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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11	_____)	CV-98-9274 ABC (CTx)
12	FEDERAL TRADE COMMISSION,)	
13	Plaintiff,)	CONSENT JUDGMENT AND ORDER FOR
14	v.)	PERMANENT INJUNCTION AS TO
15	INFODIRECT, INC., et al.,)	DEFENDANT THOMAS R. FLETCHER
16	Defendants.)	
17	_____)	

18 Plaintiff Federal Trade Commission ("Commission") filed a
19 Complaint for a permanent injunction and other equitable relief
20 pursuant to Sections 13(b) and 19 of the Federal Trade Commission
21 Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing
22 and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 et
23 seq. The Complaint charged Defendant Thomas R. Fletcher
24 ("Fletcher" or "defendant") with violations of Section 5(a) of the
25 FTC Act, as amended, 15 U.S.C. § 45(a), and Sections 310.3(a)(4),
26 310.3(a)(2)(iii), 310.3(a)(3), and 310.3(a)(2)(iv) of the
27 Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310.

28

1 Plaintiff Commission and Defendant Fletcher have agreed to
2 entry of this Consent Judgment and Order for Permanent Injunction
3 ("Consent Judgment" or "Order") by the Court to resolve all
4 matters in dispute as to Defendant Fletcher in this action.
5 Defendant Fletcher has waived defenses set forth in Fed. R. Civ.
6 P. 12(h)(1), and all claims under the Equal Access to Justice Act,
7 28 U.S.C. § 2412, *amended by* PL 104-121, 110 Stat. 847, 863-64
8 (1996). Defendant Fletcher has consented to entry of this Order
9 without trial or adjudication of any issue of law or fact herein
10 and has agreed that entry of this Order by the Court will
11 constitute notice to him of the terms and conditions of the Order.
12 Plaintiff Commission and Defendant Fletcher having requested the
13 Court to enter this Order, the Court hereby finds and orders as
14 follows:

15 FINDINGS

16 1. This is an action by the Commission instituted under
17 Sections 13(b) and 19 of the FTC Act and the Telemarketing and
18 Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*
19 The Complaint seeks permanent injunctive relief against Defendant
20 Fletcher in connection with the advertising, sale, and offering
21 for sale of information pertaining to government auctions and
22 foreclosed properties.

23 2. This Court has jurisdiction of the subject matter of
24 this case and over Defendant Fletcher. Venue in the Central
25 District of California is proper.

26 3. The Complaint states a claim upon which relief may be
27 granted against Defendant Fletcher under Sections 5(a), 13(b) and
28 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, and Sections

1 310.3(a)(4), 310.3(a)(2)(iii), 310.3(a)(3), and 310.3(a)(2)(iv) of
2 the Commission's Telemarketing Sales Rule (16 C.F.R. Part 310), 16
3 C.F.R. §§ 310.3(a)(4), 310.3(a)(2)(iii), 310.3(a)(3), and
4 310.3(a)(2)(iv).

5 4. The Commission has the authority under Sections 13(b)
6 and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the
7 Telemarketing and Consumer Fraud and Abuse Prevention Act, 15
8 U.S.C. § 6101 *et seq.*, to seek the relief it has requested.

9 5. The activities of Defendant Fletcher charged in the
10 Complaint are in or affecting commerce, as defined in Section 4 of
11 the FTC Act, 15 U.S.C. § 44.

12 6. Defendant Fletcher has not admitted liability for the
13 charges in the Complaint, disputes the allegations in the
14 Complaint, and contends he has no liability.

15 7. Defendant Fletcher has waived all rights to seek
16 judicial review or otherwise challenge or contest the validity of
17 this Order. He has also waived all claims under the Equal Access
18 to Justice Act, 28 U.S.C. § 2412, *as amended by* PL 104-121, 110
19 Stat. 847, 863-64 (1996).

20 8. Entry of this Order is in the public interest.

21 DEFINITIONS

22 A. "**Document**" is synonymous in meaning and equal in scope
23 to the usage of the term in Federal Rule of Civil Procedure 34(a),
24 and includes writings, drawings, graphs, charts, photographs,
25 audio and video recordings, computer records, and other data
26 compilations from which information can be obtained and
27 translated, if necessary, through detection devices into
28

1 reasonably usable form. A draft or non-identical copy is a
2 separate document within the meaning of the term.

