

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-6885-Civ.-Ferguson

FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 v.)
)
STREAMLINE INTERNATIONAL, INC., et al.,)
)
 Defendants.)

STIPULATED FINAL JUDGMENT AND ORDER

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the parties hereto;
2. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b);
3. The Commission's Complaint states a claim upon which relief may be granted against Defendant Waitkus under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);
4. The acts and practices of Defendant Waitkus was or is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Defendant Waitkus waives any claim he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by PL 104-121, 110 Stat. 847, 863-64 (1996), concerning the prosecution of this action to the date of this Final Order;
6. Defendant Waitkus waives all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order, and further waives and releases any claim he may have against the FTC and the employees, agents, or representatives of the FTC;
7. Entry of this Final Order is in the public interest; and
8. By his agreement to the conditions herein, Defendant Waitkus does not admit to any of the allegations asserted against him by the Commission.

DEFINITIONS

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

- A. "Asset" means any legal or equitable interest in, right to, or claim to any real or personal property of defendant Waitkus, or held for the benefit of defendant Waitkus, wherever located, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general

intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts.

- B. “Competent and reliable scientific evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
- C. “Defendant Waitkus” means Robert “Bob” Waitkus, individually or doing business as WorldWide Opportunity Network, whether acting directly, indirectly, in connection or participation with others, or through any agent, representative, business entity or other device.
- D. “Multi-level marketing program” means any marketing program in which participants make a payment and receive the right, license or opportunity to derive income as a participant primarily from: (1) recruiting additional participants, or having additional participants placed by the promoter or any other person into the program participant’s downline, tree, cooperative, income center, or other similar program grouping; (2) selling goods or services; and (3) receiving payment or other compensation, in whole or in part, based upon the retail sales of those in the participant’s downline, tree, cooperative, income center or similar program grouping.
- E. “Participating” in a multi-level marketing program or a prohibited marketing scheme includes, but is not limited to, promoting, marketing, advertising, offering for sale, or selling, or assisting others in the offering for sale or selling the right to participate in, the program or scheme, as well

as acting or serving as an officer, director, employee, salesperson, agent, shareholder, advisor, consultant, independent contractor, or distributor, or acting as a speaker or spokesperson on behalf of the program or scheme.

- F. “Prohibited marketing scheme” means any marketing program, Ponzi scheme, chain marketing scheme, or other marketing plan or program in which a participant makes a payment and receives the right, license or opportunity to derive income as a participant primarily from: (i) the recruitment of additional recruits by the participant, program, promoter or others; or (ii) non-retail sales made to or by such recruits or their successive generations of recruits.
- G. “Retail sales” means sales of goods or services to third-party end users who are not participants or recruits in the multi-level marketing program.

ORDER

Conduct Prohibitions

I.

IT IS THEREFORE ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently restrained and enjoined from participating in any manner or capacity whatsoever, directly, in concert with others, individually or through any business entity or other device, in any prohibited marketing scheme.

II.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise,

while participating in any multi-level marketing program not subject to Paragraph I, are hereby permanently restrained and enjoined from making or assisting in the making of, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement or representation of material fact, including but not limited to the following:

- A. Misrepresentations about the potential earnings or income derived from such activity;
- B. Misrepresentations about the benefits any person participating in such an activity actually can receive or reasonably can expect to receive from such activity; and
- C. Misrepresentations about the amount of sales, incentives, profit or rewards a person actually made or can potentially make through such activity.

III.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, while participating in any multi-level marketing program not subject to Paragraph I, are hereby permanently restrained and enjoined from failing to disclose, clearly and conspicuously, to any prospective participant in said program to whom any earnings, profits or sales volume claims have been made:

- A.. The number and percentage of current program participants who have made a profit through their participation in the program; and
- B. The average and median amount of money made by each current program participant.

IV.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, while participating in any multi-level marketing program not subject to Paragraph I, are hereby permanently restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement.

V.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement in or affecting commerce, are hereby permanently restrained and enjoined from making any representation in any manner, expressly or by implication, that the dietary supplement contains ingredients that are generally recognized as safe by the Food and Drug Administration, unless the representation is true.

VI.

IT IS FURTHER ORDERED that Defendant Waitkus, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement in or affecting commerce, are hereby permanently restrained and enjoined from representing, in any manner, expressly or by implication, the benefit, performance, efficacy or safety of such supplement, unless, at the time the representation is made, Defendant Waitkus

possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

contains material information upon which the Commission relied in negotiating and agreeing to this Final Order. If, upon motion by the Commission, this Court finds that Defendant Waitkus' financial statement either failed to disclose any material asset or source of income or materially misrepresented the value of any asset or source of income, or contained any other material misrepresentation or omission, the Court shall enter judgment in the amount of \$7,106,899.00, rendered immediately payable by Defendant Waitkus; provided, however, that in all other respects this Final Order shall remain in full force and effect unless otherwise ordered by this Court;

- B. Defendant Waitkus authorizes the Commission to verify all information provided in Defendant Waitkus' financial statement with all appropriate third parties, including, but not limited to, financial institutions or credit reporting bureaus;
- C. Defendant Waitkus agrees that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Order, including, but not limited to, a nondischargeability complaint in any bankruptcy proceeding; and
- D. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any and all other proceedings and remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Final Order.

XI.

IT IS FURTHER ORDERED that, within five (5) business days of entry of this Final Order, Defendant Waitkus shall submit to the Commission a truthful sworn statement, in the form that is attached as an appendix to this Final Order, that shall reaffirm and attest to the truth, accuracy, and completeness of the financial statement executed by Defendant Waitkus on August 21, 2001.

Record Keeping Provisions

XII.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of

person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaint and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

Compliance Reporting

XIII.

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Final Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Final Order, Defendant Waitkus shall notify the Commission in writing of the following:
 - 1. Any changes in his residence, mailing address, and telephone numbers, within fifteen (15) days of the date of such change;
 - 2. Any changes in his employment status (including self-employment), or his participation in any multi-level marketing program not subject to Paragraph I, within fifteen (15) days of such change. Such notices shall include the name and address of each business that Waitkus is employed by or participating in, a statement of the nature of the business,

and a statement of Waitkus' duties, responsibilities or involvement in connection with the business or employment;

3. Any proposed change in the structure of any business entity owned or controlled by Defendant Waitkus, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Final Order, thirty (30) days prior to the effective date of any proposed change; provided, however, that with respect to any proposed change in the corporation about which Defendant Waitkus learns fewer than thirty (30) days prior to the date such action is to take place, Defendant Waitkus shall notify the Commission as soon as practicable after learning of such proposed change;
4. Any filing by Defendant Waitkus of a petition for relief under the United States Bankruptcy Code, contemporaneously upon the filing of such petition; and
5. Any filing by any of Defendant Waitkus' creditors of a petition for relief under the United States Bankruptcy Code against Defendant Waitkus, within five (5) days of receipt of notice of such petition;

B. One hundred eighty (180) days after the date of entry of this Final Order, Defendant Waitkus shall provide a written report to the Commission, sworn under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Final Order.

This report shall include, but not be limited to:

1. Defendant Waitkus' then-current residence address and telephone numbers;

2. Defendant Waitkus' then-current employment, business address and telephone numbers, a description of the business activities of each such employer, and the defendant's title and responsibilities for each employer;
 3. A description of any multi-level marketing program in which Defendant Waitkus is participating, including the name and address of the program, a statement of the nature of the program, and a statement of Defendant Waitkus' involvement in or connection with the program;
 4. A copy of each acknowledgment of receipt of this Final Order obtained by Defendant Waitkus pursuant to Paragraph XVI below; and
 5. A statement describing the manner in which Defendant Waitkus has complied and is complying with this Final Order;
- C. Upon written request by a representative of the Commission, Defendant Waitkus shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Final Order;
- D. For the purpose of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom the defendant performs services as an employee, consultant, or independent contractor; and
- E. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with the Defendant Waitkus.

Compliance Monitoring

XIV.

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendant Waitkus' compliance with this Final Order by all lawful means, including, but not limited to, the following means:

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Federal Rules of Civil Procedure 26-34, 36 and 37, and to use compulsory process pursuant to Federal Rule of Civil Procedure 45, for the purpose of monitoring and investigating Defendant Waitkus' compliance with any provision of this Final Order;
- B. The Commission is authorized to use representatives posing as consumers and employees of, and suppliers to, Defendant Waitkus, Defendant Waitkus' employees, or any other entity managed or controlled in whole or in part by Defendant Waitkus, without the necessity of identification or prior notice; and
- C. Nothing in this Final Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendant Waitkus has violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

Cooperation by Defendant Waitkus

XVII.

IT IS FURTHER ORDERED that Defendant Waitkus shall fully cooperate with and assist agents of the Commission throughout the pendency of this litigation and any appeal that may be brought in this litigation, including but not limited to providing a sworn written statement or oral testimony, as may be necessary, concerning Defendant Waitkus' involvement with Streamline International, Inc. and J.R. Jackson. Defendant Waitkus is hereby permanently restrained and enjoined from hindering or obstructing, directly or indirectly, agents of the Commission in any manner in this litigation.XVII.1.j -183.75 -30 TD -0.176

Retention of Jurisdiction and Entry of Judgment

XX.

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

There being no just cause for delay, this Stipulated Final Judgment and Final Order for a Permanent Injunction as to Defendant Robert Waitkus is hereby entered this ___ day of _____, 2001.

Wilkie D. Ferguson, Jr.
United States District Judge

The parties hereby consent to the terms and conditions of the Final Order as set forth above and consent to entry thereof.

FOR THE COMMISSION:

FOR THE DEFENDANT:

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Appendix

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4. The information contained in the financial statements dated August 21, 2001, that I have submitted to the Federal Trade Commission was true, accurate, and complete at such time.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____ [date], at _____ [city and state].

Robert Waitkus

Subscribed and sworn to before me this _____ day of _____, 2001.

Notary Public
My Commission Expires:
