (b) defendants will not bill charges to the consumer's credit card account without first obtaining the consumer's written authorization.

17. In truth and in fact, in numerous instances, (a) defendants use consumer's cred card account information for the purpose of billing charges to the consumer's credit card acc and (b) defendants bill charges to the consumer's credit card account without first obtaining t consumer's written authorization.

18. Therefore, the representations set forth in Paragraph 16 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO
(By Plaintiff Federal Trade Commission)

19. In numerous instances, in the course of offering for sale or selling magazine subscriptions through telemarketing, the defendants represent, expressly or by implication, that defendants will provide at no cost to those consumers who purchase a magazine subscription $500 worth of coupons for the purchase of groceries.

20. Defendants fail to disclose material conditions and restrictions associated with the receipt of these coupons, including but not limited to the following:

(1) consumers must complete and mail to a third-party numerous forms; and

(2) consumers must pay substantial money for postage and processing.

21. In light of the representations set forth in Paragraph 19 above, defendants' failure to disclose material conditions and restrictions associated with consumers receiving grocery coupons is misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

22. In the Telemarketing Act, 15 U.S.C. § 6101, et. seq., Congress directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, with a Statement of Basis and Purpose, 60 Fed. Reg. 43842 (Aug. 23, 1995). The Rule became effective December 31, 1995.

23. Defendants are "sellers" or "telemarketers" engaged in "telemarketing" and telemarketing of a "prize promotion," as those terms are defined in the Telemarketing Sales Rule. 16 C.F.R. § 310.2(r), (t), (u), and (q).

24. The Telemarketing Sales Rule prohibits telemarketers and sellers from failing to disclose, in a clear and conspicuous manner and before a customer pays for goods or services, in any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds. 16 C.F.R. § 310.3(a)(1)(iv).

25. The Telemarketing Sales Rule prohibits telemarketers and sellers from failing to disclose, in a clear and conspicuous manner and before a customer pays for goods or services, all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(ii).

26. The Telemarketing Sales Rule prohibits telemarketers and sellers from failing to disclose, in a clear and conspicuous manner and before a customer pays for goods or services, if the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy. 16 C.F.R. § 310.3(a)(1)(iii).

27. The Telemarketing Sales Rule's Statement of Basis and Purpose explains that, "[t]he Commission intends that the disclosures be made<u>before</u> the consumer sends funds to a seller or telemarketer or divulges to a telemarketer or seller credit card or bank account information. Thus, a telemarketer or seller who fails to provide the disclosures until the consumer's payment information is in hand violates the Rule." 60 Fed. Reg. 43842, 43852 (Aug. 23, 1995).

28. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102 (c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE
(By Plaintiffs Federal Trade Commission and State of New Jersey)

29. In numerous instances, in connection with the telemarketing of magazine subscriptions, defendants conduct a prize promotion as defined in section 310.2(q) of Telemarketing Sales Rule, 16 C.F.R. § 310.2(q), but fail to disclose to consumers the odds of being able to receive the prize or the factors used in calculating the odds, before the customers pay for the goods or services offered.

30. Therefore, defendants have engaged in a deceptive telemarketing act or practice in violation of Section 310.3(a)(1)(iv) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(iv).

COUNT FOUR
(By Plaintiffs Federal Trade Commission and the State of New Jersey)

31. In numerous instances, in connection with the telemarketing of magazine subscriptions, defendants represent, expressly or by implication, that consumers who purchase a magazine subscription from the defendants will receive, at no cost, $500 worth of coupons for the purchase of groceries.

32. Defendants do not disclose to those consumers all material restrictions, limitations, or conditions to receive the grocery coupons, before the consumers pay for the magazine subscriptions. In fact, in order to obtain the $500 worth of grocery coupons, consumers must complete and mail numerous forms and pay postage and processing fees.

33. Therefore, defendants have engaged in a deceptive telemarketing act or practice in violation of Section 310.3(a)(1)(ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(ii), by failing to disclose to consumers all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer, before consumers pay for the goods or services offered.

COUNT FIVE
(By Plaintiffs Federal Trade Commission and the State of New Jersey)

34. In numerous instances, in connection with the telemarketing of magazine subscriptions, defendants fail to disclose to the consumer, before the consumer pays for the goods or services offered, that defendants have a policy of not making refunds, cancellations, exchanges, or repurchases.

35. Therefore, defendants have engaged in a deceptive telemarketing act or practice in violation of Section 310.3(a)(1)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(iii).

CONSUMER INJURY

36. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of the defendants' unlawful acts or practices. In addition, the defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

37. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.

38. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violation of the Telemarketing Sales Rule, including the rescission or reformation of contracts, and the refund of money.

39. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy the injury caused by the defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, and plaintiff State of New Jersey pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Court's own equitable power request that the Court:

1. Award plaintiffs such preliminary injunctive and ancillary equitable relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

2. Permanently enjoin the defendants from violating the FTC Act and the Telemarketing Sales Rule as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the Telemarketing Sales Rule and the FTC Act, including, but not limited to, recision or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award plaintiffs the costs of bringing this action, as well as such other and additional equitable relief as the Court may determine to be just and proper.

Respectfully submitted,
STEPHEN CALKINS
General Counsel

ALLEN HILE
Assistant Director
Division of Marketing Practices

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THOMAS M. HUGHES
Federal Trade Commission
Division of Marketing Practices
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580
202-326-3730

FAITH S. HOCHBERG
United States Attorney

by:_______________________
SUSAN C. CASSELL
Assistant U.S. Attorney
970 Broad Street - 7th Floor
Newark, New Jersey 07102
(201) 645-2847
SCC-8081

PETER VERNIERO
Attorney General of New Jersey

by: ______________________
CINDY K. MILLER
Senior Deputy Attorney General
P.O. Box 45029
Newark, New Jersey 07101
(201) 648-7579
Attorney for Plaintiff
State of New Jersey
CKM - 3650

VERIFICATION

I, Thomas M. Hughes, an attorney admitted to practice in the State of Massachusetts, certify under penalty of perjury:

1. I am counsel to the Federal Trade Commission and in that capacity I am responsible for representing the Plaintiff FTC in this action.

2. To the extent facts relating to Counts 1-5 are alleged in this Complaint, the facts set forth are true to the best of my knowledge, information and belief.

DATED: ___________, 1997.

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Thomas M. Hughes
Attorney for Plaintiff
Federal Trade Commission

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Friday, May 30, 1997