3 B. "**Information guide**" means any document that is
4 advertised, offered for sale, or offered in conjunction with the
5 sale or marketing of any other item or service, and which is
6 represented to contain information on how or where consumers can
7 obtain vehicles or other consumer products at auction, or how or
8 where to find properties for sale that have been foreclosed upon
9 or otherwise repossessed by a lender, government agency or other
10 organization.

11 C. "**Telemarketing**" means offering, selling, or marketing
12 any good or service during the course of a telephone call, except
13 for:

14 1. telephone calls in which the sale of goods or
15 services is not completed, and payment or authorization of payment
16 is not required until after a face-to-face sales presentation; or

17 2. telephone calls that are initiated by a customer
18 regarding the good or service and which are not the result of any
19 solicitation paid for, made by, or made on behalf of or for the
20 benefit of, the person or business selling or offering the good or
21 service.

22 ORDER

23 I.

24 **PERMANENT BAN ON SALE OF INFORMATION GUIDES AND TELEMARKETING**

25 **IT IS THEREFORE ORDERED** that Defendant Fletcher is
26 permanently restrained and enjoined from engaging or
27 participating, whether directly, in concert with others, or
28 through any business entity or other device, in:

1 D. Representing, expressly or by implication, that
2 consumers who purchase information guides relating to foreclosed
3 homes are frequently able to purchase homes in reasonably good
4 condition for substantially below their market values, unless the
5 defendant possesses and relies upon a reasonable basis that
6 substantiates such representation at the time it is made;

7 E. Falsely representing, expressly or by implication, that
8 a consumer's checking account or credit card information will not
9 be used for the purpose of debiting the consumer's bank account or
10 billing the consumer's credit card account;

11 F. Using a consumer's credit card or bank account number,
12 or any portion thereof, that the consumer disclosed over the
13 telephone, to obtain payment from the consumer's credit card or
14 bank account, unless the defendant has disclosed to the consumer,
15 immediately prior and subsequent to obtaining the number, the fact
16 that such information would be used to obtain payment from the
17 consumer's credit card or bank account, and the amount and date of
18 the transaction;

19 G. Causing a consumer to be billed through his credit card
20 or local telephone exchange carrier account for any product or
21 service unless the defendant has obtained the consumer's express
22 verifiable authorization to do so;

23 H. Submitting for payment a check, draft, or other form of
24 negotiable paper drawn on a person's checking, savings, share, or
25 similar account, without the person's signature on the negotiable
26 instrument;

27

28

1 I. Falsely representing, expressly or by implication, any
2 aspect of obtaining a refund, including but not limited to the
3 ease with which a consumer can obtain a refund;

4 J. Failing to disclose any material aspect of a refund
5 policy in connection with the offering or sale of any good or
6 service;

7 K. Falsely representing, or failing to disclose, any other
8 material fact in connection with the offering or sale of any good
9 or service; and

10 L. Violating any provision of the Telemarketing Rule, 16
11 C.F.R. Part 310, *et seq.*, including, but not limited to, by:

12 1. making false or misleading statements to induce the
13 purchase of information guides, including but not limited to:

14 a. that consumers who purchase information guides
15 relating to seized cars frequently are able to purchase
16 vehicles in good condition for a fraction of their
17 wholesale values, including as little as \$100;

18 b. that government agencies such as the DEA and
19 IRS regularly seize vehicles, including vehicles in good
20 condition, and that such vehicles are regularly sold to
21 the general public at prices substantially below their
22 wholesale values;

23 c. that consumers who purchase information guides
24 relating to foreclosed homes frequently are able to
25 purchase foreclosed and repossessed homes in reasonably
26 good condition for substantially below their market
27 values; and

28

1 (other than a federal, state or local law enforcement agency or
2 pursuant to a court order) of any mailing or telephone list of
3 past customers of Defendant Infodirect or Defendant Fletcher or of
4 any business which Defendant Fletcher has owned or controlled
5 individually or jointly that has sold any information guide, or
6 any other list containing identifying information relating to any
7 such customer, including but not limited to a customer's name,
8 address, telephone number, bank account number or credit card
9 number.

10 **IV.**

11 **PROHIBITION ON TRANSFERRING BUSINESS INFORMATION**

12 **IT IS FURTHER ORDERED** that Defendant Fletcher, directly or
13 through any corporation, subsidiary, division, or other device or
14 person, is hereby restrained and enjoined from transferring or in
15 any other way providing to any person (other than a federal, state
16 or local law enforcement agency or pursuant to a court order),
17 directly or indirectly, any books, records, tapes, disks,
18 accounting data, manuals, electronically stored data, banking
19 records, invoices, telephone records, ledgers, payroll records, or
20 other documents of any kind, including information stored in
21 computer-maintained form, in the possession, custody or control of
22 Defendant Fletcher, or any trade secrets or knowledge, whether
23 recorded or otherwise, that are in any way related to Infodirect
24 or any business Defendant Fletcher has owned or controlled
25 individually or jointly that has sold any information guide.

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V.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that judgment is hereby entered in the amount of \$10,000,000 [TEN MILLION DOLLARS] against Defendant Fletcher. *Provided, however,* that this judgment shall be suspended until further order of the Court, and *provided further* that this suspension shall be subject to the conditions set forth in Paragraph VII of this Order.

VI.

REAFFIRMATION OF FINANCIAL STATEMENT

IT IS FURTHER ORDERED that within five (5) business days after entry of this Order, Defendant Fletcher shall submit to the Commission a truthful sworn and notarized statement, in the form shown on Appendix 1, that shall acknowledge receipt of this Order as entered and shall reaffirm and attest to the truthfulness, accuracy, and completeness of Defendant Fletcher's December 2, 1998 financial statement.

VII.

RIGHT TO REOPEN

The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial condition of the defendant as represented in his December 2, 1998 financial statement, which contains material information upon which the Commission relied in negotiating and agreeing to the amount and/or terms of the redress payment stated in the Order. If, upon motion by the Commission, this Court finds that Defendant Fletcher failed to submit to the Commission the sworn statement required by Paragraph VI of this Order, or

1 submitted a financial statement that failed to disclose any
2 material asset, or materially misrepresented the value of any
3 asset, or made any other material misrepresentation in or omission
4 from the financial statement, the suspension of the monetary
5 judgment will be terminated and the entire judgment amount of
6 \$10,000,000 [TEN MILLION DOLLARS] will be immediately due and
7 payable. For purposes of this Paragraph, and any subsequent
8 proceedings to enforce payment, including but not limited to a
9 non-dischargeability complaint filed in a bankruptcy proceeding,
10 Defendant Fletcher stipulates to all of the allegations in the
11 Commission's Complaint.

12 **VIII.**

13 **RECORDKEEPING**

14 **IT IS FURTHER ORDERED** that, for a period of five (5) years
15 from the date of entry of this Order, Defendant Fletcher, in
16 connection with any and every business entity of which he is a
17 majority owner, or which he otherwise manages or controls, is
18 hereby restrained and enjoined from failing to create, and to
19 retain, in a location under his control, for a period of five (5)
20 years following the date of such creation, unless otherwise
21 specified:

22 A. Books, records and accounts which, in reasonable detail,
23 accurately and fairly reflect the cost of goods or services sold,
24 revenues generated, and the disbursement of such revenues.

25 B. Records accurately reflecting: the name, address, and
26 phone number of each person that such business entity employs in
27 any capacity, including as an independent contractor; that
28 person's job title or position; the date upon which the person

1 commenced work; and the date and reason for the person's
2 termination, if applicable. Defendant Fletcher shall retain such
3 records for any terminated emplyee for a period of two (2) years
4 following the date of termination.

5 C. Records containing the names, addresses, phone numbers,
6 dollar amounts paid, quantity of items or services purchased, and
7 description of items or services purchased for all consumers to
8 whom such business entity has sold, invoiced or shipped any goods
9 or services, or from whom such business entity accepted money or
10 other items of value, to the extent that it is common industry
11 practice to obtain such consumer information in the ordinary
12 course of business, or if not, to the extent Defendant Fletcher
13 obtains such consumer information in the ordinary course of
14 business.

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

18 1. The consumer's name, address, telephone number and
19 the dollar amount paid by the consumer;

20 2. The written complaint, if any, and the date of the
21 complaint or refund request;

22 3. The basis of the complaint, including the name of
23 any salesperson complained against, and the nature and result of
24 any investigation conducted concerning the complaint;

25 4. Each response and the date of the response;

26 5. Any final resolution and the date of resolution;

27 and

28

1 2. Any changes in his employment status (including
2 self-employment) within ten (10) days of such change. Such notice
3 shall include the name and address of each business that Defendant
4 Fletcher is affiliated with or employed by, a statement of the
5 nature of the business, and a statement of his duties and
6 responsibilities in connection with the business or employment;
7 and

8 3. Any proposed change in the structure of Defendant
9 Infodirect, such as creation, incorporation, dissolution,
10 assignment, sale, merger, creation, dissolution of subsidiaries,
11 proposed filing of a bankruptcy petition, or change in the
12 corporate name or address, or any other change that may affect
13 compliance obligations arising out of this Order, thirty (30) days
14 prior to the effective date of any proposed change; provided,
15 however, that, with respect to any proposed change in the
16 corporation about which Defendant Fletcher learns less than thirty
17 (30) days prior to the date such action is to take place, the

1 2. Defendant Fletcher's then current employment,
2 business address and telephone numbers, a description of the
3 business activities of each such employer, and Defendant
4 Fletcher's title and responsibilities for each employer;

5 3. A statement describing the manner in which
6 Defendant Fletcher has complied and is complying with the
7 provisions of Paragraphs I through IV of this Order;

8 C. Upon written request by a representative of the
9 Commission, Defendant Fletcher shall submit additional written
10 reports (under oath, if requested) and produce documents on
11 fifteen (15) days' notice with respect to any conduct subject to
12 this Order;

13 D. For the purposes of this Order, Defendant Fletcher
14 shall, unless otherwise directed by the Commission's authorized
15 representatives, mail all written notifications to

16 Assistant Regional Director
17 Federal Trade Commission
18 10877 Wilshire Boulevard, Suite 700
19 Los Angeles, California 90024
20 Re: FTC v. Infodirect

21 E. For the purposes of this Paragraph, "employment"
22 includes the performance of services as an employee, consultant,
23 or independent contractor; and "employers" include any individual
24 or entity for whom the Defendant performs services as an employee,
25 consultant or independent contractor;

26 F. For purposes of the compliance reporting required by
27 this Paragraph, the Commission is authorized to communicate
28 directly with Defendant Fletcher; and

 G. *Provided, however,* that the Commission shall not
disclose any information that Defendant Fletcher provides to the

1 Commission pursuant to this Paragraph, and which the Commission
2 has not independently obtained from any other source, to any third
3 party except for law enforcement purposes.

4 **X.**

5 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

6 **IT IS FURTHER ORDERED** that the Commission is authorized to
7 monitor Defendant Fletcher's compliance with this Order by all
8 lawful means, including but not limited to the following means:

9 A. The Commission is authorized, without further leave of
10 court, to obtain discovery from any person in the manner provided
11 by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ.
12 P. 26 - 37, including the use of compulsory process pursuant to
13 Fed. R. Civ. P. 45, for the purpose of monitoring and
14 investigating Defendant Fletcher's compliance with any provision
15 of this Order;

16 B. The Commission is authorized to use representatives
17 posing as consumers and suppliers to Defendant Fletcher, Defendant
18 Fletcher's employees, agents or sales representatives, or any
19 other entity managed or controlled in whole or in part by
20 Defendant Fletcher without the necessity of identification or
21 prior notice;

22 C. Nothing in this Order shall limit the Commission's
23 lawful use of compulsory process, pursuant to Sections 9 and 20 of
24 the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether
25 Defendant Fletcher has violated any provision of this Order or
26 Section 5 of the FTC Act, 15 U.S.C. § 45.

1 purposes of inspecting and copying all documents relevant to any
2 matter contained in this Order.

3 **XII.**

4 **EXPIRATION OF ASSET FREEZE**

5 **IT IS FURTHER ORDERED** that the freeze of Defendant Fletcher's
6 assets shall be lifted upon entry of this Order.

7 **XIII.**

8 **INDEPENDENCE OF OBLIGATIONS**

9 **IT IS FURTHER ORDERED** that the expiration of any requirements
10 imposed by this Order shall not affect any other obligation
11 arising under this Order.

12 **XIV.**

13 **COSTS AND ATTORNEYS FEES**

14 **IT IS FURTHER ORDERED** that each party to this Order bear its
15 own costs and attorneys fees incurred in connection with this
16 action.

17 **XV.**

18 **CONTINUING JURISDICTION**

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

21 **XVI.**

22 **NOTICE OF ENTRY OF JUDGMENT**

23 **IT IS FURTHER ORDERED** that entry in the docket of this
24 Consent Judgment by the Clerk of Court shall constitute notice to
25 Defendant Fletcher of the terms and conditions of this Consent
26 Judgment, and that Defendant Fletcher waives all rights to contest
27 in any future proceeding whether he was properly served with this
28 Consent Judgment.

1 **XVII.**

2 **ENTRY BY CLERK**

3 There being no just reason for delay, the Clerk of the Court
4 is hereby directed to enter this Order.

5
6 The parties hereby stipulate and agree to entry of the
7 foregoing Order, which shall constitute a final judgment as to
8 Defendant Fletcher in this action.

9
10 SIGNED AND STIPULATED BY:

11 Dated: _____, 19____
12 _____
13 John D. Jacobs
14 FEDERAL TRADE COMMISSION
15 Attorney for Plaintiff

16 Dated: _____, 19____
17 _____
18 Thomas R. Fletcher
19 Defendant

20 APPROVED AS TO FORM AND CONTENT:

21 Dated: _____, 19____
22 _____
23 Theodore E. Bacon
24 BACON & MILLS
25 Attorney for Defendant Fletcher

26 **IT IS SO ORDERED.**

27 Dated this ____ day of _____, 19____.

28 _____
United States District Judge

[APPENDIX 1]

JOHN D. JACOBS, CA Bar No. 134154
Federal Trade Commission
10877 Wilshire Blvd., Suite 700
Los Angeles, CA 90024
(310) 824-4360 voice
(310) 824-4380 fax

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

_____)	CV-98-9274 ABC (CTx)
FEDERAL TRADE COMMISSION,)	
) 9EV-	
) Plaintiff,	
) v.	
) INFODIRECT, INC., et al.,	
) Defendants.	
_____)	

1 [APPENDIX 1]

2 2. I agreed to entry of a Consent Judgment against me to
3 settle the charges in the Commission's Complaint. I read the
4 provisions of the Consent Judgment before signing it. I
5 understand all the provisions of the Consent Judgment. By signing
6 the Consent Judgment I agreed to be bound by those provisions.

7 3. On _____, 19 ____, I received a copy of the
8 Consent Judgment, which was signed by a United States District
9 Judge and was entered on _____, 19 ____. A true
10 and correct copy of the Consent Judgment I received is appended to
11 this affidavit. After receiving the entered Consent Judgment I
12 reviewed it and confirmed it was the document I had previously
13 signed.

14 4. In December 1998, I provided to Plaintiff Federal Trade
15 Commission ("Commission") a completed and signed document titled
16 "Financial Statement of Individual Defendant" ("Financial
17 Statement"), which I dated December 2, 1998.

18 5. I understand that my Financial Statement contains
19 material information upon which the Commission relied in
20 negotiating and agreeing to the terms in the Consent Judgment
21 related to payment of redress and suspension of the judgment
22 amount of \$10,000,000.

23 6. I hereby reaffirm and attest to the truthfulness,
24 accuracy, and completeness of my December 2, 1998 Financial
25 Statement.

26 7. I understand that if, upon motion by the Commission, the
27 Court finds that the Financial Statement I submitted failed to
28 disclose any material asset, or materially misrepresented the

[APPENDIX 1]

value of any asset, or finds that I made any other material misrepresentation in or omission from the financial statement, the suspension of the monetary judgment will be terminated and the entire judgment amount of \$10,000,000 [TEN MILLION DOLLARS] will be immediately due and payable.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, 19 __, at _____, California.

Thomas R. Fletcher

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 19 __.

Notary Public
My Commission Expires:
